



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 09-07456

Appearances

For Government: Richard Stevens, Esq., Department Counsel

For Applicant: *Pro se*

February 14, 2011

Decision

GOLDSTEIN, Jennifer I., Administrative Judge:

Applicant has an inability to satisfy his financial indebtedness. He currently has 13 delinquent debts, and has only made payment arrangements on one of his debts. He has not mitigated the Financial Considerations security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On October 1, 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 October 21, 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 November 16, 2010. The Government's submission included Government Exhibits (GEs) 1 through 9. 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 December 9, 2010. He was afforded a 30-day opportunity to file objections and submit material to refute, extenuate, or mitigate the security concerns. On December 9, 2010, Applicant responded with a thirty-two page submission (Reply). The Department Counsel had no objections. The case was assigned to me on January 6, 2011.

Findings of Fact

Applicant is a 48-year-old employee of a defense contractor. From August 1988 through March 1993, Applicant was enlisted in the Army. He has worked for his current employer since 2008. He has been married since 1990. In his Reply, Applicant indicated that he and his wife are now separated. He did not identify any children on his security clearance application, although he identified three sons and a daughter in his adopted statement. (Reply; GE 5; GE 6.)

Applicant identified that he had been over 180 days delinquent on debts in the past seven years and that he was currently over 90 days past due on debts, when he completed his security clearance application. The SOR alleges 15 delinquent debts, which are all substantiated in the record, although two of the listed debts are duplicated in the allegations. Applicant admitted owing allegations 1.a, 1.e., 1.f., 1.h., 1.j., 1.k., 1.l., and 1.n. He indicated that he denied 1.b., 1.c., 1.d., 1.g., 1.i., 1.m., and 1.o. as alleged in the SOR. Applicant's delinquent debt as listed in the SOR totals \$128,678, however, after adjusting the debt to avoid being duplicative, the final total is \$102,401. (GE 4; GE 5; GE 6; GE 7; GE 8; GE 9.)

Applicant began experiencing financial difficulties in approximately September 2008, when he moved from one state to another state. In his adopted statement, Applicant indicated that he was in the process of contacting his creditors to make payment arrangements with them. Applicant, in his Reply, asserts that he has been current on his bills for the past year, and that his wife has failed to give him proof of payment for several of her student loan accounts. (Reply; GE 6.) His debts are as follows:

Applicant is indebted to a collections agent for a gas company in the approximate amount of \$990, as alleged in SOR subparagraph 1.a. Applicant failed to offer evidence that he has made payment arrangements or otherwise satisfied this account. (GE 9.)

Applicant is indebted to a collections agent for a telecommunications company in the approximate amount of \$143, as alleged in SOR subparagraph 1.b. In his adopted statement, Applicant indicated this debt was incurred after Applicant's move from one state to another. He indicated he will pay this account, but provided no proof that this account has been settled. Applicant failed to offer evidence that he has made payment arrangements or otherwise satisfied this account. (GE 6; GE 7; GE 8; GE 9.)

Applicant is indebted to a collections agent in the approximate amount of \$1,367, as alleged in SOR subparagraph 1.c. Applicant failed to offer evidence that he has made payment arrangements or otherwise satisfied this account. (GE 9.)

Applicant is indebted on a charged off account in the approximate amount of \$757, as alleged in SOR subparagraph 1.d. Applicant failed to offer evidence that he has made payment arrangements or otherwise satisfied this account. (GE 9.)

Applicant is indebted to a collections agent in the approximate amount of \$4,091, as alleged in SOR subparagraph 1.e. Applicant failed to offer evidence that he has made payment arrangements or otherwise satisfied this account. (GE 9.)

Applicant is indebted to a collections agent in the approximate amount of \$9,098, as alleged in SOR subparagraph 1.f. Applicant's Reply indicates that he has been making monthly payments of \$750 on this account since April 2010. He provided copies of his account statements that show \$750 payments per month from July 2010 through November 2010. His balance on this debt, as of November 2010, is \$5,464.49. (Reply; GE 9.)

Applicant is past due \$26,134 on a \$272,000 mortgage, as alleged in SOR subparagraph 1.g. Applicant failed to offer evidence that he has made payment arrangements or otherwise satisfied this account. (GE 9.)

Applicant is indebted on a delinquent student loan in the approximate amount of \$37,192, as alleged in SOR subparagraph 1.h. Applicant acknowledged this debt in his adopted statement. He explained that the debt was for a loan his wife obtained to attend college in approximately 2008. Applicant failed to offer evidence that he has made payment arrangements or otherwise satisfied this account. (GE 6; GE 7; GE 8.)

Applicant is indebted on a repossessed vehicle in the approximate amount of \$20,769, as alleged in SOR subparagraph 1.i. In his adopted statement, Applicant explained that in 2008, he purchased a new vehicle. At the time of the purchase, he traded in a used vehicle, financed by this creditor, which had not yet been full paid off. Applicant did not believe he was responsible for the amount still owed and indicated he did not intend to pay further on this account. Applicant failed to offer evidence that he has disputed this debt, made payment arrangements, or otherwise satisfied this account. (GE 6; GE 8.)

Applicant is indebted on a student loan account in the approximate amount of \$236, as alleged in SOR subparagraph 1.j. Applicant failed to offer evidence that he has made payment arrangements or otherwise satisfied this account. (GE 8.)

Applicant is indebted on a student loan account in the approximate amount of \$573, as alleged in SOR subparagraph 1.k. Applicant failed to offer evidence that he has made payment arrangements or otherwise satisfied this account. (GE 8.)

Applicant is indebted on a mortgage debt in the approximate amount of \$26,134, as alleged in SOR subparagraph 1.l. This debt appears to be a duplicate of the mortgage debt alleged in SOR subparagraph 1.g. Applicant failed to offer evidence that he has made payment arrangements or otherwise satisfied this account. (GE 8.)

Applicant is indebted on a delinquent telephone account in the approximate amount of \$143, as alleged in SOR subparagraph 1.m. This debt appears to be a duplicate of the debt alleged in SOR subparagraph 1.b. (GE 7; GE 8; GE 9.)

Applicant is indebted on a student loan account in the approximate amount of \$500, as alleged in SOR subparagraph 1.n. Applicant failed to offer evidence that he has made payment arrangements or otherwise satisfied this account. (GE 8.)

Applicant is indebted on a charged off account in the approximate amount of \$524, as alleged in SOR subparagraph 1.o. Applicant failed to offer evidence that he has made payment arrangements or otherwise satisfied this account. (GE 8.)

Applicant's financial statement, completed as part of his Answers to Interrogatories in June 2010, indicated that his household net income was approximately \$8,798.88 per month and that his monthly expenditures totaled \$5,631.84. He was operating at a monthly surplus of \$3,164.04. He listed no savings or other assets. Applicant did not provide an updated budget with his Reply. (GE 7.)

Applicant 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 \$102,401, and is unable to pay his obligations. Further, his financial problems have been ongoing for at least the past two years, without resolution. Yet his 2010 budget showed he was

operating with a monthly surplus of \$3,164. From his budget, it appears that he has the funds available to pay on his delinquent accounts, but has failed to do so. 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 the 13 debts alleged in the SOR. He documented payments to only one creditor, as listed in 1.f. His financial issues are recent and ongoing. AG ¶ 20(a) is not applicable.

AG ¶ 20(b) is not applicable. Applicant's debts were not caused by circumstances beyond his control. He did not present evidence that his move from state to state was not voluntary or that his separation with his wife has caused inability to satisfy his financial responsibilities. Further, to be fully applicable, AG ¶ 20(b) also requires that the individual act responsibly under the circumstances. While he submitted evidence of payments on the debt listed in allegation 1.f., he did not submit evidence of how the rest of his debts were being resolved. 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 Applicant has contacted the creditors or made any other good faith efforts to repay his financial obligations alleged in subparagraphs 1.a.-1.e., 1.g.-1.k., and 1.n.-1.o. He is paying on the debt listed in 1.f., but it appears from his monthly budget that he could afford to pay on his other debts as well. Further, he did little to show any concrete good-faith efforts he has taken to contact his creditors about these debts. AG ¶ 20(d) is not applicable.

In his adopted statement, Applicant disputed the debt listed in 1.i. With respect to this disputed account, Applicant failed to present any evidence to show that he was in the process of disputing this debt formally with the creditor or that he had successfully disputed this debt 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.

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.e:	Against Applicant
Subparagraph 1.f.:	For Applicant
Subparagraphs 1.g-1.o:	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 or continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Jennifer I. Goldstein
Administrative Judge