



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



In the matter of:)	
)	
SSN:)	ISCR Case No. 09-06770
)	
Applicant for Security Clearance)	

Appearances

For Government: Braden M. Murphy, Esq., Department Counsel
For Applicant: *Pro se*

August 10, 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 February 19, 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. 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 with an undated response, 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 30, 2010, and the hearing was convened as scheduled on June 3, 2010. The Government offered Exhibits (GE) 1 through 4, which

were admitted without objection. Department Counsel's exhibit index is marked as Hearing Exhibit (HE) I. Applicant testified and submitted Exhibits (AE) A through C, which were admitted without objection. The record was held open for Applicant to submit additional information. Applicant submitted documents, which were marked AE D through I and admitted without objection. Department Counsel's post-hearing memorandum is marked HE II. DOHA received the hearing transcript (Tr.) on June 11, 2010.

Findings of Fact

Applicant is a 28-year-old employee of a defense contractor. He has worked for his current employer since November 2009. He is seeking to obtain a security clearance. He has a bachelor's degree in computer science which he obtained in 2006. He is single.¹

The SOR alleges eight delinquent debts. The debts were listed on credit reports obtained on February 25, 2009, September 23, 2009, and November 9, 2009. Applicant admitted owing the debts alleged in SOR ¶¶ 1.b, 1.d, and 1.h. He disputes the debts alleged in SOR ¶¶ 1.a, 1.c, and 1.e – 1.g.²

Applicant and a friend from college decided to pursue real estate interests by buying a house in 2007 and building another house in 2008. Based upon Applicant's strong credit standing at the time, he and his friend were able to secure mortgages on both properties. They planned on selling the houses when the market conditions were right. However, the real estate market took a downturn and the houses were not sold.³

Applicant was working at an office job when he began this real estate venture. He was laid off and stayed unemployed from May 2008 to February 2009. It was during this period of unemployment (October 2008) that he became delinquent on the two mortgages and his other obligations. He was hired by his current employer in November 2009, and he earns \$90,000 per year at his job.⁴

He applied for and was granted loan modifications for both mortgages. In order to qualify for the loan modifications the Applicant had to make four payments during a trial period. Applicant made one payment on July 6, 2010, since the loan was modified. Currently, Applicant receives rental income from both properties (\$7,090 per month) that he uses to make his monthly mortgage payments. In addition to the SOR-related debts described below, Applicant pays \$700 per month toward \$40,000 worth of credit card debt. The interest rate on the credit card balance is zero and he has this obligation for

¹ Tr. at 49-51; GE 1.

² Applicant's Answer to SOR.

³ Tr. at 35-39.

⁴ Tr. 44-45, 51-52.

the next five years. He also pays \$700 a month on \$100,000 worth of student loan debt.⁵

Applicant is unaware of the source of the debt alleged in SOR ¶ 1.a. He admitted he has not looked into the debt and since it was charged off it is not a high priority for him. The debt is from a cable/internet provider in the amount of \$213. This debt appears on the two most recent credit reports and remains unpaid.⁶

SOR ¶ 1.b alleges a delinquent debt of \$460 owed to a company that made mortgage payments for Applicant when he was unable to do so. The total owed on this debt is \$14,000. Applicant is making bi-weekly payments of \$120 on this debt to get it into a current status.⁷

SOR ¶ 1.c alleges a delinquent debt of \$4,687 owed to a bank. Applicant settled this account by paying \$3,625 on September 30, 2009.⁸

SOR ¶ 1.d alleges a delinquent debt of \$39,612 owed on a mortgage account. Applicant made one payment in July 2010, under a loan modification agreement.⁹

SOR ¶ 1.e alleges a delinquent debt of \$332 owed to a credit union. Applicant presented documentation that as of March 22, 2010, he is current on this debt.¹⁰

Applicant is unaware of the source of the debts alleged in SOR ¶¶ 1.f and 1.g. He admitted he has not looked into the debts and since they were charged off they are not a high priority for him. The debts are from a telephone provider in the amount of \$874 and \$244. These debts appear on the most recent credit report and remain unpaid.¹¹

SOR ¶ 1.h alleges a delinquent debt of \$997 owed on a student loan debt. Applicant was a co-signer for this loan. Applicant presented documentation that as of June 3, 2010, he is current on this debt.¹²

⁵ Tr. at 73-84, 113-117; GE 4; AE B, E, H.

⁶ Tr. at 90-91; GE 3, 4.

⁷ AE F, I; Tr. at 31-32, 61-64.

⁸ Applicant's Answer to SOR.

⁹ AE B, H.

¹⁰ Applicant's Answer to SOR.

¹¹ GE 4.

¹² AE A.

Applicant has not received any credit counseling for his financial difficulties. According to a manager at work, Applicant has “good character and [a] positive work ethic” and is devoted to the company.¹³

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 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

¹³ AE C.

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 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's debts are recent and because he still owes more than one million dollars on two different mortgages and is highly dependant on receiving rental income in order to make his mortgage payments, it is possible that Applicant could find himself in this position again. He also has three smaller debts (SOR ¶¶ 1.a, 1.g, and 1.f) that are owed but unresolved. His financial issues are current and ongoing. AG ¶ 20(a) is not applicable.

Applicant and his business partner made deliberate business decisions to finance two houses. However, the nationwide recession and Applicant's 10 month period of unemployment were contributing factors that led to Applicant's financial difficulties. These qualify as conditions that were outside of his control. To be fully applicable, AG ¶ 20(b) also requires that the individual act responsibly under the circumstances. Applicant acted responsibly when he sought and received mortgage loan modification agreements, paid the SOR debt listed in ¶ 1.c, brought current the SOR debts listed in ¶¶ 1.b, 1.e, and 1.h. However, he has done nothing to resolve debts listed in SOR ¶¶ 1.a, 1.f, and 1.g. I am unable to determine that he has acted completely responsibly under the circumstances. AG ¶ 20(b) is partially applicable.

Applicant did not receive financial counseling. At this point, it is too early to tell if Applicant's finances are under control. He has made only one payment on the modified mortgage, he is highly leveraged on both home mortgages, he is heavily dependent on rental income to make his mortgage payments, and he has worked at his present job for less than one year. Applicant has not established a track record of financial stability, therefore, his single payment under the mortgage modification agreement and his other 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.¹⁴ AG ¶¶ 20(c) and 20(d) are not applicable.

¹⁴ The Appeal Board has previously explained what constitutes a "good-faith" effort to repay overdue creditors or otherwise resolve debts:

In order to qualify for application of Financial Considerations Mitigating Condition 6, an Applicant must present evidence showing either a good-faith effort to repay overdue creditors or some other good-faith action aimed at resolving the Applicant's debts. The Directive does not define the term 'good-faith.' However, the Board has indicated that the concept of good-faith 'requires a showing that a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation.' Accordingly, an Applicant must do more than merely show that he or she relied on a legally available option (such as bankruptcy) in order to claim the benefit of Financial Considerations Mitigating Condition 6.

Applicant claimed he was unaware of the SOR debts listed in ¶¶ 1.a, 1.f, and 1.g, but he failed to produce documentary evidence disputing the debts. AG ¶ 20(e) is not applicable. 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 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, it is too soon to determine whether Applicant can continue to meet his substantial monthly financial obligations that include two mortgage payments, student loan debts, and \$40,000 worth of credit card debt payments.

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.

(internal citation and footnote omitted) ISCR Case No. 02-30304 at 3 (App. Bd. Apr. 20, 2004) (quoting ISCR Case No. 99-9020 at 5-6 (App. Bd. Jun. 4, 2001)).

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-1.b:	Against Applicant
Subparagraph 1.c:	For Applicant
Subparagraphs 1.d-1.h:	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.

Robert E. Coacher
Administrative Judge