



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



In the matter of:)
)
) ISCR Case No. 09-06436
)
)
Applicant for Security Clearance)

Appearances

For Government: Melvin Howry, Esq., Department Counsel
For Applicant: *Pro se*

November 30 , 2010

Decision

GOLDSTEIN, Jennifer I., Administrative Judge:

Applicant filed a Chapter 7 bankruptcy petition in September 2010, in which he listed \$626,603 in secured debt and \$111,054 in unsecured claims. Applicant incurred the debt as a result of a business downturn. The bankruptcy is pending discharge and has not yet been granted by the bankruptcy court. Applicant failed to mitigate the Financial Considerations security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On June 10, 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) effective for cases after September 1, 2006.

Applicant answered the SOR on June 30, 2010, and requested a hearing before an administrative judge. The case was assigned to me on August 9, 2010. DOHA issued a notice of hearing on August 16, 2010, scheduling the hearing for September 23, 2010. The hearing was convened as scheduled. The Government offered Exhibits (GE) 1 through 7, which were admitted without objection. The Applicant offered Exhibits (AE) A through F, and testified on his own behalf. The record was held open for Applicant to submit additional information until close of business October 22, 2010. Applicant submitted two packets of post-hearing exhibits, marked AE G and AE H, which were admitted without objection. DOHA received the transcript of the hearing (Tr.) on October 5, 2010.

Findings of Fact

The SOR alleged under Guideline F, Financial Considerations, that Applicant owed delinquent debt totaling \$672,471 (SOR 1.a.-1.t.), as found in credit reports dated June 19, 2009; May 18, 2010; July 31, 2010; and September 20, 2010. (GE 2; GE 4; GE 5; GE 7.) He asserted that he filed for Chapter 7 bankruptcy and has changed his spending habits. After considering the pleadings, exhibits, and transcript, I make the following factual findings.

Applicant is a 45-year-old employee of a defense contractor. He has worked for a government contractor since April 2009. He has been married for 13 years and has two children, ages 13 and 15. His wife is a homemaker and home schools their children. He is active in his church and its music ministry. (GE 1; Tr. 6, 25-27.)

From approximately 1989 through 2009, Applicant was self-employed in a residential landscape and masonry business. In 2007, Applicant experienced large businesses losses, due to a downturn in the economy. His contracts decreased. Applicant found himself struggling to make ends meet and to put food on the table. (GE 2; Tr. 27-29.)

Applicant lives in a home that he purchased in 2000 for \$191,000. He purchased the home with \$10,000 down and financed the rest. Since that time, he has refinanced the home several times. In 2006-2007, he refinanced the home to build an addition. He borrowed \$480,000 as his primary mortgage when he refinanced the home, and took an additional \$59,000 home equity line of credit to furnish the house. His primary mortgage was a "pick and pay" loan, in which the Applicant selected whether he wanted to pay the minimum payment, an interest only payment, or the fully amortized payment each month. Applicant could only afford the minimum payment and the balance on his mortgage was rising significantly. Applicant has applied for a number of loan modifications. He has successfully participated in a ten-month-trial period where the bank agreed to accept reduced payments, but he was eventually told, in February 2010, that he was denied the loan modification. They reapplied for a loan modification in April 2010, and a trial period of three months at a reduced rate was approved in August 2010. Applicant refused the trial period and filed bankruptcy. Applicant has not made a payment on his house since June 2010. The house is now appraised at \$380,000. As of the date of the hearing, Applicant was still living in the house, but he had not decided if

he would reaffirm the mortgage debt through his bankruptcy. During the time he was working to get a loan modification, he stopped making payments on his other consumer debts in hopes of saving his home. (Tr. 29-32, 34-42, 78.)

On September 16, 2010, Applicant filed for Chapter 7 bankruptcy, listing \$111,054 in consumer debt and \$626,603 in secured debts. His meeting of creditors was held October 20, 2010. A letter from Applicant's bankruptcy attorney indicated that the meeting of creditors occurred as scheduled, and that "the case proceedings [*sic*] to be discharged." However, the court had not issued a discharge at the close of the record. His debts are as follows. (AE H; 39-40.)

Applicant is indebted on an account placed for collections by a phone company in the approximate amount of \$43, as alleged in allegation 1.a. This debt is included in Applicant's Chapter 7 bankruptcy filing. (AE F; Tr. 48.)

Applicant is indebted on an account placed for collections by a department store credit card in the approximate amount of \$3,301, as alleged in allegation 1.b. He used the card to buy appliances and household items. This debt is included in Applicant's Chapter 7 bankruptcy filing. (AE F; Tr. 49-51.)

Applicant is indebted on an account placed for collections by a department store credit card in the approximate amount of \$3,575, as alleged in allegation 1.c. He used the card to buy household items. This debt is included in Applicant's Chapter 7 bankruptcy filing. (AE F; Tr. 52.)

Applicant is indebted on a credit card in the approximate amount of \$8,185, as alleged in allegation 1.d. He used the card to buy business related supplies. This debt is included in Applicant's Chapter 7 bankruptcy filing. (AE F; Tr. 52.)

Applicant is indebted on a credit card in the approximate amount of \$3,423, as alleged in allegation 1.e. This debt is included in Applicant's Chapter 7 bankruptcy filing. (AE F; Tr. 52.)

Applicant is indebted on a financing loan in the approximate amount of \$2,835, as alleged in allegation 1.f. He used the loan to buy home furnishings. This debt is included in Applicant's Chapter 7 bankruptcy filing. (AE F; Tr. 56.)

Applicant is indebted to a credit union in the approximate amount of \$4,852, as alleged in allegation 1.g. He used the funds to buy items for his home. This debt is included in Applicant's Chapter 7 bankruptcy filing. (AE F; Tr. 57.)

Applicant is indebted on a store credit card in the approximate amount of \$2,778, as alleged in allegation 1.h. He used the card to buy business related supplies. This debt is included in Applicant's Chapter 7 bankruptcy filing. (AE F; Tr. 52.)

Applicant is indebted on his mortgage in the approximate amount of \$10,000, as alleged in allegation 1.i. As noted above, his total debt on his first mortgage is

approximately \$522,000. He has not made a payment on this debt since June 2010. This debt is included as secured debt in Applicant's Chapter 7 bankruptcy filing. (AE F; Tr. 58-59.)

Applicant is indebted on a credit card in the approximate amount of \$2,122, as alleged in allegation 1.j. This debt is included in Applicant's Chapter 7 bankruptcy filing. (AE F.)

Applicant is indebted on a home equity line of credit in the approximate amount of \$60,000, as alleged in allegation 1.k. This was Applicant's second mortgage, discussed above. This debt is included as secured debt in Applicant's Chapter 7 bankruptcy filing. (AE F; Tr. 59.)

Applicant is indebted on a vehicle loan in the approximate amount of \$7,296, as alleged in allegation 1.l. The vehicle was repossessed and resold. He owes the lender the difference between the price of the vehicle and the price for which it was resold. This debt is included in Applicant's Chapter 7 bankruptcy filing. (AE F; Tr. 61.)

Applicant is indebted on a water system he purchased for his home, in the approximate amount of \$3,105, as alleged in allegation 1.m. This debt is included in Applicant's Chapter 7 bankruptcy filing. (AE F; Tr. 62.)

Applicant is past due on a credit card in the approximate amount of \$341, with a total debt of \$2,084, as alleged in allegation 1.n. He used the card to pay for his wife's root canal. This debt is included in Applicant's Chapter 7 bankruptcy filing. (AE F; Tr. 62-65.)

Applicant is indebted on an account placed for collections by a phone company in the approximate amount of \$119, as alleged in allegation 1.o. This debt is included in Applicant's Chapter 7 bankruptcy filing. (AE F; Tr. 64-65.)

Applicant is past due on a credit card in the approximate amount of \$1,682, with a total indebtedness of \$7,493, as alleged in allegation 1.p. Applicant used this credit card to purchase food and other household necessities. This debt is included in Applicant's Chapter 7 bankruptcy filing. (AE F; Tr. 65.)

Applicant is past due on a credit card in the approximate amount of \$230, with a total indebtedness of \$2,074, as alleged in allegation 1.q. This debt is included in Applicant's Chapter 7 bankruptcy filing. (AE F; Tr. 66.)

Applicant is indebted on an account placed for collections by a water company in the approximate amount of \$282, as alleged in allegation 1.r. This debt is included in Applicant's Chapter 7 bankruptcy filing. (AE F; Tr. 66.)

Applicant is indebted on an account placed for collections in the approximate amount of \$4,846, as alleged in allegation 1.s. Applicant used this club card to purchase

items to finish his home remodeling. This debt is included in Applicant's Chapter 7 bankruptcy filing. (AE F; Tr. 66-67.)

Applicant is indebted on a loan for a recreational vehicle (RV), purchased in 2005, in the approximate amount of \$32,058, as alleged in allegation 1.t. He had an agreement with the creditor to make \$200 per month payments on the RV, but he stopped payment in June 2010. He estimates the RV to be valued at approximately \$20,000 but he has not tried to sell the RV. This debt is included in Applicant's Chapter 7 bankruptcy filing. (AE F; Tr. 36-38, 71,-72, 85.)

Since April of 2009, Applicant has not applied for any new credit cards or made other purchases on credit. Prior to filing Chapter 7 bankruptcy, Applicant attended credit counseling. He also took a full day workshop on financial planning, offered through his church, in September 2010. (AE C; AE D; AE E; AE G; Tr. 78, 81-82.)

Applicant has the support of his Contract Manager, co-workers, pastor, and associates. His Contract Manager calls him "a valued employee with integrity and ambition." He has received an Air Force Recognition Ribbon for his exceptional public affairs skills and abilities. (AE A; AE B; GE 3.)

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). 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.

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 protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to 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, 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 concern 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 delinquent debts and has been unable or unwilling to pay his obligations. His delinquencies have been on-going for several years. 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's debt is extensive and on-going. He financed an unusually large amount of debt, which he now seeks to discharge through Chapter 7 bankruptcy. Even in the event of a bankruptcy discharge, he still has mortgages and the RV loan that have not been resolved. He has not demonstrated good judgment with respect to these debts by halting his payments to these creditors. Further, not enough time has passed to predict whether Applicant will be able to live within his means on a limited income. AG ¶ 20(a) is not applicable.

Applicant's financial difficulties were caused by his business downturn. He had no control over the weakening economy and the absence of landscaping contacts. These qualify as conditions that were outside his control. However, to be fully applicable, AG ¶ 20(b) also requires that the individual act responsibly under the circumstances. Applicant has not made a significant attempt to responsibly address his remaining secured debts that will not be discharged through bankruptcy. AG ¶ 20(b) is not applicable.

Applicant sought financial counseling from his church and attended pre-bankruptcy counseling. However, he has failed to show that his financial problems are under control. It would be premature to apply AG ¶ 20(c) without a discharge and a sustained showing by Applicant that he can live within his means.

Applicant has applied for Chapter 7 bankruptcy. Assuming it is discharged, this will resolve his consumer debts. However, he has \$626,603 in secured debts listed on his bankruptcy. He has offered no evidence that he is resolving this secured debt. While bankruptcy is a legal remedy, it is not a substitute for a track record of repayment. Under a Chapter 7 discharge, it is likely that only the creditors holding debts reaffirmed by Applicant will be paid. AG ¶ 20(d) is only partially mitigating.

Finally, Applicant has not contested his outstanding debts. AG ¶ 20(e) cannot be fully applied.

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 those guidelines, but some warrant additional comment.

Applicant's financial situation was adversely affected by the economic downturn, which occurred after he had taken on a large home improvement project. However, there is little indication that he will regain financial stability in the near future. While he hopes to discharge his consumer debt through Chapter 7, he has a large amount of secured debt which is unresolved. While he is well respected by his Contract Manager, co-workers, pastor, and associates, there are significant unresolved concerns about Applicant's finances and judgment.

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated Financial Consideration 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.:	Against Applicant
Subparagraph 1.c.:	Against Applicant
Subparagraph 1.d.:	Against Applicant
Subparagraph 1.e.:	Against Applicant
Subparagraph 1.f.:	Against Applicant
Subparagraph 1.g.:	Against Applicant
Subparagraph 1.h.:	Against Applicant
Subparagraph 1.i.:	Against Applicant
Subparagraph 1.j.:	Against Applicant
Subparagraph 1.k.:	Against Applicant
Subparagraph 1.l.:	Against Applicant
Subparagraph 1.m.:	Against Applicant
Subparagraph 1.n.:	Against Applicant
Subparagraph 1.o.:	Against Applicant
Subparagraph 1.p.:	Against Applicant
Subparagraph 1.q.:	Against Applicant
Subparagraph 1.r.:	Against Applicant
Subparagraph 1.s.:	Against Applicant
Subparagraph 1.t.:	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.

Jennifer I. Goldstein
Administrative Judge