



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



In the matter of:)
)
) ISCR Case No. 09-06672
)
Applicant for Security Clearance)

Appearances

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

January 27, 2011

Decision

GOLDSTEIN, Jennifer I., Administrative Judge:

Applicant has an inability to satisfy his financial indebtedness. He currently has ten delinquent debts, and has failed to submit proof that any of them are satisfied or are being adequately addressed. He has not mitigated the Financial Considerations security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On May 17, 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 revised adjudicative guidelines (AG) effective within the Department of Defense on September 1, 2006.

Applicant answered the Statement of Reasons (SOR) in writing on June 14, 2010, and elected to have the case decided on the written record in lieu of a hearing.

Department Counsel submitted the Government's written case on September 18, 2010. The Government's submission included Government Exhibits (GE) 1 through 12, and two documents for administrative notice, including the Equifax Training Brochure (GE 13) and a copy of DoD Directive 5220.6 (GE 14). Applicant expressed no objection to the Government's submissions and they were admitted. A complete copy of the file of relevant material (FORM) was received by Applicant on September 30, 2010. He was afforded a 30-day opportunity to file objections and submit material to refute, extenuate, or mitigate the security concerns. On October 13, 2010, Applicant responded with a seven page submission (Reply 1); and on November 10, 2010, he provided an additional two page submission (Reply 2). The Department Counsel had no objection. The case was assigned to me on December 1, 2010.

Findings of Fact

Applicant is a 48-year-old employee of a defense contractor. He has worked for his current employer since November 2001. He has a bachelor's degree. He is married and did not identify any children on his security clearance application. (GE 4.)

The SOR alleges ten delinquent debts, which are all substantiated in the record. (GE 6; GE 7; GE 9; GE 10; GE 11; GE 12.) Applicant admitted owing allegations 1.a., 1.c., 1.d., 1.g., and 1.i., and indicated that he neither admitted nor denied 1.b., 1.e., 1.f., 1.h., and 1.j. as alleged in SOR because they had all been charged off by the creditors. Applicant's delinquent debt as listed in the SOR totals \$190,475.

In his Replies and Answers to the Interrogatories, Applicant admitted he had an inability to satisfy his debts at the current time. He attributes his large indebtedness to his participation in a real estate investment program. Applicant and his wife joined a real estate investment group in 2006, which "finds its members properties, brokers the loans via their mortgage company, finds tenants for the properties and manages them." They acquired two out-of-state investment properties for approximately \$200,000 each through this program. In approximately 2007, when the real estate market took a downturn, they discovered that the equity in one of the investment properties had been greatly overestimated and they could not take any equity out on the investment property. Additionally, a renter in one of the properties moved out of the property. Applicant was forced to rely on his credit cards to make ends meet and satisfy his mortgages. Eventually, the lenders foreclosed on the two real estate properties. The case file does not indicate the terms of the mortgages Applicant had on the two investment properties or contain any foreclosure documentation. Appellant has spoken with an attorney who advised him that he was subject to "predatory lending," but he cannot afford to file a law suit. He admits that he is "currently insolvent" but plans to revisit the idea of debt consolidation after he is able to refinance his mortgage on his primary residence, the equity of which he used to make his real estate investments. He began working on the loan modification for his primary residence in 2008, but has met with significant bureaucratic problems in the banking industry. He also noted that his wife has taken a recent reduction in pay. (Reply 1; Reply 2; GE 8.) His debts are as follows:

Allegations 1.a., 1.b., 1.d., 1.e., and 1.f. all allege that Applicant is indebted to the same bank on five separate accounts in the amounts of \$10,845; \$11,034; \$17,636; \$15,210; and \$14,296, respectively. The total owed to this creditor is approximately \$69,201. In his adopted report of investigation, he indicated he only had two credit cards with this bank, which he used to support his real estate investment properties, prior to foreclosure. In his Answer, Applicant claims that he had three accounts with this creditor. However, each of the five debts to this creditor appears separately on Applicant's credit reports in evidence. Applicant produced a letter from this creditor entitled "Next Payment Due" indicating that by September 17, 2010, the creditor expected a payment based on a previous payment agreement. The letter only identified one account number. It appears that the account number on the letter matches up partially with the account number for the debt alleged in allegation 1.a. The letter fails to establish if a payment was actually made, the amount of that payment, and if any previous payments had been made. It does not appear that the debts in allegations 1.b., 1.d., 1.e., and 1.f. are being addressed through this or any other agreement. (GE 3; GE 6; GE 7; GE 8; GE 9; GE 11; GE 12; Reply 2.)

Allegation 1.c. alleges that Applicant is indebted to a bank for a credit card in the amount of \$7,992. Applicant used this credit card to help keep his investment properties "afloat before foreclosure." A letter from this creditor dated October 27, 2010, indicates that Applicant contacted the creditor and arranged to make a \$100 payment on this account on November 5, 2010. Applicant failed to offer documentation establishing this scheduled payment was actually made. (GE 3; GE 6; GE 7; GE 8; GE 9; GE 11; GE 12; Reply 1.)

Allegation 1.g. alleges that Applicant is indebted to a bank for a line of credit in the amount of \$52,357. A letter from this creditor, dated September 23, 2010, indicates that Applicant submitted a \$200 check to this creditor that was post-dated by five or more days at the time it was received and was scheduled for deposit on the date indicated. Applicant failed to offer documentation establishing this scheduled payment was actually debited from his account, or provide any other documentation about prior or subsequent payments to this creditor. (GE 3; GE 5; GE 6; GE 7; GE 9; GE 11; GE 12; Reply 1.)

Allegation 1.h. alleges that Applicant is indebted to a collection agent for a bank in the amount of \$9,114. Applicant, in his Answer, indicates he has not been contacted by this creditor. In his adopted report of investigation, he identified the original creditor as the lender he used to purchase two "quad" vehicles. He indicated that he agreed to a \$9 monthly payment, however, after a year, the payments increased to \$300 per month. In his Answer, he indicated the agreed upon fee was \$50 per month and it went up to \$350 per month. He disputed the increase, claiming that he only agreed to the \$9 per month fee. Applicant renegotiated a fee of \$125 per month with the creditor, but found that he could not afford these payments after he began experiencing problems paying the mortgages on his investment properties. He defaulted on the loan. Applicant failed to introduce any documentation to establish he is taking any actions to repay this debt. (GE 3; GE 6; GE 7; GE 8; GE 9; GE 11; GE 12.)

Allegation 1.i. alleges that Applicant is indebted on a second mortgage that is 120 days or more past due in the approximate amount of \$3,427 on a balance of \$90,243. It is unclear from the record if this debt was incurred for Applicant's primary residential mortgage or for an investment property. He produced no documentation establishing he is taking any action with regard to this debt. (GE 3; GE 6; GE 7; GE 9; GE 11; GE 12.)

Allegation 1.j. alleges that Applicant is indebted on a real estate mortgage for \$48,564. Applicant denies this account claiming that the lender charged off the account. He indicated that it was for one of his foreclosed investment properties, but failed to produce any documents to substantiate his claim. (GE 3; GE 6; GE 7; GE 9; GE 11; GE 12.)

Applicant's financial statement, completed as part of his Answers to Interrogatories in 2009, indicated that his household net income was approximately \$7,974 per month and that his monthly expenditures totaled \$10,350. He was operating at a monthly deficit of \$2,376. He listed savings of \$1,500 and noted that he owned a boat and two horse trailers. Applicant did not provide an updated budget with his Replies. (GE 8.)

Applicant is a member of his local county Sheriff's volunteer mounted posse and a member of his local emergency animal rescue system. (GE 8; Reply 1.) He failed to submit any reference letters or work performance evaluations to support his character.

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the revised 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

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 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:

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, totaling \$190,475, and is unable to pay his obligations. Further, his financial problems have been ongoing for at least the past 3 years, without resolution, and his 2009 budget showed he was operating with a monthly deficit of \$2,376. 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.

The evidence does not show that Applicant has resolved any of the ten debts alleged in the SOR. His financial issues are recent and ongoing. AG ¶ 20(a) is not applicable.

AG ¶ 20(b) is not applicable. Applicant contends that his debts were caused by circumstances beyond his control as a result of his failed investments and his wife's reduction in pay. However, he failed to present any documentation in support of this claim. He made claims of fraud against the investment group, but failed to provide documentation to support his assertions. Applicant has the burden to present mitigating evidence and he failed to do so. Further, to be fully applicable, AG ¶ 20(b) also requires that the individual act responsibly under the circumstances. While he submitted evidence of promises to pay on the debts listed in allegations 1.a; 1.c; and 1.g., he did not submit evidence of any actual payments. He did not present a plan on how he will address his delinquent debts, other than to indicate in his Replies that he is in the process of getting them consolidated, as he indicated he intended to do in his Answer. I am unable to make a determination that he acted responsibly under the circumstances.

Applicant did not produce any evidence to suggest he attended any financial counseling. Further, there is little indication that Applicant's delinquent accounts are being resolved or are under control. AG ¶ 20(c) does not apply.

Applicant has not made a good-faith effort to pay or resolve his delinquent debts. The record fails to establish that any actual payments have been made on any of his ten debts, despite the documentation of his promises to pay on the debts listed in allegations 1.a; 1.c; and 1.g. AG ¶ 20(d) is not applicable.

Applicant disputes owing the debt alleged in 1.e. and 1.f. claiming that he only had three accounts with this creditor. He also denies the debt in 1.g. claiming that the property had been foreclosed upon and the debt had been charged off. Applicant's Answer with respect to 1.h. seems to dispute the debt, although in his adopted report of investigation he admitted the underlying debt and acknowledged he failed to keep up with his negotiated payments. With respect to these disputed accounts, Applicant failed to present any evidence to show that he was in the process of disputing these debts formally with the creditors or that he had successfully disputed these debts in the past. AG ¶ 20(e) is inapplicable.

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 the 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 is 48-years old. He is clearly aware of the need to be financially responsible. He has had ample opportunity to address his financial delinquencies, but has failed to do so. While his work with the local county Sheriff's volunteer mounted posse and a member of his local emergency animal rescue system is commendable, it fails to mitigate the financial concerns presented by the Government.

