



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



In the matter of:)	
)	
-----)	ISCR Case No. 09-06180
SSN: -----)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Alison O’Connell, Esq., Department Counsel
For Applicant: *Pro se*

October 1, 2010

Decision

MARSHALL, Jr., Arthur E., Administrative Judge:

On April 18, 2010, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) enumerating security concerns arising under Guideline F (Financial Considerations). The action was taken 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).

Applicant responded to the SOR on May 7, 2010. He denied one allegation and admitted, with an explanation, the remaining two allegations raised under Guideline F. Applicant also requested a decision without hearing. On June 21, 2010, the Government compiled a File of Relevant Material (FORM), consisting of a brief and eight attached items. Applicant received the FORM on July 1, 2010, but did not respond to its contents within the 30 days provided. DOHA assigned the case to me on September 22, 2010. Based on a review of the submissions, I find Applicant failed to provide sufficient documentation to meet his burden in mitigating financial considerations security concerns. Clearance is denied.

Findings of Fact

Applicant is a 44-year-old computer support specialist working for a defense contractor. He has worked for the same employer since 2001. He completed high school and received a diploma. Applicant is married and has six children.

Between 2004 and 2006, Applicant attended classes at two different institutions of post-secondary education. While enrolled, he obtained two student loans. Those loans amount to almost \$25,000.¹ They have been delinquent since at least January 2008.² When he completed his security clearance application in May 2009, Applicant noted that he was working on setting up payments on the loans.³ A year later, he was still working on setting up those payments. On May 7, 2010, Applicant wrote in his Answer to the SOR: "I have been talking to the [creditor] who is collecting for this debt. We are setting up a payment Schedule [sic] with them, we sent the first payment today."⁴ No copy of the payment schedule or evidence of payment accompanied the Answer to the SOR. In his Answer, Applicant also noted: "When we get in the Loan Rehab Program, we will be on for 9 to 12 months at first to establish a good payment practice. Then we can, according to the collection company, drop the penalties and the loans Would [sic] be taken out of default."⁵ Applicant attached no correspondence from the collection entity to corroborate this representation of the loans' current status or the proposed remedial action. No documentation regarding these debts was submitted in response to the FORM.

Also at issue is a delinquent medical debt for \$134, as cited in the SOR.⁶ Applicant thinks that the debt is related to a nasal reconstruction surgery he underwent to address migraines.⁷ Regarding that debt, Applicant wrote: "I Deny [sic] that I am indebted to [this creditor]. I called and verified with [this entity] that we Paid [sic] this debt in Dec 2009, Account# [XXXXXXXX] was paid in full."⁸ He provided no

¹ See SOR, dated Apr. 18, 2010.

² FORM, Item 8 (Credit bureau report, dated Jun. 11, 2009), at 6. These student loans are represented in the SOR at allegations ¶¶ 1.b and 1.c, for approximate balances of \$19,472 and \$5,371, respectively.

³ FORM, Item 5 (Security clearance application, dated May 27, 2009), at 51 (Additional Comments and Certification section).

⁴ See FORM, Item 4 (Answer to the SOR, dated May 7, 2010, at 3.

⁵ *Id.*

⁶ See SOR allegation ¶ 1.a. As well, although not at issue in the SOR, Applicant is satisfying a delinquent child support obligation through a writ of garnishment. FORM, brief at 5 of 8; Item 7 (Credit bureau report, dated Dec. 4, 2009), at 2; Item 8, *supra*, note 2, at 4; and Item 6 (Applicant's Response to Interrogatories, dated Nov. 18, 2009), at 3.

⁷ Item 6, *supra*, note 6, at 3 of 10.

⁸ See FORM, Item 4 (Answer to the SOR, dated May 7, 2010, at 3.

documentation showing that this debt has been paid, his current balance is now zero, or that he has disputed its continued entry in his credit report.

Scant additional information was submitted in response to the SOR and FORM. There is no evidence whether Applicant has received financial counseling. The reasons for these three debts becoming delinquent are not fully explained. No significant factors are noted with regard to adverse financial issues occurring in Applicant's life in the past few years. In denying that he lives beyond his means, Applicant only noted: "We do not gamble or spend money on like things. We pay our bills and have spent the last couple of years paying off old bills."⁹

Policies

When evaluating an applicant's suitability for a security clearance, an administrative judge must consider the AG. In addition to brief introductory explanations for each guideline, the AG list potentially disqualifying conditions and mitigating conditions. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. Under AG ¶ 2(c), this process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all 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.

The Government must present evidence to establish controverted facts alleged in the SOR. An applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." ¹⁰ The burden of proof is something less than a preponderance of evidence. The ultimate burden of persuasion is on the applicant.¹¹

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

⁹ *Id.*

¹⁰ See also ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

¹¹ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

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 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). “The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”¹² Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.¹³

Based upon consideration of the evidence, Guideline F (Financial Considerations) is pertinent to this case. Conditions pertaining to this AG that could raise a security concern and may be disqualifying, as well as those which would mitigate such concerns, are set forth and discussed below.

Analysis

Under Guideline F, “failure or an inability to live within one’s means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or an 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.”¹⁴ The guideline sets out several potentially disqualifying conditions. Here, Applicant admitted that he has been delinquent on two student loans. While he wrote that a delinquent medical bill was previously paid, he provided no evidence of payment or that the balance is now either at zero or reduced. Applicant acknowledged that he has “spent the last couple of years paying off old bills.” Such facts are sufficient to raise Financial Considerations Disqualifying Condition (FC DC) AG ¶ 19(a) (inability or unwillingness to satisfy debts) and FC DC AG ¶ 9(c) (a history of not meeting financial obligations). With such conditions raised, the burden shifts to Applicant to overcome the case against him and mitigate security concerns.

Applicant stated that he was working on setting up payments on his student loans in his May 2009 security clearance application. One year later, he wrote in his May 2010 Answer to the SOR that “We are setting up a payment Schedule [sic] with them, we sent the first payment today.” No explanation was provided why a one year

¹² *Id.*

¹³ *Id.*

¹⁴ AG ¶ 18.

delay was necessary to set up a repayment plan, nor was an explanation provided for what financial issues Applicant had that may have affected his ability to keep the loan payments current from the beginning. Moreover, without some evidence providing insight into his current financial situation, there is no indication whether further interruptions or delays might occur in the near future. Even assuming the comparatively minor medical debt was satisfied in December 2009, such facts fail to give rise to Financial Considerations Mitigating Condition (FC MC) AG ¶ 20(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).

The record is devoid of incidents in the past few years that might have impeded Applicant ability to meet his obligations in a timely and consistent manner. It is also devoid of facts indicating how he addressed any other "old bills." Therefore, FC MC AG ¶ 20(b) (the conditions that resulted in the behavior 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) does not apply. Moreover, the record contains no evidence or indication that Applicant has received financial counseling, nor is there documentary evidence that any payments have been made on these accounts, obviating application of FC MC ¶ 20(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).

In his Answer to the SOR, Applicant wrote that he has addressed the three debts at issue. While his veracity is not questioned, the one year delay in starting a repayment plan on the student loans is worrisome. There is no indication why it took a year to start a payment plan on the student loans. Moreover, without evidence of his current ability to make whatever payment arrangements have been discussed, it is unclear whether the student loan payment schedule is one to which he can adhere consistently. Furthermore, in failing to provide documentation showing the actual agreement and evidence of the first payment, Applicant failed to corroborate his statements. Additionally, there is no documentary evidence showing the minor medical debt was paid. Lacking such documentary evidence, FC MC ¶ 20(d) (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts) does not apply.

Applicant provided insufficient evidence to mitigate the security concerns raised. There is no documentary evidence showing the medical account was addressed. There is no documentary evidence corroborating his statements regarding the year-long attempt to get his defaulted student loans into repayment. Based on the record, I find that financial considerations security concerns remain unmitigated.

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. An administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a). Under AG ¶ 2(c), the ultimate determination of whether to grant a security clearance must be an overall commonsense judgment based on 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, as well as the “whole-person” factors. Applicant is a mature man. He is married. He has several children. He has a career in the field of information technology. He endeavored to pursue post-secondary education at a mature age. He has some delinquent debt, as evidenced by his statement that he has spent the past couple of years paying off old bills. Little more is known of his finances or his life.

As noted, the burden in these proceedings is placed squarely on the Applicant. Here, Applicant failed to provide sufficient documentation reflecting his efforts to address the three debts at issue. Lacking such evidence, financial considerations security concerns remain unmitigated. The “clearly consistent standard” indicates that security clearance determinations should err, if they must, on the side of denials. In light of the evidence presented, clearance is denied.

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-1.c	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 a security clearance. Clearance is denied.

ARTHUR E. MARSHALL, JR.
Administrative Judge