



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



In the matter of:)
)
) ISCR Case No. 09-05602
)
)
Applicant for Security Clearance)

Appearances

For Government: Daniel F. Crowley, Esq., Department Counsel
For Applicant: *Pro se*

January 14, 2011

Decision

LOUGHRAN, Edward W., Administrative Judge:

Applicant has not mitigated Financial Considerations security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On May 7, 2010, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, Financial Considerations. The action was taken under Executive Order (EO) 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) implemented by the Department of Defense on September 1, 2006.

Applicant answered the SOR on June 8, 2010, and requested a hearing before an administrative judge. The case was assigned to me on October 25, 2010. DOHA issued a notice of hearing on November 2, 2010, and the hearing was convened as

scheduled on November 5, 2010. DOHA received the hearing transcript (Tr.) on November 16, 2010.

Procedural and Evidentiary Rulings

Notice and Location of Hearing

Applicant affirmatively waived his right under ¶ E3.1.8 of the Directive to 15 days notice before the hearing. Applicant works in Iraq. He elected to do the hearing by video teleconference (VTC) while he was in the United States on vacation.

Evidence

The Government offered Exhibits (GE) 1 through 6, which were admitted without objection. Applicant testified, called a witness, and submitted Exhibits (AE) A through T, which were admitted without objection. The record was held open for Applicant to submit additional information. Applicant submitted documents that were marked AE U through VV and admitted without objection. Department Counsel's memorandum is marked Hearing Exhibit (HE) I.

Findings of Fact

Applicant is a 27-year-old employee of a defense contractor. He served on active duty in the United States military from 2002 until he was honorably discharged in 2005. He seeks a security clearance for the first time. He attended college for a brief period but did not earn a degree. He married in 2003 and divorced in 2008. He married his current wife in August 2009. He has two children, ages seven and six.¹

Applicant experienced financial problems in about 2005. His first wife quit her job to return to school. He was not able to pay all his debts on his salary alone, and a number of debts became delinquent. Applicant works for a contractor in Iraq. He returned home from working overseas in June 2009. He returned to work in late September 2009. He had to return home from Iraq in January 2010, and again in March 2010, when his mother was extremely ill. His wife has been managing his finances and paying his debts while he has been overseas.²

The SOR alleges 11 delinquent debts with balances totaling about \$28,000. Except as specifically stated below, the allegations were established through credit reports and Applicant's admissions. The delinquent debts raising security concerns in Applicant's case are addressed in the table below.

¹ Tr. at 48, 52, 54, 71-73; GE 1; AE W.

² Tr. at 25-26, 50-53, 57, 64-65, 72; GE 5; AE C-G, BB.

SOR	AMOUNT	STATUS	EVIDENCE
1.a Credit card	\$710	Payment program to become current. Paid \$154 from August to December 2010. Balance of about \$556.	Tr. at 29-34, 54-55; AE S, T, Z, AA, DD, QQ, RR.
1.b. Collection company/auto loan/repossession	\$8,640	Admitted. Unresolved.	Tr. at 55-56.
1.c. State Attorney General/child support	\$3,820	Payments through garnishment. Balance of \$2,291. Discussed further below.	Tr. at 35-36, 56-60; AE BB, CC.
1.d. Utility company	\$142	Paid December 2010.	AE UU.
1.e. DFAS	\$5,256	Admitted. Overpayment from when Applicant was in military. Unresolved.	Tr. at 38, 62-65.
1.f. Collection company/telephone company	\$721	Settlement agreement for \$387 through monthly payments. Paid \$300 from July to December 2010.	Tr. at 29, 43-44, 65; AE J, K, VV.
1.g. Retail store/computer	\$1,290	Unresolved.	Tr. at 44, 65-67; GE 5.
1.h. Auto loan/repossession	\$765	Admitted vehicle repossessed. Unable to locate creditor. Creditor no longer in business. ³ Not listed on two most recent credit reports.	Tr. at 45, 51, 67-68; GE 2-5.
1.i. Internet provider	\$461	Denied. Dispute letter mailed December 2010. Not listed on two most recent credit reports.	Tr. at 45, 51, 68-69; GE 2-5, 6; AE II, KK, LL.
1.j. Internet provider	\$274	Denied. Dispute letter mailed December 2010. Not listed on two most recent credit reports.	Tr. at 45, 51, 68-69; GE 2-5, 6; AE II, JJ, LL.
1.k. Collection company/truck school	\$6,138	Paid \$175 in August and September 2010. Current balance \$6,862. Discussed further below.	Tr. at 45-48, 69; GE 5; AE M, N.

In summary, Applicant paid about \$154, \$1,530, \$142, \$300, and \$350, for a total of about \$2,475, toward the debts alleged in SOR ¶¶ 1.a, 1.c, 1.d, 1.f, and 1.k. The debts alleged in SOR ¶¶ 1.h through 1.j were successfully disputed or otherwise resolved. Applicant still owes almost \$25,000 on the remaining debts alleged in the SOR.

³ See www.cutimes.com/News/2009/8/Pages/Peak5-Financial-Closes-Up-Shop.aspx

Applicant's monthly child support obligation for his two children is \$1,000, as collected by his state Attorney General's Office. The payment is \$461 every two weeks. He was current through May 2009. He returned home from working overseas in June 2009. He made some payments, but fell behind on the total amount due. In November 2009, he was \$3,821 in arrears. Since November 2009, with one exception, his wages have been garnished \$507 every two weeks. During one pay period in February 2010, only \$445 was garnished. The amount over \$461 goes toward the arrearages. An additional \$885 was obtained in May 2010 from Applicant's income tax refund. The balance on the account was \$2,291 in November 2010.⁴

Applicant enrolled in a truck-driving school operated by a trucking company in 2006. The company did not charge for the school provided the student went to work for the company. In July 2006, Applicant learned that he had been accepted for a position to work overseas. He quit the school and accepted the position. The \$6,138 debt alleged in SOR ¶ 1.k reflects the cost of the tuition after Applicant quit the school. Applicant entered a payment agreement in July 2010 to pay \$175 each month. He made \$175 payments in August and September 2010. The balance on the debt in September 2010 was \$6,862. He stopped paying this debt in order to pay a debt owed to a military exchange, as addressed below.⁵

Applicant had additional delinquent debts that were not alleged in the SOR. In September 2010, the balance due on a delinquent debt owed to a military exchange was \$1,380. He entered a payment agreement to pay \$232 every two weeks until the debt was paid. He submitted documentation that he paid \$232 on September 10, 2010, September 24, 2010, and October 22, 2010. He paid \$50 on October 8, 2010, and \$198 in December 2010. His wife indicated the \$198 payment paid the debt in full. She stated that they made the payments to the military exchange instead of the creditor listed in SOR ¶ 1.k because the exchange told them that it would garnish his wages if they did not.⁶

Applicant also fell behind on his rent payments and owed about \$5,000. He submitted evidence of payments of about \$8,500 between July 2009 and May 2010. The payments apparently went toward the current rent as well as the past-due rent. It is unclear how much of the \$8,500 went toward the normal rent and how much went to pay the past-due rent.⁷

⁴ Tr. at 35-36, 56-60; Applicant's response to SOR; AE W, BB, CC.

⁵ Tr. at 44-48, 69; Applicant's response to SOR; GE 5; AE I.

⁶ Tr. at 27-29, 38-44; AE O-R, FF, GG, NN, OO, SS, TT. Any debts that were not specifically alleged in the SOR will not be used for disqualification purposes. They will be used in assessing Applicant's overall financial situation, in the application of mitigating conditions, and in analyzing the "whole person."

⁷ Tr. at 57; AE H-I.

Applicant listed several of his delinquent debts when he submitted his Questionnaire for Sensitive Positions (SF 86) in March 2009. He discussed his finances with an investigator from the Office of Personnel Management (OPM) in May 2009. He stated that he planned to pay his delinquent debts in 2009. He stated that he would use the income earned while working overseas to pay his debts. When Applicant responded to DOHA interrogatories in December 2009, he did not submit proof of payments of any of his delinquent debts. Applicant and his wife testified that their plan is to pay the smaller debts first and then move on to the larger debts. His wife does not have a full-time job. She attends school and does volunteer work for a church. Applicant's pay statement for the period ending November 26, 2010, reflected that he had earned \$110,655 year-to-date (YTD) in 2010. His deductions totaled \$26,978, leaving a net or "take-home" pay of \$83,677. Applicant and his wife stated they have sufficient income to pay their living expenses and their delinquent debts. He stated that he intends to pay all his delinquent debts. He has not received financial counseling.⁸

Applicant served in Iraq while he was in the military. He stated that he has spent almost four years overseas since 2006. He submitted letters attesting to his outstanding job performance, professionalism, moral standards, dependability, dedication, and integrity.⁹

Policies

When evaluating an applicant's suitability for a security clearance, the 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 to be 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, administrative judges apply the guidelines in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching 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.

⁸ Tr. at 28-29, 44, 47-49, 69-70, 73; GE 1, 5, 6; AE DD, EE.

⁹ Tr. at 71-72; GE 1; AE B.

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 the applicant or proven by Department Counsel.” The applicant has the ultimate burden of persuasion 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 safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that adverse 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. Two are potentially applicable in this case:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant accumulated a number of delinquent debts and was unable or unwilling to pay his obligations for a period. The evidence is sufficient to raise the above disqualifying conditions.

Five Financial Considerations Mitigating Conditions under AG ¶ 20 are potentially applicable:

(a) the behavior 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;

(b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances;

(c) 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;

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and

(e) 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.

Applicant attributed his financial problems to his first wife quitting her job and returning to school, which left them without enough income to pay their bills. He had periods during the past two years when he had to return from Iraq, which affected his income. These events may qualify as conditions that were outside his control. To be fully applicable, AG ¶ 20(b) also requires that the individual act responsibly under the circumstances. Not all of Applicant's financial problems were outside his control. He owes DFAS more than \$5,000 from when the military overpaid him. He told the OPM investigator in May 2009 that he planned to pay his delinquent debts in 2009. He has worked overseas for about four years since 2006, but he has only paid a total of about \$2,475 toward the debts alleged in the SOR, and he still owes almost \$25,000. I recognize that he has paid debts that were not alleged in the SOR. The payments, including those made to non-SOR debts, are insufficient for a finding that he acted responsibly and made a good-faith effort to pay or otherwise resolve all his debts. Applicant has not received financial counseling. His financial issues are recent and ongoing. I am unable to determine that they are unlikely to recur. They continue to cast doubt on his current reliability, trustworthiness, and good judgment. AG ¶¶ 20(a) and 20(c) are not applicable. AG ¶ 20(b) is partially applicable. AG ¶ 20(d) is partially applicable toward the debts alleged in SOR ¶¶ 1.a, 1.c, 1.d, 1.f, and 1.k, but not toward Applicant's overall financial situation. AG ¶ 20(e) is applicable toward the debts alleged in SOR ¶¶ 1.h through 1.j. In sum, I conclude that financial concerns remain despite the presence of some mitigation.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the 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. I have incorporated my comments under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

I considered Applicant's honorable service in the U.S. military. I also considered the favorable character evidence and his service overseas. Applicant has made some effort to pay his delinquent debts. However, he has spent extended time working overseas earning a substantial income, but he has not made a substantial dent in the total amount he owes. I am particularly concerned that he has made no effort to repay DFAS for the overpayment he received before he was discharged from the military in 2005. Applicant may be headed in the right direction to get his finances back on track. He is not there yet. At this time, his finances continue to reflect poorly on his judgment, responsibility, and reliability.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. I conclude Applicant has not mitigated Financial Considerations security concerns.

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
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	Against Applicant
Subparagraphs 1.c-1.d:	For Applicant
Subparagraph 1.e:	Against Applicant
Subparagraph 1.f:	For Applicant
Subparagraph 1.g:	Against Applicant
Subparagraphs 1.h-1.j:	For Applicant
Subparagraph 1.k:	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.

Edward W. Loughran
Administrative Judge