



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



In the matter of:)	
)	
)	ISCR Case No. 09-06548
)	
)	
Applicant for Security Clearance)	

Appearances

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

October 28, 2010

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 and certified an Electronic Questionnaire for Investigations Processing (e-QIP) on May 5, 2009. On May 26, 2009, he was interviewed by an authorized investigator from the U.S. Office of Personnel Management and provided information about his financial obligations. On June 14, 2010, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing the security concerns 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) effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant responded to the SOR on July 7, 2010, and 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 August 31, 2010. The FORM contained documents identified as Items 1 through 8. By letter dated September 2, 2010, 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 September 26, 2010. His response was due on October 26, 2010. On October 2, 2010, Applicant filed a response to the FORM and indicated he might provide additional information about his federal tax issue. Department Counsel did not object to Applicant's filing. I marked Applicant's response to the FORM as Applicant's Exhibit (AE) A and entered it in the record.

On October 18, 2010, the case was assigned to me for a decision. By letter postmarked October 22, 2010, Applicant filed additional information on his federal tax obligations. DOHA received Applicant's second filing on October 27, 2010. Department Counsel objected to the admission of Applicant's second filing but did not specify the nature of his objection. I marked Applicant's second filing as AE B, entered it in the record, and considered it in my decision.

Findings of Fact

The SOR contains 22 allegations of financial delinquency under AG F, Financial Considerations (SOR ¶¶ 1.a. through 1.v.). The 22 allegations total \$32,834. In his Answer to the SOR, Applicant admitted seven Guideline F allegations (¶¶ 1.d., 1.e., 1.h., 1.l., 1.m., 1.n., and 1.o.). He denied 15 Guideline F allegations (SOR ¶¶ 1.a., 1.b., 1.c., 1.f., 1.g., 1.i., 1.j., 1.k., 1.p., 1.q., 1.r., 1.s., 1.t., 1.u., 1.v.). Applicant's admissions are entered as findings of fact. (Item 1; Item 2.)

Applicant is 47 years old and employed as an aircraft mechanic by a Government contractor. He has worked for this employer since February 2009. He is a high school graduate and attended college for approximately two years. In 1982, he enlisted in the U.S. military, and he served for ten years. In 1992, he received an honorable discharge. In 1992, Applicant also filed for Chapter 7 bankruptcy. His debts, totaling \$56,111, were discharged in 1992. Applicant has held a security clearance since 2001. (Item 4; Item 5 at 6.)

Applicant has been married and divorced twice. He married for the first time in 1985. A daughter was born to the marriage in 1989. He and his first wife divorced in 2003. Applicant married for the second time in 2004. He and his second wife divorced in 2007. (Item 4.)

When Applicant completed his e-QIP in May 2009, he answered "Yes" when asked if he had had any possessions or property voluntarily or involuntarily repossessed or foreclosed. He also answered "Yes" when asked if he had bills or debts turned over to a collection agency, when asked if he was currently over 90 days delinquent on any

debts, and when asked if he was currently delinquent on any Federal debts. (Item 4 at 42-43.)

In further response to financial inquiries on his e-QIP, Applicant stated that one of his debts was currently over 90 days delinquent and had been turned over to a collection agency. He also reported that his home mortgage had been foreclosed upon in March 2003. Additionally, Applicant reported that he owed the Internal Revenue Service approximately \$2,000 in delinquent income taxes, and he had agreed to a plan to pay his delinquent taxes. (Item 4 at 43-46.)

When Applicant was interviewed by an Office of Personnel Management (OPM) investigator about his finances on May 26, 2009, he stated that his delinquent accounts resulted from his two divorces and an automobile accident in 2007. He further explained that he was unable to work after his automobile accident for six weeks, and then he was laid off by his employer and was unemployed for three months. During his unemployment he had to reside in a hotel, which was expensive, and he subsequently had no money to pay his monthly debts.¹ (Item 7 at 7.)

During his interview, Applicant acknowledged the delinquent debts alleged at SOR ¶¶ 1.f., 1.h., 1.i., 1.k., 1.l., 1.n., 1.o., 1.p., 1.q., 1.r., 1.t., and 1.u. He stated that he intended to pay the debts in full. (Item 7 at 7-9.)

Applicant also acknowledged during his interview the delinquent debts alleged at SOR ¶¶ 1.a., 1.b., 1.c., 1.d., 1.e., and 1.s. He explained that these were debts incurred for medical services after his automobile accident. He stated that these debts were to be paid by his attorney from proceeds from his insurance settlement. He stated that he intended to contact his attorney and instruct him to pay the delinquent medical debts in full. (Item 7 at 8.)

Applicant told the interviewer that the delinquent debts alleged at SOR ¶¶ 1.g. and 1.j. had been paid in full. He also reported that he owed a delinquent tax debt of \$3,533 to the U.S. Treasury for invalid deductions taken in tax year 2006 and for failure to report all of his income in 2004. This debt is alleged at SOR ¶ 1.v. Applicant told the investigator that he had sufficient income to make monthly payments on his delinquent accounts. (Item 7 at 5, 7.)

Applicant's delinquent accounts are listed on his credit reports of May 12, 2009 and May 18, 2010. His credit report of May 18, 2010, also lists a charged off delinquent account in the amount of \$8,930. This debt is alleged at SOR ¶ 1.m. In his answer to the SOR, Applicant admitted the debt. His credit report reflects that he disputed information in the account report. (Item 2; Item 8.)

¹ On November 21, 2009, in response to DOHA interrogatories, Applicant signed a notarized statement affirming that he had read the summary of the interview and found it to be true and correct. He made no changes, corrections, or revisions to the investigator's summaries. (Item 7.)

In his answer to the SOR, Applicant reported that he had disputed all negative ratings on his credit reports in order to identify creditors to whom he could make payment. He also sought the assistance of a credit repair firm in March 2010. He estimated after the dispute process was completed, he would be able to identify his creditors and begin paying his delinquent debts. He provided no documentation to corroborate his statement that the debts alleged at SOR ¶¶ 1.g. and 1.j. had been paid. He provided no documentation to corroborate payment of other debts alleged on the SOR. (Item 2.)

On November 21, 2009, in response to DOHA interrogatories, Applicant provided a personal financial statement. He reported a monthly net income of \$3,654, monthly expenses of \$1,135, and monthly debt payments totaling \$1,050. On his list of monthly debt payments were four debts alleged in the SOR. Applicant reported a \$200 monthly payment on the debt alleged at SOR ¶ 1.h., a \$250 monthly payment on the debt alleged at SOR ¶ 1.v., a \$100 monthly payment on the debt alleged at SOR ¶ 1.o., and a \$100 monthly payment on the debt alleged at SOR ¶ 1.g.² Applicant reported a net monthly remainder of \$1,469. (Item 7 at 12.)

In his response to the FORM, Applicant provided a credit report dated August 1, 2010. Applicant's credit report showed that he had satisfied the delinquent debts alleged at SOR ¶¶ 1.k. and 1.q. Applicant also provided documentation showing that he had satisfied his 2004 federal tax debt. He did not provide documentation to clarify the status of his 2006 tax obligation. Although Applicant provided a document from the credit repair firm he engaged, it is unclear from the record that he has received consumer credit counseling. (Item 2; AE A; AE B.)

Burden of Proof

The Government has the initial burden of proving controverted facts alleged in the SOR. To meet its burden, the Government must establish by substantial evidence a *prima facie* case that it is not clearly consistent with the national interest for an applicant to have access to classified information. 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 a heavy 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*

² In his May 2009 interview with the OPM investigator, Applicant stated that the debt alleged at SOR ¶ 1.g. had been satisfied in full.

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 and modified.

When evaluating an applicant’s suitability for a security clearance, an administrative judge must consider the revised 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 common sense 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 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 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 relating to the guideline 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. Applicant was divorced in 2003 and 2007, and he suffered an automobile accident and temporary unemployment in 2007. He claims that these events caused him to accumulate substantial delinquent debt which has not been paid. This evidence is sufficient to raise potentially disqualifying conditions under Guideline F.

The guideline also includes examples of 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)).

Applicant provided documentation to corroborate his statements that he had satisfied the debts alleged at SOR ¶¶ 1.k. and 1.q. Accordingly these two allegations are concluded for Applicant.

However, Applicant has a history of financial delinquencies that dates to at least the period of 2003 to 2007. Most of the delinquencies alleged in the SOR remain unpaid and have occurred under circumstances that are likely to recur. He lacks a clear and timely strategy for resolving his delinquent debts. While his most recent credit report reflects that two debts on the SOR have been paid or otherwise satisfied, the record is silent regarding consumer credit counseling and the status of his 2006 federal tax debt.

Applicant has been employed by his present employer since February 2009, and his financial statement shows a monthly net remainder sufficient to pay or settle his delinquent debts. While he stated that that his two divorces and his automobile accident caused him to fall behind in paying his debts, he did not specify how these events specifically impacted his financial situation. Moreover, he did not reveal any actions he took to inform his creditors of these events and to negotiate payments in keeping with his reduced finances. The record does not reflect that Applicant responded reasonably to the unforeseen circumstances that gave rise to his delinquencies.

Applicant disputed his debts, not because he denied they were his, but because he wanted to use the dispute process to identify successor creditors. Applicant expressed his intent to pay his debts in the future. However, 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). I conclude that AG ¶¶ 20(b) and 20(d) apply in part to Applicant's case. However, I also conclude that AG ¶¶ 20(a), 20(c), and 20(e) do not apply in mitigation in 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. He has been steadily employed as a Government contractor since early 2009, and he reports a net remainder each month of approximately \$1,469. In his May 2009 interview with an authorized investigator, he stated he would take action to pay or otherwise satisfy his delinquent debts. He provided documentation to corroborate that he had paid two of his 22 delinquent debts. He also provided documentation that established that his delinquent federal tax debt was partially satisfied. The two debts for which Applicant provided proof of satisfaction totaled \$571, leaving over \$32,000 in unpaid financial delinquencies. Despite some financial strength, Applicant has failed to satisfy most of 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 at the present time as to 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. If his employer concurs, Applicant can reapply for a security clearance one year after the date that this decision becomes final. If he wishes, he can produce new evidence that addresses the Government's current 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
Subparagraphs 1.a. through 1.j.:	Against Applicant
Subparagraph 1.k.:	For Applicant
Subparagraphs 1.l. through 1.p.:	Against Applicant
Subparagraph 1.q.:	For Applicant
Subparagraphs 1.r. through 1.v.:	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