



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



In the matter of:)	
)	
)	ISCR Case No. 09-06002
SSN:)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Fahryn E. Hoffman, Esq., Department Counsel
For Applicant: *Pro se*

July 22, 2010

Decision

COACHER, Robert E., Administrative Judge:

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

Statement of the Case

On December 21, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, Financial Considerations. DOHA acted 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).

Applicant answered the SOR on January 16, 2010, and requested a hearing before an administrative judge. The case was assigned to me on April 22, 2010. DOHA issued a notice of hearing on April 23, 2010, and the hearing was convened as scheduled on May 20, 2010. The Government offered Exhibits (GE) 1 through 6, which

were received without objection. Department Counsel's exhibit index is marked as Hearing Exhibit (HE) I and a demonstrative chart as HE II. Applicant testified and submitted Exhibits (AE) A through H, which were admitted without objection. The record was held open for Applicant to submit additional information. Applicant submitted documents, which were marked AE I through Y and admitted without objection. Department Counsel's post-hearing memorandum is marked HE III. DOHA received the hearing transcript (Tr.) on June 1, 2010.

Findings of Fact

Applicant is a 42-year-old employee of a defense contractor. He has worked for his current employer since March 2009. He is seeking to obtain a security clearance. He attended college for a period but did not obtain a degree. He has been married for 11 years. He has five step-children whose ages range from 17 to 29. One child currently resides at home with Applicant and his wife.¹

The SOR alleges seven delinquent debts and/or judgments, and a prior dismissed bankruptcy action. The debts were listed on credit reports obtained on October 23, 2009 and June 9, 2009. Applicant admitted owing the debts alleged in SOR ¶¶ 1.a - 1.f, and filing for Chapter 13 bankruptcy as alleged in SOR ¶ 1.h. He disputes the judgment alleged in SOR ¶ 1.g.

Applicant attributes the delinquent debts to the time when all five children were living with Applicant and his wife. This was in 2005. The costs associated with the children significantly affected the overall household expenses. Some of the medical bills (see SOR ¶¶ 1.e and 1.f) were for the children. Additionally, Applicant was a partner in a home remodeling business that was failing because the other partner put the partnership in a bad business position. Applicant severed the partnership and essentially worked for free for the next three months in order to fulfill existing contracts and pay his employees. His wife had recently returned to work after being unemployed for six months. Currently, she is a federal employee. Applicant then started his own remodeling business that operated for about one year and broke even. However, he then had knee surgery that kept him off the job for several months. When he did come back, it was after the housing decline and his company went out of business. He had difficulty finding steady work for about one year until March 2009, when he started his current job.²

Applicant incurred the debt alleged in SOR ¶ 1.a by using this credit card for his failed business. The account went delinquent and the creditor sued Applicant for the amount owed. A default judgment was issued against Applicant in the amount of over \$13,000. In July 2009, Applicant indicated that he would contact the creditor and make payment arrangements. As of the date of hearing, Applicant failed to contact the creditor. Since the hearing, Applicant contacted the creditor, attempted to negotiate a

¹ Tr. at 39-42; GE 1.

² Tr. at 35-36, 91-94; Applicant's response to SOR.

settlement, and paid \$300 toward the judgment. No evidence of an executed payment plan was offered.³

SOR ¶ 1.b alleges a delinquent debt of \$1221 owed to a collection company collecting on behalf of credit card company. Applicant settled this debt for \$597 on May 26, 2010.⁴

SOR ¶ 1.c alleges a delinquent debt of \$190 owed to a collection company collecting on behalf of a cellular telephone services company. Applicant settled this account by paying \$50 on January 12, 2010.⁵

SOR ¶ 1.d alleges a delinquent debt of \$172 owed to a collection company collecting on behalf of a cable company. Applicant paid this account in full on January 11, 2010.⁶

SOR ¶ 1.e alleges a delinquent debt of \$530 owed to a collection company collecting on behalf of a health professional. Applicant paid this account in full on May 28, 2010.⁷

SOR ¶ 1.f alleges a judgment in the amount of \$452 owed to a health care service. Applicant believes this is an amount associated with the care of one of his children. Applicant provided a copy of the front of his personal check showing a payment in full of this judgment on May 10, 2010. However, Applicant also states that the check has not cleared his bank as of June 4, 2010.⁸

Applicant denied owing the \$240 judgment to a county government, as alleged in SOR ¶ 1.g. Applicant provided documentation from the relevant county supporting his position that he had no arrests there and did not owe any fines or fees. The county's records only go back 10 years and this alleged judgment was recorded in 1994. Neither credit report lists this judgment.⁹

SOR ¶ 1.h alleges a dismissed Chapter 13 bankruptcy action. Applicant admits that he filed bankruptcy for debts of about \$16,000 in 1995. He further explained that he had the action dismissed and paid off the debts.¹⁰

³ Tr. at 98; GE 2; AE U.

⁴ AE K, V.

⁵ AE L.

⁶ AE M.

⁷ AE X.

⁸ AE E, T.

⁹ GE 2; AE N, O.

¹⁰ GE 5; Tr. at 62-65.

Applicant recently began receiving financial counseling services through his credit union. That process assisted in helping him formulate a monthly family budget. His personal financial statement showed that he had discretionary income, after all expenses, in excess of over \$3,000 each month. When asked what he was doing with this discretionary income he stated he didn't know where it went.¹¹

Applicant is considered a top-notch performer by his employer. He is also viewed as an outstanding performer and person by his work supervisor. A character letter attests that he is a "good, honest guy".¹²

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 that 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.

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 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

¹¹ Tr. at 66-69, 102; GE 2.

¹² AE G, H.

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 about 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* Executive Order 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, as follows:

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 judgments and was unable or unwilling to satisfy his obligations. The evidence is sufficient to raise the above disqualifying conditions.

Several 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 still owes the largest debt (judgment) listed in the SOR with no payment plan in place. His financial issues are current and ongoing. However, Applicant's 1995 Chapter 13 bankruptcy is remote and those debts were resolved by Applicant. AG ¶ 20(a) is partially applicable.

Applicant's financial difficulties were partly caused by his failed business ventures and both his and his wife's periods of unemployment. These 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. Applicant acted responsibly when he paid the SOR debts listed in ¶¶ 1.b – 1.f. However, he has done little to resolve his largest debt (the judgment listed in SOR ¶ 1.a), despite having the discretionary income to do so and making assurances over a year ago that he would attempt to resolve this debt. I am unable to determine that he has acted completely responsibly under the circumstances. AG ¶ 20(b) is partially applicable.

Applicant received financial counseling and is using that knowledge to operate under a monthly budget. That is a good start. Applicant clearly can benefit from counseling and advice on how to manage his money. However, at this point, his finances are not being resolved and are not under control. His limited payments to date are insufficient to support a finding that he has made a good-faith effort to pay or otherwise resolve his debts. AG ¶¶ 20(c) and 20(d) are not applicable to the debt listed at SOR ¶ 1.a.

Applicant disputes owing the debt listed in SOR ¶ 1.g. His testimony about the disputed debts was credible and was supported by corroborating evidence. AG ¶ 20(e) is applicable to that debt.

At this point, Applicant's finances remain a concern 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 relevant 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 outstanding work performance and favorable character evidence. I also found Applicant to be honest and candid about his finances. I believe he is sincere about getting his finances in order. However, he is not close to reaching that point, as evidenced by the minimal effort he has made to resolve his largest debt despite having the time and apparent finances to do so. His past financial track record also does not breed confidence that he will resolve his debts.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated the 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:	Against Applicant
Subparagraph 1.b-1.h:	For 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.

Robert E. Coacher
Administrative Judge