



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



In the matter of:)
)
) ISCR Case No. 09-07267
)
Applicant for Security Clearance)

Appearances

For Government: Paul M. Delaney, Esq., Department Counsel
For Applicant: *Pro se*

June 22, 2011

Decision

MENDEZ, Francisco, Administrative Judge:

Applicant failed to mitigate the Financial Considerations concern. He has accumulated over \$25,000 in delinquent debt. Some of this debt dates back to 2000. He has not acted responsibly under the circumstances and failed to show that his financial problems are under control. Clearance is denied.

Statement of the Case

On August 30, 2010, the Defense Office of Hearings and Appeals (DOHA) made a preliminary determination to deny Applicant access to classified information. DOHA issued a Statement of Reasons (SOR), which set forth the security concerns of Guideline F (Financial Considerations), as the basis for its decision.¹

¹ This action was taken pursuant to 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) implemented by the Department of Defense on September 1, 2006.

On September 7, 2010, Applicant submitted his Answer to the SOR (Answer), wherein he admitted all nine allegations. He affirmatively waived his right to a hearing and requested that a decision be made on the administrative record.

On October 14, 2010, Department Counsel filed its File of Relevant Material (FORM). It was mailed to Applicant on March 16, 2011.² The FORM contains Government Exhibits (GE) 1 through 9. Applicant filed a Response to the FORM (Response), which was received by DOHA on April 18, 2011. Neither side objected to the other side's submission. Accordingly, GE 1 – 9 and Applicant's Response are admitted. The case was assigned to me on May 5, 2011.

Findings of Fact

Applicant is 50 years old. He served on active duty in the Navy for 20 years from 1978 to 1998.³ After retiring from the Navy, Applicant "took some time off."⁴ He was unemployed from October to May 2001, November 2002 to September 2007, and December 2009 to February 2009. He has been with his present employer since February 2009.⁵

Applicant is married with one child from a previous marriage. He defaulted on his child support obligation, when his ex-wife "no longer wanted to accept the verbal agreement that she had made."⁶ In 2009, Applicant owed over \$13,000 in back child support. His wages are being garnished to satisfy this obligation, and the current balance is \$7,845.⁷

Applicant submitted his security clearance application (SCA) in May 2009. He revealed several derogatory accounts, including the debts referenced in SOR ¶¶1.b, 1.e, 1.f, and 1.i.⁸ He also revealed that this is not the first time he has applied for and

² The record does not contain any explanation for what appears to be a five month delay between the completion of the FORM and its mailing to the Applicant. However, Applicant has not claimed any prejudice and none is apparent. If anything, Applicant was given additional time to mitigate the financial concerns at issue. ISCR Case No. 06-22547 at 4 (App. Bd. Jul. 29, 2008) ("Absent a showing that a delay in the processing of a case prejudiced an applicant's rights in a meaningful way, mere proof of a delay is not sufficient to warrant remand or reversal . . .").

³ GE 5 [5/23/09 Security Clearance Application (SCA), Sec. 15].

⁴ Response at 1.

⁵ GE 5 (SCA, Sec. 13).

⁶ Response at 1. See *also*, GE 5 (SCA, Sec. 17 and 18).

⁷ GE 5 (SCA, at 18); Response, 3/01 Experian Credit Report, at 3. This debt was not alleged in the SOR. However, as Applicant was on notice that his finances were at issue, I will consider this debt in assessing the mitigation evidence and whole-person factors. ISCR Case No. 09-06770 (App. Bd. Nov. 8, 2002); ISCR Case No. 01-07656 (App. Bd. Aug. 29, 2002).

⁸ GE 5 (SCA, Sec. 26).

been denied a security clearance. Applicant was first granted a clearance by DoD in 1978 and a secret clearance by another agency in 2001. He was denied a clearance in November 2008, due, in part, to his financial problems.⁹ There was no evidence presented as to this previous denial.

In July 2009, Applicant was interviewed by an agent from the Office of Personnel Management (OPM) regarding his finances. Applicant told the agent that his financial problems extended back to 2000 when he and his wife lost their jobs. Applicant had three cars repossessed in 2000, and still owes \$18,109 for these three cars. These three debts are alleged in SOR ¶¶1.e, 1.f, and 1.i. Applicant admits these debts, but notes that they no longer appear on his credit report. He told the agent in July 2009 that he had contacted all his creditors and was working with them to satisfy his outstanding debts. Applicant did not submit any proof that these three debts have been paid, nor that he has contacted the creditor to address these debts.¹⁰

Applicant had another vehicle repossessed in 2006, for which he still owes \$2,840. This debt is alleged in SOR ¶1.b. Applicant admits this debt, but claims that the car belonged to his wife, who was unable to keep up with the payments after she had to quit her job due to inappropriate conduct that was directed at her in the workplace. Applicant failed to submit any documentation that he is not liable for this debt and it appears on several of his recent credit reports.¹¹

Applicant has satisfied two of the minor debts listed in the SOR, which total \$208 (SOR ¶¶1.a and 1.h). However, the remaining three SOR debts, which are not car related, have not been paid. The three debts alleged in SOR ¶¶1.c, 1.d, and 1.g total \$4,369. Applicant discussed the debts in ¶1.c (\$1,106 hospital bill) and ¶1.d (\$2,925 collection account) with the OPM agent in July 2009. He promised to resolve these debts at the time, but made only one payment of \$88 towards the debt in ¶1.c.¹²

In April 2010, Applicant responded to a DOHA Financial Interrogatory asking for an update as to his delinquent debts and requesting that he complete a personal

⁹ GE 5 (SCA, Sec. 25).

¹⁰ GE 6 at 3 (“Subject indicated that he and his wife have contacted all his creditors and that the creditors were working with them to make payment arrangements.”); GE 6 at 5, In 5 (discusses the 3 repossessed vehicles alleged in ¶¶1.e, 1.f, and 1.i).

¹¹ See GE 4 at 7 and 16 (6/10 Experian Credit Report and 9/10 Equifax Credit Report); Response (3/11 Experian Credit Report at 4). See also, GE 5 (SCA at 16-17); GE 6 at 4-5.

¹² GE 6 at 4, In 2 (¶1.c) and In 3 (¶1.d). In his 3/10 Interrogatory Response, Applicant initially claimed that the collection account in ¶1.d was consolidated and being paid back with the other student loans he had defaulted on. (GE 6 at 6). However, I find that ¶1.d is a separate student loan account that Applicant failed to show is in repayment status. Applicant admits ¶1.d in his Answer and, this admission, is corroborated by his recent credit report, which shows that the debt in 1.d is separate and apart from his other student loans. Compare, GE 4 at 5-6, with, GE 7 at 7 (the three student loans in repayment status).

financial statement (PFS). Applicant's PFS shows that he has a net monthly remainder of \$465, but the debts in SOR ¶¶1.b through 1.g and 1.i are not addressed. Applicant provided no explanation for his failure to address these debts.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, 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.

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 of potential, rather than actual, risk of compromise of classified information.

¹³ GE 7.

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 disqualifying conditions under AG ¶ 19. Applicant has accumulated of over \$25,000 in delinquent debt, some of which dates back to 2000. He is unable or unwilling to satisfy his debts. AG ¶ 19(a) and (c) are established.¹⁴

Guideline F also lists a number of mitigating conditions under AG ¶ 20 that may mitigate the concern. I have considered all the mitigating conditions, and find that the following warrant further discussion:

(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; and

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

¹⁴ “(a) inability or unwillingness to satisfy debts; and (c) a history of not meeting financial obligations.”

Applicant has now satisfied the debts in ¶¶1.a and 1.h. I find in favor of Applicant as to these two debts.

However, Applicant's financial problems are significant and current. He admits to owing over \$25,000 on seven delinquent debts, some of which date back 11 years. He should have been aware of the Government's concerns about his financial situation when he was denied a clearance in 2008, which, in part, was due to his financial problems. He was then interviewed in 2009 by an OPM agent about his debts and promised to address them at that time. Two years have passed, and Applicant has still not paid or attempted to resolve the debts in the SOR. I find that Applicant's debts are current and continue to cast doubt on his reliability, trustworthiness, and judgment.¹⁵

In analyzing an Applicant's debts vis-à-vis the concern of Guideline F, the Appeal Board has held that:

[A]n applicant is not required to be debt-free nor to develop a plan for paying off all debts immediately or simultaneously. All that is required is that an applicant act responsibly given his circumstances and develop a reasonable plan for repayment, accompanied by 'concomitant conduct,' that is, actions which evidence a serious intent to effectuate the plan."¹⁶

Applicant failed to establish that he has acted responsibly under the circumstances that led to his financial problems, to wit: his unemployment. He has been employed since February 2009 and has \$465 in disposable income each month that he could be using to repay his overdue creditors. Instead, Applicant has relied upon the fact that some of his debt no longer appears on his credit report. However, "[a] security clearance adjudication is not a proceeding aimed at collecting an applicant's debts. Rather, it is a proceeding aimed at evaluating an applicant's judgment, reliability, and trustworthiness. Accordingly, even if a debt is legally unenforceable, the government is entitled to consider the facts and circumstances surrounding an applicant's conduct in incurring the debt and failing to satisfy it in a timely manner."¹⁷ Applicant has accumulated these seven debts over an 11 year time span and, apparently, does not intend to resolve them. He has not taken a financial counseling course or otherwise demonstrated that his financial problem is under control. Under the circumstances, Applicant has failed to establish any of the mitigating conditions under Guideline F. He failed to mitigate the Financial Considerations security concerns.

¹⁵ ISCR Case 09-07792 at 2 (App. Bd. May 10, 2011) (" . . . evidence that Applicant's debts remained delinquent at the close of the record supports . . . conclusion that these debts were ongoing.")

¹⁶ ISCR Case No. 08-06567 at 3 (App. Bd. Oct. 9, 2009).

¹⁷ ISCR Case No. 07-08049 at 5 (App. Bd. Jul. 22, 2008). See also, ISCR Case No. 09-07916 at 3 (App. Bd. May 9, 2011).

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 the relevant circumstances. An 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.

Applicant served this country for 20 years in the Navy, and this decision does not, and is not intended to, call into question that service. However, those 20 years of service do not outweigh the serious security concerns that are raised by Applicant's longstanding and significant financial problems. Accordingly, I find that the favorable whole-person factors in this case do not mitigate the security concerns at issue.

Formal Findings

I make the following formal findings regarding the allegations in the SOR:

Paragraph 1, Guideline F (Financial Considerations): **AGAINST APPLICANT**

Subparagraphs 1.a and 1.h: For Applicant

Subparagraphs 1.b – 1.g, and 1.i: Against Applicant

Conclusion

In light of all of the foregoing, it is not clearly consistent with the national interest to grant Applicant access to classified information. Applicant's request for a security clearance is denied.

Francisco Mendez
Administrative Judge