



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



In the matter of:)	
)	
SSN:)	ISCR Case No. 09-07001
)	
Applicant for Security Clearance)	

Appearances

For Government: Tovah A. Minster, Esq., Department Counsel
For Applicant: *Pro se*

May 20, 2010

Decision

LOUGHRAN, Edward W., Administrative Judge:

Applicant has not mitigated Financial Considerations security concerns. Eligibility for access to classified information is denied.

On January 25, 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).

Applicant answered the SOR in writing on February 12, 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 March 9, 2010. A complete copy of the file of relevant material (FORM) was provided to Applicant, who was afforded an opportunity to file objections and submit material to refute, extenuate, or mitigate the security concerns. Applicant received a copy of the FORM on March 16, 2010. He

answered the FORM in an undated response. He did not object to the admission of the items attached to the FORM, and they are admitted. Department Counsel did not object to the documents in Applicant's response, and they are admitted. The case was assigned to me on April 21, 2010.

Findings of Fact

Applicant is a 29-year-old employee of a defense contractor. He served on active duty in the United States Army from 1999 until he was honorably discharged in May 2008. Applicant is a high school graduate. He married in 2001 and divorced in 2007. He married again in 2007. He and his current wife have a five-year-old child.¹

The SOR alleges 17 delinquent debts with balances totaling about \$53,000. Applicant admitted owing all the debts alleged in SOR except the debts alleged in SOR ¶¶ 1.l (\$337) and 1.p (\$473), which he denied. The debts he admitted range from \$141 (SOR ¶ 1.n) to \$14,369 owed to a state's Attorney General for unpaid child support (SOR ¶ 1.c).

Applicant was unemployed for a period after he was discharged from active duty. Many of his delinquent debts were accrued before his discharge. The \$5,733 debt to an apartment landlord alleged in SOR ¶ 1.b was incurred in about 2006 to 2007. Applicant was living in the barracks but wanted to live off-post. He rented an apartment. He moved back in the barracks shortly thereafter. He asked his first wife to terminate the lease and thought the matter had ended. He later learned that she did not end the lease. Applicant was questioned by an investigator from the Office of Personnel Management (OPM) in June 2009. He told the investigator that he was paying \$400 per month to this creditor. No documentary evidence was submitted to support this claim.²

Applicant stated that he and his first wife separated a short time after their wedding. His child support liability to his ex-wife is for a child born in 2003, while they were married. Applicant did not believe he was the father, because she became pregnant while he was deployed. She later admitted to him that he was not the child's father. The court ordered Applicant to pay \$879 per month in child support. Applicant told the OPM investigator in June 2009 that he was paying \$200 per month, which was all that he could afford. He stated that he intended to dispute his paternity, but he did not have the money to contest the matter in court. Applicant admitted owing child support arrearages of \$14,369 (SOR ¶ 1.c). He did not submit documentary evidence of any payments.³

Three of the debts alleged in the SOR are for deficiencies owed on car loans after the vehicles were repossessed (SOR ¶¶ 1.h - \$4,315, 1.k - \$8,859, and 1.q - \$11,000). Applicant told the OPM investigator that he financed the car that led to the

¹ Item 5.

² Items 5, 6.

³ Items 4, 6.

debt in SOR ¶ 1.q for his first wife in about 2005. He stated that he made allotments from his military pay to a bank for her to use to pay the car loan. She withdrew the money each month but did not pay the loan. He stated he stopped the allotment in 2007, because she told him she was going to refinance the loan. It appears that one of the debts for car repossessions may be a duplicate. I will consider that Applicant only owes two of the debts.⁴

Applicant denied owing the delinquent \$337 debt to a collection company on behalf of a telephone services provider. This debt was alleged in SOR ¶ 1.i. Applicant stated that he never had an account with the telephone services company. This debt is listed on a credit report obtained in April 2009. It is not listed on the credit report obtained in January 2010.⁵

SOR ¶ 1.p alleges a delinquent debt of \$473. Applicant denied owing this debt, stating he did not recognize the creditor. This debt is listed on the April 2009 credit report, but it is not listed on the January 2010 credit report.⁶

Applicant contracted with a law firm on April 6, 2010, to assist in resolving his debts. He enrolled seven debts, totaling \$23,961, in the company's debt settlement program (DSP). The company charged an initial fee of \$300. Applicant agreed to place \$395 each month into an account to be used to settle his debts. There is a \$50 per month administration fee, which will be debited out of the settlement account. The company agrees to negotiate settlements with his creditors and pay the settlement out of the settlement account. The company will receive an additional contingency fee of 30% of the difference between the creditor's claim and the amount the creditor agrees to accept as settlement of the debt. The debts alleged in SOR ¶¶ 1.a, 1.d, 1.e, 1.f, 1.h, 1.j, and 1.k were included in the DSP. The first \$395 monthly payment was due to be paid on April 17, 2010, which was after Applicant submitted his response to the FORM.⁷

The law firm and Applicant prepared a personal financial summary (PFS). It listed his assets, liabilities, monthly income, and monthly expenses. The PFS listed his monthly income at \$3,600 and his monthly expenses, without taking into account his child support and payment on his delinquent debts, at \$3,165. That leaves \$435 to be used to pay the law firm the \$395 monthly payments and any other expenses. The Applicant did not submit evidence of payments of his other debts, nor did he state how he planned on addressing the other debts, including his ongoing child support obligation.⁸

⁴ Items 4-8.

⁵ *Id.*

⁶ *Id.*

⁷ Applicant's response to FORM.

⁸ *Id.*

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, 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 pay his obligations for a period. 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 has not resolved most of the debts alleged in the SOR. His financial issues are recent and ongoing. AG ¶ 20(a) is not applicable.

Applicant was unemployed after he was discharged from the Army. However, he had financial problems before his discharge. He also placed some blame on his first wife. Some of his financial problems may have resulted from conditions that were outside his control. To be fully applicable, AG ¶ 20(b) also requires that the individual act responsibly under the circumstances. Applicant has made little effort to pay his debts except for enrolling in a debt settlement program with a law firm after he received the FORM. Applicant's debt settlement program does not contain all his delinquent debts and does not account for his child support obligations. Even if Applicant diligently pays the law firm each month, his child support arrearages will increase each month and his other debts will go unpaid. He did not present any plan on how he will address his child support and his other delinquent debts. I am unable to make a determination that he acted responsibly under the circumstances. AG ¶ 20(b) is partially applicable.

Applicant may have received some financial counseling from the law firm that is assisting with his debt settlement program. There is insufficient information in the record for a finding that there are clear indications that his financial problems are being resolved or are under control. AG ¶ 20(c) is partially applicable.

Applicant's has not made a good-faith effort to pay or resolve his delinquent debts. AG ¶ 20(d) is not applicable.

Applicant denied owing two debts alleged in the SOR. Neither debt is listed on the most recent credit report in evidence. AG ¶ 20(e) is applicable to the debts alleged in SOR ¶¶ 1.l and 1.p. I am also giving Applicant credit that one of the three debts for repossessed cars may be a duplicate. AG ¶ 20(e) is applicable to the debt alleged in SOR ¶ 1.q.

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 that guideline, but some warrant additional comment. I considered Applicant's honorable service in the United States Army. He has made a recent effort to address some of his delinquent debts through a law firm's debt settlement program. However, the debt settlement program does not include all his delinquent debts or his child support obligations. Even if Applicant conscientiously pays the monthly \$395 payment to the law firm, a number of delinquent debts will go unaddressed and his child support arrearages will continue to increase.

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 Considerations 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-1.k:	Against Applicant
Subparagraph 1.l:	For Applicant
Subparagraphs 1.m-1.o:	Against Applicant
Subparagraphs 1.p-1.q:	For 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.

Edward W. Loughran
Administrative Judge