



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



In the matter of:)	
)	
)	ISCR Case No. 09-08150
SSN:)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Bill O'Neil, Esq., Department Counsel
For Applicant: *Pro se*

October 20, 2010

Decision

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

On May 19, 2010, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) enumerating security concerns arising under Guideline F (Financial Considerations). DOHA took action 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 June 8, 2010, answer to the SOR, Applicant admitted all nine allegations set forth under Guideline F and requested a hearing before an administrative judge. DOHA assigned the case to me on August 3, 2010. The parties proposed a hearing date of August 25, 2010. A notice setting that date for the hearing was issued on August 6, 2010. I convened the hearing as scheduled. Applicant gave testimony and presented nine documents, which were accepted into evidence without objection as exhibits (Exs.) A-I. Department Counsel offered four documents, which were admitted as exhibits (Exs.) 1-4 without objection. Applicant was given until September 15, 2010, to submit any additional materials. DOHA received the transcript (Tr.) of the proceeding on September 1, 2010. On September 14, 2010, Department Counsel forwarded 14

additional documents from Applicant and noted no objections in his accompanying memorandum. The memorandum and documents were accepted as Exs. J-X. The record was then closed. Based on a thorough review of the testimony, submissions, and exhibits, I find Applicant failed to meet his burden in mitigating security concerns. Clearance is denied.

Findings of Fact

Applicant is a 60-year-old employee of a defense contractor who works in the areas of shipping and receiving. He has been with the same employer since the 1980s. Applicant earned a high school diploma. He is a widower and has no children.

In the early 1990s, Applicant, his wife, and his mother-in-law lived together in Applicant's home. His mother-in-law died in 1992. His wife followed in late October 1999, after multiple medical problems and a long illness. Prior to Applicant's wife's passing, he never had any financial issues. His late wife, a teacher and part-time x-ray technician, managed their finances. After she died, Applicant lived a simple life, but budgeting was difficult without his wife's incomes and her knowledge of financial management.

Applicant inherited his wife's \$86,000 pension proceeds and was paid \$50,000 on a life insurance policy he maintained on her through his workplace. He gave the proceeds to an investment firm to manage for him, with hopes of retiring by the time he was 60. After September 11, 2001, Applicant discovered his investments were nearly wiped out. His broker avoided him, but eventually told Applicant that his investments had crashed and most of his money lost after the events of September 11, 2001. Applicant later discovered, based on what he heard on the radio, he may have been defrauded. An out-of-state attorney filed suit against the investment entity in 2003 on his behalf. About \$20,000 was recovered, of which Applicant received approximately \$10,000.¹ That sum went directly toward Applicant's mounting debts.

Applicant continued working, making about \$650 every two weeks.² After almost two years of living alone and maintaining his home on one salary, Applicant found he had insufficient financial resources. He started using credit cards. Around the time of his 2002 cancer surgery, which was followed by 90 days of recuperation, he also refinanced his home in an attempt to help make ends meet. He sold his late wife's treasured car in order to save money on his car insurance bills while he continued driving a 1996 model truck that now has 412,000 miles on it. Health insurance helped cover most of his medical expenses for his cancer surgery. His various medications and other medical issues, however, started rising in cost. He currently pays close to \$400 a month for the prescriptions he has chosen to take.³ Due to the cost of some of his

¹ Tr. 85-87.

² Applicant has been earning about \$17.80 an hour. After a recent raise, he is now earning a little over \$1,000 every two weeks. See Tr. 92.

³ Tr. 43.

medications, he goes without other prescribed medications.⁴ He paid his bills and made payments on his credit card accounts “as long as [he] could.”⁵ When he would fall behind on one account, the penalties imposed would be unwieldy, impeding his ability to make any progress on the balances.⁶ He did not spend money on extravagances, only essentials.⁷ He has only taken one vacation in his life and he has no furniture in his house.⁸ He continues to drive the same truck. Despite his difficulties, he remained current on his mortgage.⁹

Besides being a cancer survivor, a diabetic, and a heart patient, Applicant is awaiting needed surgery to address an undiagnosed tumor on his thyroid. He also suffers from a build up of calcium that is causing hardened arteries and adversely affecting his joints. He concedes that his various medical issues have distracted him from his financial issues. Applicant stated that he is reluctant to undergo his next operation, which was scheduled for September or October 2010, because he does not want to miss the time off from work.¹⁰ His devotion to his work is reflected in very favorable recommendations.¹¹ His most recent appraisal shows that he fully meets or exceeds in all performance areas.¹² Despite his significant physical problems, Applicant maintains a modest and highly positive disposition, noting “I feel pretty good to be as sick as I’ve been.”¹³

At issue in the SOR are about \$112,000 of debts. Applicant was genuinely surprised that he had debts in excess of about \$57,000.¹⁴ He cannot verify the accuracy of the credit card entries noted in the SOR, commenting that he does not want to argue

⁴ Tr. 44. As examples, Applicant cited to prescriptions for a form of Nitroglycerin, prescribed after a 2009 heart surgery, and Lipitor.

⁵ Tr. 55.

⁶ Tr. 56.

⁷ See, e.g., Tr. 58.

⁸ Tr. 82.

⁹ Tr. 57.

¹⁰ Tr. 45-47.

¹¹ See Ex. G (Reference) and Ex. H (Reference).

¹² Tr. 53; Ex. I (Appraisal).

¹³ Tr. 48.

¹⁴ Tr. 54. The transcript mischaracterized the amount at issue as being about \$133,000. Applicant was unaware that more than eight credit cards had delinquent balances. He did not attempt to deny any of the debts alleged, only expressed his genuine surprise as to the amount.

with people.¹⁵ At the hearing, Applicant was generally unaware of the current status of the two judgments and eight delinquent debts noted in the SOR.¹⁶ After the hearing, he submitted photocopies of his existing credit cards, older account statements for eight credit cards, and three case records from the local court.¹⁷ While some reflect different, often lower balances owed on some of the accounts at issue, none show any recent or significant progress.

Applicant no longer uses any of the credit cards at issue, he only makes payments on them.¹⁸ He cannot account for the discrepancy between the debt alleged and what he thinks it is. Applicant does not know whether anyone else has been using his credit cards.¹⁹ He has not disputed his credit report. He recently tried to negotiate a settlement with the creditor noted at SOR allegation ¶ 1.b, but he was unable to make the deadline for payment.²⁰ He has not received financial counseling because he is wary of divulging his personal information to third parties.²¹ He would do so, and consider a debt consolidation plan, if he knew an individual or organization that he could trust.²² He may pursue such counseling on the advice of his minister. Applicant has not considered bankruptcy because he has been told that it is “the worse thing you can do.”²³ He would pursue it if he thought it was the wise thing to do. He stated that he is “ready to pay today. If [he] had the money [he] would have been paid [that was lost to investors]. It’s not that I don’t want to pay. . . . [I have] had many headaches day and night over these bills.”²⁴ He conceded he does not currently know who or what he owes.²⁵ He is genuinely embarrassed about his financial situation.²⁶ As for the amount at issue in the SOR versus the approximately \$57,000 in debt Applicant stated he believed was owed, Department Counsel conceded that the credit report and SOR

¹⁵ Tr. 69. Applicant stated, “I don’t want to argue with people. They say, ‘You owe it.’ I just went along.”

¹⁶ Tr. 64-69.

¹⁷ See generally Exs. L-X.

¹⁸ Tr. 69.

¹⁹ Tr. 70.

²⁰ Tr. 71-72.

²¹ Tr. 74.

²² Tr. 74-75.

²³ Tr. 92.

²⁴ Tr. 77.

²⁵ *Id.*

²⁶ Tr. 103.

could contain duplicate entries that inflate the amount actually owed.²⁷ The record has insufficient evidence to calculate Applicant's true amount of debt.

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 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. . . ." ²⁸ The burden of proof is something less than a preponderance of evidence. The ultimate burden of persuasion is on the applicant.²⁹

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

²⁷ Tr. 97.

²⁸ See *also* ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

²⁹ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

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.”³⁰ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.³¹

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.

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.”³² The guideline sets out several potentially disqualifying conditions. Here, Applicant conceded that he has over \$50,000 in debts that remain unpaid. He expressed his willingness to pay his debt, but cited to his limited income and distracting health issues as to why they remain unpaid. 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.

The debts at issue were acquired within the last decade. They have been compounded by fees and penalties. They reflect Applicant’s overall inability to satisfy his current debt and medical costs within the salary he presently earns. There is no indication that Applicant will be soon seeking bankruptcy, implementing a consolidation plan, or adopting some other strategy for addressing his debt. Financial Considerations Mitigating Condition (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.

Applicant has had several medical issues in the past few years and has been prescribed a number of costly medications. To help ends meet, he has declined to purchase some of his prescriptions. The loss of Applicant’s wife and her income adversely affected Applicant’s ability to pay his obligations. He lives a simple life to minimize expenses. He does not take vacations, he drives an old truck, and he has

³⁰ *Id.*

³¹ *Id.*

³² AG ¶ 18.

gone without furniture. He was also the apparent victim of a fraud that virtually eliminated his savings and inheritance. Although only a modest sum was ultimately paid to Applicant, he did pursue recourse through the courts. The proceeds recovered were paid toward his debts. Given these circumstances, 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) applies.

Applicant expressed little understanding of personal financial management. His late wife used to handle all such issues on his behalf. He has been wary of pursuing financial counseling, but hopefully will soon pursue it with the help of pastoral counsel. He also has been wary of pursuing bankruptcy, but may also explore that as an option upon assurances that it will not make his situation worse. Given the facts presented, 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) does not apply.

While Applicant is earnest and well-intentioned, he presented no documentary evidence that would help give rise to FC MC ¶ 20(d) (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts).

Applicant has been fraught with medical problems over the past eight years and he has been without financial guidance since he lost his wife a decade ago. He is not unwilling to pay his debts, but he is financially incapable of doing so in an organized manner. He does not need to learn financial restraint, but he does need to develop financial management skills. No progress has been made on the debts at issue. Therefore, financial considerations security concerns remain unmitigated.

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 on 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. Applicant is a credible, straight-forward, and hard-working man whose testimony was particularly honest. He lost his wife a decade ago, a woman on whom he depended and who worked to make their home financially solvent. Applicant has lived a simple, no-frills life. His truck is old, but operational. He does without furniture. He does not take vacations. There is no indication that he maintains cell phones, cable television or internet accounts, or any other frivolities that are often taken today as essentials. He is devoted to his work in the shipping and receiving department, to the point where he

has compromised his health in order to stay on the job. He foregoes important prescription medications because they are too expensive. Through it all, Applicant has maintained an admirably positive outlook and disposition.

Unfortunately, Applicant was unable to provide sufficient evidence that he has substantially addressed the debts at issue. It is apparent by his testimony that his income is insufficient to satisfy the debts at issue, much of which was apparently increased due to penalties and fees. While his past circumstances mitigate the creation of the debts at issue, they do not sufficiently mitigate their continued neglect. Until Applicant seeks advice as to how he might address these debts, financial considerations security concerns will remain unmitigated. The “clearly consistent standard” indicates that security clearance determinations should err, if they must, on the side of denials. In light of the evidence presented, clearance is 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
Subparagraphs 1.a-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 the national interest to grant Applicant a security clearance. Clearance is denied.

ARTHUR E. MARSHALL, JR.
Administrative Judge