



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----, -----) ISCR Case No. 09-08405
SSN: -----)
)
Applicant for Security Clearance)

Appearances

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

November 24, 2010

Decision

WHITE, David M., Administrative Judge:

Applicant and his wife incurred almost \$90,000 in delinquent debt since 2001. Some were large credit card accounts, and some were small utility bills. They separated in May 2009, and she created additional debt for unpaid rent and damages to their apartment. He recently filed for divorce, and is in a relationship with another woman, who is beginning to help him address his delinquent debt. To date, he established an insufficient track record of financial responsibility to overcome resulting security concerns. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

Applicant submitted a security clearance application (SF 86) on September 8, 2009. On May 11, 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 that went into effect within the Department of Defense on September 1, 2006.

Applicant answered the SOR in writing (AR) on June 8, 2010, and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on June 25, 2010, and the case was assigned to me on June 29, 2010. DOHA issued a Notice of Hearing on July 9, 2010, and I convened the hearing as scheduled on August 18, 2010. The Government offered exhibits (GE) 1 through 4, which were admitted without objection. Applicant offered exhibits (AE) A through L, which were admitted without objection, and testified on his own behalf. His significant other also testified. I granted Applicant's request to leave the record open until September 15, 2010, for submission of additional evidence. DOHA received the transcript of the hearing (Tr.) on August 26, 2010. Applicant timely submitted AE M through U, which were also admitted without objection, and the record was closed as scheduled.

Findings of Fact

Applicant is a 36-year-old employee of a defense contractor, where he has worked as a heating, ventilation, and air conditioning (HVAC) mechanic since March 2009. He has no military service, and this is his first application for a security clearance. He holds an associate's degree from a junior college, and a technical certificate of completion from a community college. He received an award for saving a human life during a medical emergency in 1999. He recently filed for divorce from his second wife, against whom he has also obtained domestic violence restraining orders. He has no idea where his wife is, but hopes the divorce will be final by the end of the year. He has custody of his two young daughters and of his wife's 16-year-old daughter, and lives with another woman, with whom he has been friends for four years, who has two young daughters of her own.¹ In his response to the SOR, Applicant admitted all of the factual allegations in SOR ¶¶ 1.a through 1.m, with some explanations.² Applicant's admissions, including his statements in response to DOHA interrogatories,³ are incorporated in the following findings.

Applicant worked as a refrigeration technician at a hotel casino from 1997 to September 2008. He and his wife, who became an alcoholic and spent a lot of money in bars, fell behind on a number of bills and credit cards around 2001 through 2003, resulting in the delinquent debts alleged in SOR ¶¶ 1.a through 1.i. Applicant described the cause of his financial problems as being young and dumb, acting irresponsibly by spending more than they earned without budgeting, and just ignoring the debts and hoping the situation would improve. He stopped using credit cards in 2003.⁴ The total of

¹GE 1; AE B; AE K; AE L; Tr. 52-53, 56-59, 64, 98-99, 120-121, 127-131.

²AR.

³GE 2.

⁴GE 2 at 12; Tr.103-107.

those delinquent debts is \$84,217. Individually, they ranged from utility bills for \$36 and \$114 to credit card debts of \$25,583 and \$26,814. The credit card debts were incurred purchasing regular consumer items. As of the date of the hearing, although he expressed his intention to do so and had received several settlement offers from creditors, Applicant had not paid anything toward, or made any arrangement to pay, any of these debts.⁵ The debts alleged in SOR ¶¶1.g, 1.i, 1.k, and 1.l, are so old that they have dropped off his current credit reports. He acknowledged, however, that these were legitimate debts that he did not pay.⁶

Applicant described his intention to dispute the \$5,647 collection account alleged in SOR ¶ 1.m, because his wife should be considered solely responsible for that debt. This debt comprises unpaid rent for, and damages to, the apartment that Applicant and his wife rented together before they separated in May 2009. He said, without further corroboration, that all these liabilities arose after he left, and while she was living in the apartment with her new boyfriend. He hopes that the debt will be assigned to his wife in connection with their pending divorce proceeding. However, the creditor has obtained a judgment against Applicant and his wife for the debt. His wages have not yet been garnished for satisfaction of this judgment. He has done nothing else to formally dispute the debt, and acknowledged that his name remained on the lease during the period in question.⁷

Applicant and his house-mate have not combined their finances, but together have a household budget that reflects a discretionary surplus of approximately \$1,350 per month. That surplus only arose recently, after Applicant was awarded custody of the three girls, for which he formerly paid his wife \$1,000 per month in child support. Shortly before the hearing, they decided to manage the negotiation of his delinquent debt themselves, rather than hiring someone or seeking bankruptcy protection as Applicant formerly planned. It is their intention to resolve each of these debts within the next two years so that they can buy a house in which to raise their children. They had almost finished paying off an \$800 tax deficiency for 2009, plus interest and penalties, to the Internal Revenue Service that was caused when Applicant's wife filed her taxes separately and he tried to file jointly.⁸

Applicant's supervisor for the past six months described him as "one of my stronger performers" who was very forthright and dependable, and who ensures that his work is completed accurately and completely. Applicant has kept his employers informed of his financial situation and plans to resolve it.⁹ His family members are also

⁵SOR; GE 3; GE 4; AE F; AE G; AE H; Tr. 102-107, 124-127.

⁶Tr. 117-118, 135-142.

⁷GE 2 at 7; AE D; AE E; AE J; Tr. 107-109, 121-124.

⁸GE 1 at 43-44; GE 2 at 2, 14; AE C; Tr. 78-81, 88-97, 142-143.

⁹Tr. 39-46.

aware of his financial problems. Two coworkers and the mother of his house-mate wrote letters attesting to his good character and responsibility.¹⁰ His testimony during the hearing was sincere and credible.

While the record remained open after the hearing, Applicant and his house-mate began making payments toward several delinquent debts. The evidence to support this was difficult to interpret, but appears to show that they made a \$238 payment toward the debt in SOR ¶ 1.e, in connection with an agreement to settle that \$2,362 debt for payments totaling \$723. They also began making \$25 weekly payments toward the \$26,814 debt alleged in SOR ¶ 1.d. They paid off the \$106 debt alleged in SOR ¶ 1.h. They also paid the \$151 debt alleged in SOR ¶ 1.a, and claimed without corroborating documentation that they paid the \$36 debt alleged in SOR ¶ 1.c.¹¹

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

¹⁰AE A.

¹¹AE M through AE U.

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 delinquent debt stretches back about nine years, and continues, in large part, at present. Some of these debts were as small as the \$36 and \$114 utility bills that he acknowledged, but made no effort to address before his hearing, despite being made aware of their security significance well before that time. His total delinquent debt was almost \$90,000, some of which may now be legally uncollectible but none of which was repaid before his hearing. The burden accordingly shifts to Applicant to rebut, explain, extenuate or mitigate these facts and the resulting 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.

Applicant's delinquent debt began to accrue about nine years ago, but remains delinquent for the most part to date. He offered no justification for the circumstances under which it arose except for his irresponsibility and neglect of financial obligations. He is now living with a different and significantly more responsible woman than he was when the debts arose, but it is too early to reasonably conclude that this lengthy pattern of irresponsibility is unlikely to recur and does not cast doubt on his reliability. Applicant established the beginning of mitigation under AG ¶ 20(a), but one month of post-hearing efforts to address the debts is insufficient to outweigh concerns arising from the nine-year history that preceded the hearing.

Only minimal mitigation under AG ¶ 20(b) was established. Applicant fully participated in the creation and failure to pay the debts alleged in SOR ¶¶ 1.a through 1.l. His wife's irresponsibility concerning their apartment after he moved out, and while he was paying her child support, was largely beyond his control. However, he failed to show that he has since acted responsibly concerning this debt, which has now been reduced to an enforceable judgment against him. To date he has only hoped to convince his divorce judge to assign responsibility for it to his wife, which will not affect his joint obligation to the third-party creditor.

Applicant and his new house-mate decided to undertake resolution of his delinquent debts on their own. This is a reasonable approach if they can demonstrate sufficient budgetary discipline while raising five daughters to save enough to achieve debt reduction. At the time of the hearing, their situation had so recently stabilized that they had not yet made any effort toward resolution of Applicant's delinquent debts. They credibly testified that they intended to work toward resolution of the delinquent debts that still appeared on Applicant's credit report. After the hearing, they made \$556 in payments toward several debts. Even if the \$50,411 in debt that no longer reflects on Applicant's credit reports, as alleged in SOR ¶¶ 1.g, 1.i, 1.k, and 1.l is excluded, almost \$40,000 in delinquent debt remains. If Applicant's estimate of \$1,350 in surplus income per month is truly available, it would take 29 months to resolve this debt. The actual payments of \$556 during the month following the hearing, while debt reduction was a priority, cause the \$1,350 estimate to appear very optimistic. Thus, the beginning of mitigation was established under AG ¶¶ 20(c) and (d), but the track record of actual debt repayment is far too short to provide substantial mitigation of the foregoing security

concerns. Moreover, uncollectible debt may no longer support concerns about financial coercion or duress, but ignoring financial obligations for that lengthy period does not alleviate concerns about Applicant's judgment or willingness to comply with rules and regulations.

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.'"¹² This applicant, with significant help and resolve from his house-mate, has very recently begun a plan 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 incurred almost \$90,000 in delinquent debt, primarily due to his and his wife's financial irresponsibility. He expressed an intention to file bankruptcy at some future point, but never made any concrete efforts in that regard. He and his house-mate have undertaken a plan to resolve the delinquent debts without bankruptcy, so they can buy a home. They had not begun resolving those debts before his hearing, but began doing so after the hearing. His openness with all concerned about his financial situation, and proactive efforts to achieve resolution of his debts, have begun to reduce the potential for pressure,

¹²ISCR 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)).

coercion, exploitation, or duress. The strong testaments to his good character, integrity, and trustworthiness by his supervisor and coworkers further evidence his potential to reestablish his reliability and responsibility. However, facing almost \$90,000 in delinquent debt, Applicant made post-hearing payments of \$556 to partially resolve some debts and fully resolve others. He did not yet demonstrate a sufficient pattern of financial responsibility to show that the financial concerns are unlikely to continue or recur.

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
Subparagraph 1.f:	Against Applicant
Subparagraph 1.g:	Against Applicant
Subparagraph 1.h:	For Applicant
Subparagraph 1.i:	Against Applicant
Subparagraph 1.j:	Against Applicant
Subparagraph 1.k:	Against Applicant
Subparagraph 1.l:	Against Applicant
Subparagraph 1.m:	Against 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