



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



In the matter of:)	
)	
-----)	ISCR Case No. 09-06983
SSN: -----)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Ray T. Blank, Esquire, Department Counsel
For Applicant: *Pro se*

July 16, 2010

Decision

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

The Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) on March 3, 2010. The SOR enumerated 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).

In a March 24, 2010, response, Applicant admitted all 10 allegations set forth under Guideline F and requested a hearing before an administrative judge. DOHA assigned the case to me on April 16, 2010. The parties proposed a hearing date of May 12, 2010. A notice setting that date for the hearing was issued on April 28, 2010. I convened the hearing as scheduled. Department Counsel offered five documents, which were admitted as exhibits (Exs.) 1-5 without objection. Applicant testified and presented four documents, which were accepted into evidence without objection as exhibits (Exs.) A-D. The transcript (Tr.) of the proceeding was received on May 20, 2010, and the record was closed. Based on a review of the testimony, submissions,

and exhibits, I find Applicant failed to meet his burden in mitigating security concerns. Clearance denied.

Findings of Fact

Applicant is a 33-year-old web editor who has worked for the same defense contractor for over a year. He has an associate's degree in electronics and mathematics. Applicant served in the military from 1996 until 2000. He is currently separated from his wife.

Following his discharge from the military in 2000, Applicant lived with his parents for about six months, before moving in with relatives in a neighboring state. About eight months later, he moved to a major metropolitan area, found an apartment, and acquired a job which would permit him to maintain his security clearance.¹ He married in May 2003, then bought a home at the end of that year for about \$155,000. The house was purchased in Applicant's name because his wife had credit issues.² A second mortgage was obtained in 2005 from the same lender holding the mortgage used to purchase the house.³ It was obtained in the form of a home equity loan of approximately \$38,000.⁴ The proceeds were used to help finance some remodeling projects, replace the furnace, and install a new air conditioner. It also provided sufficient funds for him to buy a \$3,500 car and consolidate some minor debts.⁵

In September 2006, Applicant discovered his wife was having an affair with one of his co-workers. The couple separated in November 2006, when his wife and child relocated. Applicant's estranged wife did not work for the few months after she left Applicant. Applicant moved in with his parents in April 2007. Shortly after he was settled, he put his house on the market. Given the cause of his marital breakup, continuing at his workplace became untenable.⁶ He ultimately left his place of employment in August 2007, leaving a position which paid an annual salary of about \$91,000. He left his job because of personal issues and emotional turmoil, including his separation and related depression.⁷

Applicant thought his retirement fund would provide adequate capital for him to meet his obligations while he was unemployed. Finding a new job, however, was difficult. He remained unemployed for about five or six months. Consequently, he fell

¹ Tr. 42.

² Tr. 41.

³ Tr. 56.

⁴ Tr. 53.

⁵ Tr. 46-47.

⁶ Tr. 75.

⁷ Tr. 44-45, 50, 74-75.

behind on his mortgage payments for two to three months. While he searched for work, his house was sold at the beginning of 2008 for about \$175,000.⁸ Having only owned the home for about four years, Applicant had very little equity in the home at the time of closing and balances remained owed on his home loans.⁹ In the interim, he relocated and met his current girlfriend. The two moved in together, sharing a \$950 a month studio apartment and related expenses.¹⁰ Applicant does not believe he had any delinquent accounts at the time of his relocation.¹¹

Around the same time Applicant moved in with his girlfriend, he started working for a company in a position paying about \$35,000. He began providing about \$800 a month in child support to his estranged wife for their child, and approximately \$250 a month in car payments and insurance. Although he kept his expenses low and had his mother help manage his bills, Applicant began acquiring delinquent debt.

Applicant first realized his finances were not in balance when he was notified of an April 2008 judgment against him for \$271, a debt originally incurred for emergency medical treatment. In the interim, he and his girlfriend relocated to mitigate expenses and find better jobs. After three months of unemployment, Applicant started a new position around May 2008, earning about \$40,000. He and his girlfriend found an apartment for about \$740 a month to share. Despite the relocation and cost cutting, Applicant found it difficult to make ends meet. He decided to pursue a higher paying job that could utilize his security clearance. In February 2009, Applicant accepted an offer to assume his present position, which initially paid about \$45,000 per year.¹² He knew at the time that his mounting financial issues could jeopardize the continuance of his security clearance.¹³

Around February 2009, Applicant met with a law firm to discuss his finances.¹⁴ Between May 2009 and February 2010, Applicant contemplated bankruptcy protection under Chapter 13.¹⁵ His attorney instructed him to “focus on the things [he] needed to pay off. . . like the jeep, child support and all those other things and then they would deal with the remaining debt and . . . work on that when [the bankruptcy petition is]

⁸ Tr. 54-56. Approximately \$9,150 was paid to Applicant’s realtor as commission. There is no evidence the home equity line was considered as forgiven as a result of the sale.

⁹ Tr. 56.

¹⁰ Tr. 49.

¹¹ Tr. 56-57.

¹² Tr. 65. Applicant now earns approximately \$48,000 per year.

¹³ Tr. 63-64.

¹⁴ Tr. 66-67.

¹⁵ Tr. 66.

filed.”¹⁶ Applicant needs to pay his lawyer certain sums up front to have his bankruptcy petition filed. He currently owes the lawyer about \$350-\$450.¹⁷ He is hoping to have that balance paid by August or September of 2010, at which point Applicant and his attorney will decide whether to proceed under Chapter 7 or Chapter 13 of the bankruptcy code.¹⁸

In the past year, Applicant and his girlfriend ended their relationship. Applicant now maintains his own apartment. After monthly expenses and obligations, Applicant currently retains about \$900 each month.¹⁹ He is using these retained funds to pay his attorney and save money to pay off any debts his attorney believes should be paid off before his bankruptcy filing. Regarding the delinquent debts noted in the SOR, Applicant was unaware of some of the debts at issue until about May 2009, when he was interviewed by investigators regarding his security clearance. He has been relying on his attorney to decide which debts are included in his bankruptcy filing and which should be satisfied with his current income.²⁰ Pursuant to his attorney’s advice, he has left issues related to those debts to his legal counsel. There is no evidence of efforts performed by the lawyer on Applicant’s behalf regarding the debts at issue. Applicant has not personally tried to work with his creditors or sought professional financial counseling.²¹

At issue in the SOR are 10 delinquent debts. Applicant admits that he owes the debts cited. Those debts include the \$271 medical judgment filed in April 2008 (SOR allegation ¶ 1.a), balances owed related to his home loans for \$59,016, \$5,900, and \$773 (SOR allegations ¶¶ 1.b – 1.d), a \$344 medical collection account (SOR allegation ¶ 1.e), a utilities balance of about \$33 (SOR allegation ¶ 1.f), a medical account balance of \$143 (SOR allegation ¶ 1.g), and balances owed to a telecommunications service for \$963, \$340, and \$1,979, respectively (SOR allegations ¶¶ 1.h – 1.j).

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

¹⁶ *Id.*

¹⁷ Tr. 68-69.

¹⁸ Tr. 73-74.

¹⁹ Tr. 69.

²⁰ Tr. 70-72.

²¹ Tr. 73.

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. . . .”²² The burden of proof is something less than a preponderance of evidence. The ultimate burden of persuasion is on the applicant.²³

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 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.”²⁴ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.²⁵

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.

²² See *also* ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

²³ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

²⁴ *Id.*

²⁵ *Id.*

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.”²⁶ The guideline sets out several potentially disqualifying conditions. Here, Applicant acquired 10 debts which raised security concerns. Those debts represent over \$65,000 in delinquent debt. To date, Applicant has neither contacted the creditors noted nor paid the related balances. Instead, he has relied on his lawyer to either contact his creditors or advise him as to which debts should be paid. There is no evidence that the lawyer has exerted any effort regarding the delinquent accounts, or that Applicant has encouraged the lawyer to actively address those accounts. 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 has had a stable job for over a year. Applicant has known about most, if not all, of the accounts at issue since May 2009, but has taken no action to address any of the debts at issue. He has only discussed bankruptcy protection with a law firm. Other than payments made to his lawyer, there has been no further progress toward the filing for such bankruptcy protection for over a year. When the hearing was convened in May 2010, Applicant owed less than \$500 to his lawyer to file a bankruptcy petition, although he currently saves about \$900 a month after expenses. At that time, he did not anticipate filing for bankruptcy until August or September 2010. Meanwhile, his delinquent debts continue to remain unaddressed. Given these facts, 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) does not apply.

Learning of his wife’s affair with one of his co-workers not only led to Applicant’s 2006 separation, but also to his leaving a lucrative job in 2007. Since that time, he has had brief periods of unemployment. Despite these circumstances, Applicant has tried to minimize his costs and seek more lucrative employment. With regard to the creation of the debts at issue, these factors are sufficient to raise 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).

There is no evidence that Applicant has received financial counseling, contacted his creditors, or personally made a bona fide effort to directly address any of the debts at issue. Instead, he has relied on the prospect of filing for bankruptcy for over a year. There is no evidence that during the past year his lawyer has made any interim efforts

²⁶ AG ¶ 18.

on Applicant's behalf regarding the debts at issue. To date, those debts remain unaddressed and the contemplated bankruptcy petition remains unfiled. Given these circumstances, neither 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) nor FC MC ¶ 20(d) (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts) applies.

Applicant provided facts that mitigate the creation of the debts at issue. To date, however, none of the debts at issue have been addressed. While Applicant stated he previously was unaware of some of the delinquent debts cited in the SOR, he admitted he was aware that his finances were of concern when he sought his current position in February 2009 and that his debts were discussed by investigators in May 2009. In the intervening year, nothing tangible has been done to address these delinquent debts, except his discussions regarding the pursuit of bankruptcy. Indeed, of the 10 debts noted in the SOR, debts as relatively minor as \$33, \$143, \$271, and \$344 remain unaddressed. While some facts may help mitigate the creation of the debts at issue, Applicant failed to provide facts or evidence related to their satisfaction sufficient to mitigate security concerns.

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 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, as well as the "whole-person" factors. Many facts speak in favor of Applicant. He is a credible man who has earned a college degree and served in the U.S. armed forces. He has made the payment of child support a priority. Applicant tried to live within his budget after taking a steep reduction in pay in 2007. He left a lucrative position in 2007 voluntarily, but only after his workplace became untenable due to the fact his estranged wife had an affair with one of his co-workers. Since that time, he has earnestly sought to reduce his expenses and sought higher paying jobs in order to meet his monthly obligations. Aware that the loss incurred on the sale of his marital home was unwieldy, he sought legal advice as to how to best address his debt in February 2009.

Since first consulting an attorney regarding bankruptcy, Applicant has made no demonstrated efforts to address any of his delinquent debts. While his hands-off approach may be appropriate for one actively and expeditiously pursuing bankruptcy protection, Applicant's bankruptcy plans remain unclear. His contemplated filing date has yet to be established, and the decision whether to proceed under Chapter 7 or Chapter 13 has yet to be made. In the meantime, there is no evidence that either

Applicant or his attorney has made any efforts toward the resolution of the debts at issue. Although Applicant is earnest in his resolve to address his debts through bankruptcy, the lack of progress toward such resolution since February 2009 does not mitigate the financial considerations security concerns raised. Clearance 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	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

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with national interest to grant Applicant a security clearance. Clearance denied.

ARTHUR E. MARSHALL, JR.
Administrative Judge