



**DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS**



In the matter of:)	
)	
)	ISCR Case No. 09-05556
)	
Applicant for Security Clearance)	

Appearances

For Government: William T. O’Neil, Esquire, Department Counsel
For Applicant: *Pro se*

March 9, 2011

Decision

ANTHONY, Joan Caton, Administrative Judge:

After a thorough review of the case file, pleadings, and exhibits, I conclude that Applicant failed to rebut or mitigate the Government’s security concerns under Guideline F, Financial Considerations. His eligibility for a security clearance is denied.

Applicant completed an Electronic Questionnaire for Investigations Processing (e-QIP) on April 20, 2009. On October 29, 2010, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, Financial Considerations. DOHA acted under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant submitted an answer to the SOR on November 20, 2010. He requested that his case be adjudicated on the written record in lieu of a hearing. The Government compiled its File of Relevant Material (FORM) on December 29, 2010. The FORM contained documents identified as Items 1 through 11. By letter dated January 4, 2011,

DOHA forwarded a copy of the FORM to Applicant, with instructions to submit any additional information or objections within 30 days of receipt. Applicant received the file on February 9, 2011. His response was due on March 11, 2011. By letter dated February 9, 2011, he filed a two-page letter, which he identified as his "final response" to the FORM and DOHA's transmittal letter of January 4, 2011. On February 28, 2011, the case was assigned to me for a decision. Without objection, I marked Applicant's two-page response to the FORM as his Exhibit (Ex.) A and admitted it to the record.

Findings of Fact

The SOR contains 15 allegations raising security concerns under AG F, Financial Considerations (SOR ¶¶ 1.a. through 1.o.). Two allegations recite Chapter 13 bankruptcies, one filed in 2002 and dismissed in 2004, and the other filed in 2004 and dismissed in 2009 (SOR ¶¶ 1.a. and 1.b.). Thirteen additional allegations recite financial delinquencies totalling approximately \$108,835 (SOR ¶¶ 1.c. through 1.o.) In his Answer to the SOR, Applicant admitted all 15 allegations. Applicant's admissions are entered as findings of fact. (Item 1; Item 4.)

Applicant, who is 55 years old and a college graduate, is employed as a program manager by a government contractor. He married in 1976 and divorced in 2005. He is the father of three adult sons. He was first awarded a security clearance in 1980. (Item 5.)

In 2000, Applicant and his wife were laid off from their jobs for an unspecified time. They were then unable to pay their mortgage and utility bills. In November 2002, Applicant and his wife filed a Chapter 13 bankruptcy. The Chapter 13 bankruptcy was dismissed without prejudice on September 23, 2004. (Item 6 at 3; Item 7 at 47, 59.)

Applicant and his wife refiled the Chapter 13 bankruptcy on November 3, 2004. They listed total assets of \$176,600 and total liabilities of \$153,490. In March 2009, their Chapter 13 trustee filed a certificate of default, claiming that Applicant was approximately \$17,368 in arrears in his monthly payments.¹ Applicant's second Chapter 13 bankruptcy was dismissed without prejudice in June 2009. (Item 6 at 5; Item 7 at 1, 5, 13.)

Applicant admitted all 13 allegations of financial delinquency on the SOR. Of those debts, five were for amounts of \$100 or less (SOR ¶ 1.e., 1.f., 1.i., 1.j., and 1.k.). Two of the debts admitted by Applicant were for amounts between \$100 and \$235. (SOR ¶¶ 1.d. and 1.g.). Applicant also admitted five additional financial delinquencies alleged in the SOR. Those delinquencies are: SOR ¶ 1.c.: \$1,438; SOR ¶ 1.l.: \$9,082; SOR ¶ 1.m.: \$1,820; SOR ¶ 1.n.: \$1,808; and SOR ¶ 1.o.: \$1,800. (Item 4.)

Applicant admitted that he was over 120 days past due on payments of his \$92,172 home mortgage. (SOR ¶ 1.h.) In his response to DOHA interrogatories,

¹ At the time the certificate of default was filed, Applicant's monthly payments were \$3,045. (Item 7 at 1.)

Applicant provided a letter from the mortgage holder, dated January 12, 2010, denying his request for hardship assistance. In response to the FORM, dated February 9, 2011, he stated that he was “still in the middle of resolving the house foreclosure process.” He further stated that he would persevere and resolve his financial delinquencies at some unspecified time in the future. (Item 4; Item 6 at 24; Ex. A.)

In a May 2009, interview with an authorized investigator from the U.S. Office of Personnel Management (OPM), Applicant attributed his two bankruptcies and current financial delinquencies to being laid off on five separate occasions. The record reflects that Applicant was laid off in 2000 for an unspecified time. He was laid off for five months in 2004, and one month in 2005. In October 2006, he was fired from a job and unemployed for one month. In November 2008, he was laid off for five months. He has worked for his present employer since April 2009. (Item 5; Item 6 at 3-4.)

In his response to the FORM, Applicant stated that he found the process of explaining his financial situation “exasperating and futile.” He denied that his financial delinquencies raised security concerns. He attributed his current financial situation in general terms to “unemployment, medical bills, marital problems culminating in divorce, not to mention college bills, my mother’s dementia and strokes and placement in a nursing home, and all sorts of repairs on my aging house.” He failed to specify how these events impacted his ability to satisfy his financial obligations. (Ex. A.)

Applicant failed to provide documentation to establish that he had paid or had payment plans in place for the 13 delinquent debts he admitted. Moreover, he failed to provide documentation to establish that any of the debts alleged in the SOR had been settled or otherwise satisfied. (Item 4; Item 6; Ex. A.)

Burden of Proof

The Government has the initial burden of proving controverted facts alleged in the SOR. The responsibility then shifts to the applicant to refute, extenuate, or mitigate the Government's case. Because no one has a right to a security clearance, the applicant carries the burden of persuasion. The “clearly consistent with the national interest” standard compels resolution of any reasonable doubt about an applicant's suitability for access to classified information in favor of protecting national security.

Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security, and it has emphasized that “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information.” *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant an applicant’s eligibility for access to classified information “only upon a finding that it is

clearly consistent with the national interest to do so.” Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended.

When evaluating an applicant’s suitability for a security clearance, an administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are used in evaluating an applicant’s eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, the administrative judge applies these guidelines in conjunction with the factors listed in the adjudicative process. The administrative judge’s over-arching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the “whole-person concept.” The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that “[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security.” In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the Applicant is responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . .” The Applicant has the ultimate burden of persuasion in seeking to obtain a favorable security decision.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information.

Section 7 of Executive Order 10865 provides that decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline F, Financial Considerations

The security concern for Financial Considerations is set out in AG ¶ 18:

Failure or inability to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

The guideline notes several conditions that could raise security concerns. Under AG ¶ 19(a), an "inability or unwillingness to satisfy debts" is potentially disqualifying. Similarly under AG ¶ 19(c), "a history of not meeting financial obligations" may raise security concerns. For several years, Applicant has accumulated delinquent debt which has not been paid. This evidence is sufficient to raise potentially disqualifying conditions under Guideline F.

The guideline also recites conditions that could mitigate security concerns arising from financial difficulties. Several Guideline F mitigating conditions could apply to the security concerns raised by Applicant's financial delinquencies. Unresolved financial delinquency might be mitigated if "it happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment." (AG ¶ 20(a)). Additionally, unresolved financial delinquency might be mitigated if "the conditions that resulted in the financial problem were largely beyond the person's control," such as "loss of employment, a business downturn, unexpected medical emergency, or a death, divorce, or separation, and the individual acted responsibly under the circumstances." (AG ¶ 20(b)). Still other mitigating circumstances that might be applicable include evidence "the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control" (AG ¶ 20(c) or "the individual has initiated a good-faith effort to repay overdue creditors or otherwise resolve debts." (AG ¶ 20 (d)). Finally, security concerns related to financial delinquencies might be mitigated if "the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue." (AG ¶ 20 (e)).

While Applicant's 13 unresolved delinquent debts total approximately \$108,835, five of his delinquent debts are for amounts under \$100 and two are for amounts between \$100 and \$235. His history of financial delinquencies dates to at least 2002, when he and his wife filed their first Chapter 13 bankruptcy. The delinquencies alleged on the SOR remain unpaid and have occurred under circumstances that are likely to

recur. Applicant has failed to demonstrate that his financial problems are resolved or are under control. Moreover, he lacks a clear and timely strategy for resolving his delinquent debts.

Applicant has been employed by his present employer since April 2009. The record shows that Applicant experienced short-term unemployment five times. Moreover, he claimed that certain life events overwhelmed his ability to satisfy his debts. He did not specify how these events---unemployment, a divorce, his mother's illness---used financial resources that he might otherwise have used to pay his delinquent debt. He failed to provide documentation to establish that he acted reasonably when confronted with financial problems. He failed to show that he had made good faith efforts to resolve his delinquent debts.

In May 2009, Applicant told an OPM investigator that he intended to pay his delinquent debts in the future. Almost two years later, however, all of his financial delinquencies remain unresolved. In determining an individual's security worthiness, the Government cannot rely on the possibility that an applicant might resolve his or her outstanding debts at some future date. ISCR Case No. 98-0614 at 5 (App. Bd. Jul. 12, 1999). It is also well settled that failure to resolve debts over a period of time constitutes a continuing course of conduct that raises concerns about an applicant's reliability and trustworthiness. ISCR Case No 07-10575 at 4 (App. Bd. Jul 3, 2008). Accordingly, I conclude that none of the Guideline F mitigating conditions fully applies to the facts of Applicant's case.

Whole-Person Concept

Under the whole-person concept, an administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of an applicant's conduct and all relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

- (1) the nature, extent, and seriousness of the conduct;
- (2) the circumstances surrounding the conduct, to include knowledgeable participation;
- (3) the frequency and recency of the conduct;
- (4) the individual's age and maturity at the time of the conduct;
- (5) the extent to which participation is voluntary;
- (6) the presence or absence of rehabilitation and other permanent behavioral changes;
- (7) the motivation for the conduct;
- (8) the potential for pressure, coercion, exploitation, or duress; and
- (9) the likelihood of continuation or recurrence.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant is a mature adult. In the

last ten years, he has experienced five brief periods of unemployment. He was divorced in 2005. He filed two Chapter 13 bankruptcies, both of which were dismissed when he failed to make required payments. He has been steadily employed at his present position since about April 2009. In a May 2009, interview with an OPM investigator, he stated he would take action to pay or otherwise satisfy his delinquent debts. However, his 13 delinquent debts remain unaddressed. Despite nearly two years of steady employment, Applicant has failed to satisfy his delinquent debts, several of which are for relatively small amounts of money. His failure to satisfy his creditors raises security concerns about his judgment and reliability.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. For these reasons, I conclude Applicant failed to mitigate the security concerns arising from his financial delinquencies.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a. - 1.o.:	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Joan Caton Anthony
Administrative Judge