



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



In the matter of:)
)
) ISCR Case No. 09-07871
)
)
Applicant for Security Clearance)

Appearances

For Government: Fahryn E. Hoffman, Esquire, Department Counsel
For Applicant: *Pro se*

May 26, 2011

Decision

WHITE, David M., Administrative Judge:

Applicant has more than \$32,000 in delinquent debt. After obtaining his current position, he paid an old tax delinquency and obtained a loan modification for his delinquent home equity loan. He recently joined a debt relief program that has yet to show results on the remaining debt. His efforts to date are a good start, but are insufficient to fully mitigate security concerns. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

Applicant submitted a security clearance application (SF 86) on August 17, 2009. On October 5, 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 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 for Determining Eligibility for Access to Classified Information* effective within the Department of Defense on September 1, 2006.

Applicant answered the SOR in writing (AR) on November 3, 2010, and requested a hearing before an administrative judge. On November 10, 2010, DOHA issued an amendment to the SOR adding a fifth allegation under Guideline F. Department Counsel was prepared to proceed on November 12, 2010, and the case was assigned to me on November 17, 2010. DOHA issued a Notice of Hearing on December 23, 2010, and I convened the hearing as scheduled on January 25, 2011. The Government offered exhibits (GE) 1 through 9, which were admitted without objection. Applicant offered no documentary evidence during the hearing to supplement the documents submitted with his response to the SOR, which were marked as attachments (Att) A through C. Those documents were admitted without objection, and Applicant testified on his own behalf. I granted Applicant's request to leave the record open until February 10, 2011, for submission of additional evidence. On February 4, 2011, Applicant submitted five documents that were marked AE D through H and admitted without objection. DOHA received the transcript of the hearing (Tr.) on February 10, 2011, and the record was closed as scheduled.

Findings of Fact

Applicant is a 53-year-old employee of a defense contractor, where he has worked as a pilot since July 2009. He served for five years as an officer in a state Air National Guard unit during the 1980s, and held a security clearance. He also held a security clearance during subsequent employment flying as a defense contractor. He holds two aviation-related bachelor's degrees. He is married for the second time, but has been separated from his wife for about eight years. He has four children, ages 33, 28, 21, and 18.¹ In his response to the SOR, Applicant denied the factual allegations in SOR ¶¶ 1.a through 1.e, and submitted documents showing that he had made arrangements toward resolution of four of the debts involved.² Applicant's admissions, including his statements in response to DOHA interrogatories,³ are incorporated in the following findings.

Applicant worked overseas as a defense contractor flying in support of U.S. forces in a combat zone from late 2004 to early 2007, when his employer's contract expired. That job paid him about \$176,000 per year. He was subsequently employed for 28 months by a small domestic airline, but did not receive any work assignments or pay from them. During that period, he tried to start an internet marketing business from his home, but only earned about \$500 a month, or about \$15,000 total. To pay living expenses, he used up his savings, took out a \$47,000 home equity loan, and used credit cards until being hired into his current position. He is now earning about \$79,000 per year working as a pilot scheduler in the company offices in a state that is far from the one in which he lives. He was hired to go back overseas and fly in support of our military operations, but cannot do so without a security clearance. Overseas flying

¹GE 1; Tr. 7-8, 41-42.

²AR.

³GE 3; GE 4.

duties would double his pay to around \$160,000 per year. Applicant is also paid \$56 per day in per diem, and provided a hotel room and rental car at company expense, when he is in his company's office location.⁴

Once Applicant started working again in 2009, he began paying off his delinquent debts. He resolved some accounts, which do not appear on the SOR, with creditors who were willing to agree to repayment terms that he could afford. He also negotiated and entered into a loan modification agreement concerning his delinquent home equity loan alleged in SOR ¶ 1.c. That loan modification was approved August 30, 2010, and incorporated the formerly delinquent \$1,500 balance due into an extended repayment schedule. Applicant has made all payments under the modification agreement.⁵

Applicant originally disputed the state income tax debt alleged in SOR ¶ 1.a. This issue arose in the mid-1990s when Applicant and his wife lived in a different state where military pay received by non-residents stationed there was not subject to state taxation. The state erroneously included his wife's military pay in their taxable income, resulting in a \$500 (or possibly \$900) tax arrearage. Applicant disputed the arrearage and thought that he had resolved the matter by explaining the error to some state employee who seemed to agree that it was a mistake. However, he never received any documentation confirming this resolution. The family moved out of the state a year or two later, and had no further notice that this was still an issue until Applicant's interview with an investigator from the Office of Personnel Management (OPM) on October 1, 2009. The investigator informed Applicant that in 2007 the state had filed a tax lien in the amount of \$1,552. During the year following the OPM interview, Applicant contacted the state tax officials on several occasions to dispute the debt, but they insisted that he owed it. After the debt appeared on the SOR as a security concern, he decided to give up and pay it rather than leave it unresolved. On November 2, 2010, he paid the state \$1,877.17 (with additional interest and fees) to settle this alleged debt. He used his company-issued credit card, which is current, to charge the settlement amount.⁶

Funds from the two credit card debts alleged in SOR ¶¶ 1.b and 1.d, totaling \$32,764, were used for living expenses, starting Applicant's marketing business, and his daughter's wedding. Applicant was unable to keep up with minimum payments due on the cards before obtaining his current job, and they became delinquent in early 2009. Neither creditor was willing to negotiate an affordable repayment plan with him, so on October 25, 2010, he hired a debt-relief company to negotiate resolution of the two debts. The agreement with this company originally called for him to make \$1,657 monthly payments into an account from which the company could draw its fees and Applicant could direct payment of any agreed settlement amounts. Appellant realized almost immediately that these monthly payments were higher than he could afford, so they agreed to cut them in half. He has made regular monthly payments of \$838,

⁴GE 1; AE F; Tr. 38-39, 44-47, 107-114, 133, 136.

⁵GE 4; Att B; AE E; Tr. 52-67, 118-119, 133-134.

⁶GE 3 at 10; GE 6; Att A; Tr. 31-33, 67-74.

starting on November 5, 2010. To date, most of his payments have been applied toward program fees. The company estimated that it could negotiate settlement of the two delinquent accounts for total payments to the creditors of about \$14,700 to \$16,400. If he continues payments into the program at the current rate, and the company succeeds in settling the debts for 45% to 50% of the amount due, these debts should be resolved between November 2012 and January 2013.⁷

The judgment debt alleged in SOR ¶ 1.e arose from another failed business venture Applicant undertook with his brother in the late 1990s. They bought used cars on the West Coast and sold them in the Midwest where prices were higher. They had entered into a five-year contract with another company to serve as a resident-agent office in another state. After a couple of years, Applicant's company went bankrupt. He did not realize that the contract provided for his personal liability to pay the agreed fees in the event of corporate bankruptcy, and did not have the means to do so in any event. The other party obtained a judgment against him in the amount of \$7,438 during June 2000. The judgment remained unpaid until Applicant started earning a good salary flying overseas in late 2004. During June 2003, the judgment creditor turned the account over to an attorney for collection. In September 2006, the attorney filed a credit bureau report claiming that the debt was then \$19,145, including interest and fees. On November 17, 2006, the attorney seized \$5,000 from Applicant's savings account. Applicant then contacted the attorney and negotiated a settlement for a total of \$13,000, with the remaining \$8,000 balance to be paid in two installments that were paid between December 8, 2006 and February 15, 2007. Applicant was unable to produce corroborating documentation of these latter two payments, other than an email exchange with an attorney that referred to the payments but was inconclusive concerning whether the judgment was considered satisfied. Applicant's credit report dated July 16, 2010, does not reflect this debt. I found Applicant's testimony concerning resolution of this debt to be credible and consistent with the available evidence.⁸

Applicant offered no evidence of financial counseling. He has one open and one closed credit card accounts, not listed on the SOR, that were current and close to their maximum limits. He makes the required minimum monthly payments toward these debts to keep them current. He has calculated his monthly budget to apply all funds that are not required to keep his other debt payments up to date toward building his account with the debt relief company. Accordingly, he lives paycheck to paycheck, has no readily-available savings balance, and requires his substantial per diem allowances to make the budget work. He has about \$7,000 in a 401(k) retirement fund, and between \$40,000 and \$50,000 in personal property assets. He recently listed his home for sale with an asking price of \$245,000. He owes approximately \$206,000 on his first mortgage and modified home equity loan secured by his home, leaving about \$39,000 in equity if it sells for asking price.⁹

⁷GE 3 at 11; GE 7; Att C; AE D; Tr. 37-38, 95-107.

⁸GE 3 at 6, 10-11; GE 5; GE 7; GE 8 at 4; GE 9 at 3; Tr. 35-36, 74-94.

⁹GE 3 at 5; Att B; AE E; AE G; AE H; Tr. 120-140.

Applicant offered no evidence concerning the quality of his professional performance, or the nature and extent of responsibilities with which he is entrusted by his company. He also offered no reputation or opinion evidence, concerning his character, trustworthiness, responsibility, or judgment, from others who know him. His demeanor during the hearing was open and sincere, and he was knowledgeable about his financial circumstances.

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions (DCs) and mitigating conditions (MCs), 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, these guidelines are applied in conjunction with the factors listed in AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶¶ 2(a) and 2(c), the entire process is a conscientious scrutiny of applicable guidelines in the context 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 the 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, "[t]he 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, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision." Section 7 of Executive Order 10865 provides: "[a]ny determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned."

A person applying for access to classified information seeks to enter 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 protect or

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.

Analysis

Guideline F, Financial Considerations

The security concerns relating to the guideline for financial considerations are 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 evidence raised security concerns under two Guideline F DCs, as set forth in AG ¶ 19(a) "inability or unwillingness to satisfy debts"; and ¶ 19(c) "a history of not meeting financial obligations." Applicant's history of presently delinquent debt stretches back about four years and continues, in large part, at present. He also had a business-related judgment debt that grew from \$7,438 to more than \$19,000 between June 2000 and early 2007, when he finally had the resources to settle it for \$13,000. The burden accordingly shifts to Applicant to rebut, explain, extenuate, or mitigate these facts and the resulting security concerns. He thought that he had successfully disputed the \$1,552 state tax claim during the mid-1990s. When informed, in October 2009, that the state had reasserted the claim by filing a tax lien in 2007, he decided to pay it rather than fight it further. His conduct with respect to this debt, as alleged in SOR ¶ 1.a, does not raise or support security concerns.

The guideline includes four conditions in AG ¶ 20 that could mitigate security concerns arising from Applicant's financial problems:

(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.

Of Applicant's five delinquent debts alleged in the SOR, two credit card debts, comprising more than 75% of the total amount due, remain unresolved at present. He has begun a program to address them, but will be financially unable to do so for at least 18 months unless his home is sold on favorable terms. These debts arose during a period of time when Applicant was voluntarily pursuing a business venture unrelated to his ability to earn income as a commercial pilot. The since-resolved judgment debt, alleged in SOR ¶ 1.e, remained unpaid for more than six years and arose under similar circumstances. Applicant failed to demonstrate that his current financial situation makes this behavior unlikely to recur, or that it does not cast doubt on his current trustworthiness and judgment. The evidence does not establish mitigation under AG ¶ 20(a).

Mitigation under AG ¶ 20(b) was not established either. The debts of concern arose due to Applicant's voluntary entry into two business ventures and related financial obligations. Both were unrelated to his commercial pilot qualifications, and both failed within the first couple of years. Applicant obtained a well-paying flying position in 2004, but did not begin to address the delinquent June 2000 judgment debt, alleged in SOR ¶ 1.e, until after the collection attorney began seizing assets from his bank account in 2006. His accumulation of the currently delinquent credit card debt and withdrawal of equity from his home to finance another attempt at self-employment were voluntary choices, and he did not begin his current employment until he had maximized the expenditure of available credit and could not meet minimum payments.

Applicant has not received financial counseling, but began to resolve some of his delinquent debts after obtaining his current position. He documented full payment of the debt alleged in SOR ¶ 1.a, and the delinquency alleged in SOR ¶ 1.c was resolved through his successful negotiation of a loan modification. Although Applicant failed to produce documents corroborating his testimony concerning the latter payments, I find that the judgment debt alleged in SOR ¶ 1.e was satisfied through seizure of \$5,000 from Applicant's bank account in 2006, and two subsequent payments totaling \$8,000. He also documented his recent entry into a debt-relief program to attempt resolution of the debts alleged in SOR ¶¶ 1.b, and 1.d, for half or less of the actual amount he owes, over the next 18 to 20 months. Thus, the beginning of mitigation was established under AG ¶¶ 20(c) and (d), but the track record of actual debt repayment is too short and recent to provide substantial mitigation of the foregoing security concerns.

As the Appeal Board has ruled concerning the successful mitigation of security concerns arising from financial considerations, "[a]n applicant is not required to show that [he] has completely paid off [his] indebtedness, only that [he] has established a

reasonable plan to resolve [his] debts and has ‘taken significant actions to implement that plan.’”¹⁰ This applicant has recently begun to resolve the debts that give rise to security concerns. Additional time and documented follow-through is required, however, in order to meet the Appeal Board’s standard of significant action to implement that plan.

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 pertinent facts and circumstances surrounding this case. Applicant is a well-educated and qualified commercial pilot with a history of service in defense of the United States. He is currently living within his means, and began addressing his substantial delinquent debts after obtaining his current position and applying for a security clearance. Continued progress in those efforts, and the avoidance of new delinquencies, will strengthen his case in mitigation of financial security concerns.

However, Applicant currently has over \$32,000 in delinquent debts that he accrued over the past four years, and did not demonstrate the financial means to resolve them in the near term. The debts arose from choices that he voluntarily made, and his commendable efforts to address them are too recent to establish a permanent behavioral change. Applicant is a mature and experienced individual, who is fully accountable for his situation. The potential for pressure, coercion, exploitation, or duress remains largely undiminished, and he did not yet demonstrate a sufficient pattern of financial responsibility to show that the financial concerns are unlikely to continue or recur.

¹⁰ISCR Case No. 06-12930 at 2 (App. Bd. Mar. 17, 2008) (quoting ISCR Case No. 04-09684 at 2-3 (App. Bd. Jul. 6, 2006)).

Overall, the record evidence creates substantial doubt as to Applicant's present eligibility and suitability for a security clearance. He failed to meet his burden to mitigate the security concerns arising from his financial considerations.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the interests of national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

DAVID M. WHITE
Administrative Judge