



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



In the matter of:)	
)	
)	ISCR Case No. 09-08713
SSN:)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Braden M. Murphy, Esq., Department Counsel
For Applicant: *Pro se*

October 15, 2010

Decision

COACHER, Robert E., Administrative Judge:

Applicant has not mitigated the Financial Considerations security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On April 23, 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. DOHA acted 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 adjudicative guidelines (AG) implemented by the Department of Defense on September 1, 2006.

Applicant answered the SOR on May 27, 2010, and requested a hearing before an administrative judge. The case was assigned to me on June 17, 2010. DOHA issued a notice of hearing on June 30, 2010, and the hearing was convened as scheduled on

July 15, 2010. The Government offered exhibits (GE) 1 through 5, which were received without objection. Department Counsel's exhibit index is marked as Hearing Exhibit (HE) I. Applicant testified but did not submit any exhibits at the hearing. The record was held open for Applicant to submit additional information. Applicant submitted documents, which were marked Applicant exhibits (AE) A through G and admitted without objection. Department Counsel's post-hearing memorandums were marked HE II and III. DOHA received the hearing transcript (Tr.) on July 23, 2010.

Findings of Fact

Applicant is a 44-year-old employee of a defense contractor. He has worked for his current employer since August 2009. He attended college for a period but is about 30 credit hours short of a degree. He is single. He has one daughter who is 17 years old. He pays child support. He is an Air Force veteran who served on active duty for seven years and in the Air Force Reserves for 10 years. He received an honorable discharge. He held a security clearance from 1984 until 2008.¹

The SOR alleges 18 delinquent debts and a prior bankruptcy discharge in 1996. The debts were listed on credit reports obtained on August 26, 2009 and April 8, 2010. Applicant admitted owing the debts alleged in SOR ¶¶ 1.b - 1.k, 1.m – 1.n and 1.p – 1.s. and receiving a bankruptcy discharge as alleged in SOR ¶ 1.a. He disputes the debts alleged in SOR ¶¶ 1.l and 1.o.

Applicant attributes his 1996 bankruptcy (SOR ¶ 1.a) to events associated with his first divorce. He was unable to pay the bills he was responsible for based upon the loss of his ex-wife's income. As a result, he declared Chapter 7 bankruptcy and his debts were discharged.²

Applicant attributes his more recent financial delinquencies, of approximately \$250,000, to periods of unemployment and a downturned real estate market. From 1995 to January 2006, Applicant worked as a government contractor employee. He was laid off from that job in January 2006. While he was working, he bought his first home (P1) in the local area in 2004. In September 2006, while he was still unemployed, he bought a second home in the local area (P2). He tried to sell P1 at this time but was unable to do so. Instead, he rented it out and initially received \$4,500 per month rent. He used this rental income to pay both mortgage payments on P1 and P2. He remained unemployed until August 2009 when he was hired by his current employer. He supported himself during this time with the rental income from P1, credit cards, and his savings. In an attempt to find employment, Applicant moved to a different city in December 2007. He bought a condominium in this new location (P3). Applicant has first mortgages on all three properties and second mortgages on P1 and P2. He was able to make the monthly payments on all these obligations once he started working for his current employer until August 2009, when he again fell behind on his payments. In April

¹ Tr. at 26-36; GE 1.

² Tr. at 43; GE 5.

2010, Applicant was put in a non-pay status by his current employer until his security clearance issue was resolved.³

The debt alleged in SOR ¶ 1.b is the delinquent mortgage debt on P2. Applicant has not paid this debt. He has sought a loan modification agreement, but no completed modification was introduced into the record.⁴

SOR ¶ 1.c alleges a delinquent debt of \$4,031 owed to a credit card company. This debt remains unpaid with no repayment agreement in place.⁵

The debt alleged in SOR ¶ 1.d is the delinquent mortgage debt on P1. Applicant has not paid this debt. He has sought a loan modification agreement, but no completed modification was introduced into the record. Additionally, Applicant has this property on the market for a short sale.⁶

SOR ¶ 1.e alleges a delinquent debt of \$741 owed to a credit card company. This debt remains unpaid with no repayment agreement in place.⁷

SOR ¶ 1.f alleges a delinquent debt of \$9,838 owed to a credit card company. This debt remains unpaid with no repayment agreement in place.⁸

The debts alleged in SOR ¶¶ 1.g and 1.k are the delinquent second mortgages on P1 and P2. Applicant provided a copy of a bank statement showing his payments are current through July 2010 on both accounts.⁹

SOR ¶¶ 1.h and 1.i allege delinquent debts of \$1,365 and \$7,309 owed to a credit card company. These debts remain unpaid with no repayment agreement in place.¹⁰

SOR ¶ 1.j alleges a delinquent debt of \$15,066 owed to a credit card company. This debt remains unpaid with no repayment agreement in place.¹¹

³ Tr. at 27-28, 38-41, 44-61; Applicant's response to SOR.

⁴ Tr. at 57-62; GE 2 - 4; AE G.

⁵ Tr. at 72; GE 2-4.

⁶ Tr. at 65-66; GE 2 - 4; AE E, F.

⁷ Tr. at 73; GE 2-4.

⁸ Tr. at 73; GE 2-4.

⁹ Tr. at 64-65; AE D.

¹⁰ Tr. at 73, 95; GE 2-4.

¹¹ Tr. at 73, 95; GE 2-4.

SOR ¶ 1.l alleges a delinquent debt of \$13,000 owed to a collection agency on a credit card. Applicant denies this debt, but admits he has not contacted anyone to dispute it. No documentary evidence was presented supporting its illegitimacy.¹²

SOR ¶ 1.m alleges a delinquent debt of \$8,708 owed to a credit card company. This debt remains unpaid with no repayment agreement in place.¹³

The debt alleged in SOR ¶ 1.n is the delinquent mortgage debt on P3. Applicant has not paid this debt. He has sought a loan modification agreement, but no completed modification was introduced into the record.¹⁴

SOR ¶ 1.o alleges a delinquent debt of \$3,215 owed on a credit card. Applicant denies this debt, but admits he has not contacted anyone to dispute it. No documentary evidence was presented supporting its illegitimacy.¹⁵

SOR ¶ 1.p alleges a delinquent debt of \$1,603 owed to a credit card company. This debt remains unpaid with no repayment agreement in place.¹⁶

SOR ¶ 1.q alleges a delinquent debt of \$3,294 owed to a credit card company. This debt remains unpaid with no repayment agreement in place.¹⁷

SOR ¶ 1.r alleges \$1,037 past due on a debt of \$75,377 owed to a credit card company. This debt remains unpaid with no repayment agreement in place.¹⁸

SOR ¶ 1.s alleges a delinquent debt of \$56,620 owed to a credit card company. This debt remains unpaid with no repayment agreement in place.¹⁹

Applicant is current on all of his property taxes. He has cut up all of his credit cards. He took an on-line credit counseling course. As of the date of the hearing, Applicant had \$200 in his checking account. Applicant believes that once he receives his security clearance and goes back to work he will be able to set up payment plans to deal with all his debts.²⁰

¹² Tr. at 74-75; GE 3-4.

¹³ Tr. at 75; GE 2-4.

¹⁴ Tr. at 53-56, 67-68; GE 2 - 4; AE C.

¹⁵ Tr. at 76; GE 2-4.

¹⁶ Tr. at 77; GE 4.

¹⁷ Tr. at 77; GE 4.

¹⁸ Tr. at 77; GE 4.

¹⁹ Tr. at 77; GE 4.

²⁰ Tr. at 80, 83-84, 87; GE 2.

Applicant was the recipient numerous decorations and certificates of appreciation and training from the Air Force. He also was recognized for his training and skills by a former federal contractor employer.²¹

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

²¹ AE A.

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* Executive Order 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 as follows:

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 including several mortgage payments and was unable or unwilling to satisfy his obligations. The evidence is sufficient to raise the above disqualifying conditions.

Several 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.

Except for the two second mortgages, which are current, Applicant still owes on the remainder of the many debts listed in the SOR with no payment plan in place. His financial issues are recent and ongoing. However, Applicant's 1996 Chapter 7 bankruptcy is remote and those debts were resolved by Applicant. AG ¶ 20(a) is partially applicable to SOR ¶ 1.a.

Applicant's financial difficulties were partly caused by his the downturned real estate market and his periods of unemployment. These qualify as conditions that were outside his control. To be fully applicable, AG ¶ 20(b) also requires that the individual act responsibly under the circumstances. Applicant did not act responsibly when he purchased both P2 and P3 when he was unemployed. He then took the first steps toward acting responsibly when he sought loan modifications for his mortgages. However, loan modifications have yet to be reached and he has done nothing to resolve the remainder of his debts. I am unable to determine that he has acted completely responsibly under the circumstances. AG ¶ 20(b) is partially applicable.

Applicant received financial counseling. He clearly can benefit from counseling and advice on how to manage his money. However, at this point, his finances are not being resolved and are not under control. His limited payments on his two second mortgages are insufficient to support a finding that he has made a good-faith effort to pay or otherwise resolve his remaining debts. AG ¶¶ 20(c) and 20(d) are only applicable to the debts listed at SOR ¶¶ 1.g and 1.k.

Applicant disputes owing the debts listed in SOR ¶¶ 1.l and 1.o. His testimony about the disputed debts was not supported by corroborating evidence. AG ¶ 20(e) is not applicable to those debts.

At this point, Applicant's finances remain a concern despite the presence of some mitigation.

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 relevant 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 that guideline, but some warrant additional comment.

I considered Applicant's military service and numerous awards and training certificates. I also found Applicant to be honest and candid about his finances. I believe he is sincere about getting his finances in order. However, he dug a deep financial hole by becoming encumbered by his multi-mortgage obligations particularly because he was unemployed when he acquired P2 and P3. He is not currently in a position to make his mortgage payments, much less the payments on numerous credit card debts. His past financial track record, that includes a prior bankruptcy action, also does not inspire confidence that he will resolve his debts.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated the 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
Subparagraph 1.a:	For Applicant
Subparagraphs 1.b – 1.f:	Against Applicant
Subparagraph 1.g:	For Applicant
Subparagraphs 1.h - 1.j:	Against Applicant
Subparagraph 1.k:	For Applicant
Subparagraphs 1.l - 1.s:	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 eligibility for a security clearance. Eligibility for access to classified information is denied.

Robert E. Coacher
Administrative Judge