



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



In the matter of:)	
)	
-----)	ISCR Case No. 10-00155
)	
Applicant for Security Clearance)	

Appearances

For Government: Julie R. Mendez, Esq., Department Counsel
For Applicant: *Pro se*

September 30, 2011

Decision

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

On June 8, 2011, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) noting security concerns arising under Guideline F (Financial Considerations) and Guideline E (Personal Conduct). The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (DOD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the DOD on September 1, 2006.

In a July 14, 2011, response, Applicant addressed the 16 allegations raised under Guideline F, but failed to address the two allegations under Guideline E. For the 16 Guideline F allegations, each of which represented a delinquent debt, Applicant wrote either, "I deny, not to have a hearing" or "I deny, decision without a hearing." His responses were taken as denials on those allegations and a general request to have a determination on the record. Applicant submitted no documentation indicating that any of the debts at issue had been paid, disputed, or otherwise addressed.

On August 1, 2011, Department Counsel submitted a File of Relevant Material (FORM), which included eight attached items. In the FORM, Department Counsel moved to strike the allegations raised under Guideline E.¹ The Guideline E allegations were consequently struck, leaving the Guideline F allegations at issue. Applicant received the FORM on August 17, 2011, but did not submit a timely response. The case was assigned to me on September 27, 2011. Based on a review of the case file, I find Applicant failed to meet his burden regarding the security concerns raised under Guideline F. Security clearance denied.

Findings of Fact

Applicant is a 41-year-old security officer who has worked for the same defense contractor since about July 2009. He has earned a high school diploma or its equivalent. Applicant was married in 1996 and divorced in 2007. He has four children.

From October 2006 to present, Applicant has worked full-time as a barber. He has simultaneously worked at his security officer position on a full-time basis since he was hired in the summer of 2009. Until starting his current security officer position in February 2008, Applicant complemented his barbering with other full-time positions, such as corrections officer, jewelry picker, and package handler. No secondary employment is shown as complementing his barbering work between about October 2006, when he was laid off from a long-standing position as an appraiser, and February 2008.² He implies that the loss of his appraiser job in late 2006 led to his present financial difficulties.³

At issue in the SOR are 16 delinquent debts, which are derived from Applicant's credit bureau reports.⁴ Those debts amount to about \$43,870, in addition to a mortgage account (\$40,000 past due on a balance of \$221,000), and a car loan account (\$3,668 past due on a balance of \$16,056).⁵ Consequently, approximately \$87,500 is at issue. Aside from attributing his debt to his 2006 loss of employment, Applicant asserts that he currently has no child support delinquencies; he argues a past attribution of delinquent child support was based on a clerical error.⁶ He provided no documentary evidence, however, showing that the credit bureau reports were incorrect in their listing of three

¹ FORM at 2.

² The record is unclear as to whether Applicant was laid off from this position in October 2006, December 2006, or an unspecified date in 2007. See, e.g., FORM, Item 8 (Response to Interrogatories, dated Jul. 20, 2010) at 4; Item 4 (Security clearance application, dated Jul. 9, 2009) at 15 of 43.

³ *Id.*

⁴ See SOR; FORM, Item 5 (Report, dated Nov. 10, 2010) and Item 6 (Report, dated Jul. 30, 2009).

⁵ The past due accounts noted are at ¶ 1.e and ¶ 1.k, respectively.

⁶ FORM, Item 8, *supra*, note 2, at 4-5.

child support-related debts, amounting to approximately \$10,800, nor did he provide evidence that he is current on his child support obligations.⁷

In one July 2010 interrogatory, Applicant stated that he was making payments on various debts, but provided no evidence of payment at that time.⁸ He was given the opportunity to submit documentation demonstrating why he does not owe the debts at issue in another July 2010 interrogatory, but failed to do so.⁹ He was also given the opportunity to submit such evidence or related financial information in response to the FORM, but failed to do so. An incomplete personal financial statement (PFS) indicates that his monthly expenses exceed his monthly salary, and there is no indication on the PFS that any of the debts at issue are being addressed.¹⁰ There is no evidence that Applicant has received any form of debt or financial counseling.

Policies

When evaluating an applicant's suitability for a security clearance, an administrative judge must consider the AG. The AG lists potentially disqualifying conditions and mitigating conditions. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, they are applied in conjunction with the factors listed in the adjudicative process. An administrative judge's over-arching 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." An 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.

The United States Government (Government) must present evidence to establish controverted facts alleged in the SOR. It is an applicant's responsibility to present "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts

⁷ SOR allegations ¶¶ 1.a, 1.c, and 1.d.

⁸ FORM, Item 8, *supra*, note 2, at 5.

⁹ FORM, Item 7 (Response to Interrogatories, dated Jul. 20, 2010). At page 2, Item 7 specifically requests documentation verifying the status of the debts at issue.

¹⁰ *Id.* at 7. The PFS shows net monthly income of \$1,173.45. Monthly expenses amount to \$1,600, although Applicant accidentally entered \$16,000 for the sum of his monthly expenses. The PFS also notes that he has no assets (*ie.* real estate, bank savings, stocks/bonds, car/boat).

admitted by applicant or proven by Department Counsel. . . .”¹¹ The burden of proof is something less than a preponderance of evidence. The ultimate burden of persuasion is on the applicant.¹²

A person seeking access to classified information enters into a fiduciary relationship with the Government based on 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.

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.”¹³ “The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”¹⁴ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such information.¹⁵ A security clearance denial does not necessarily reflect badly on an applicant’s character. It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense established for issuing a clearance.

Analysis

Guideline F – Financial Considerations

In this case, Guideline F is the appropriate guideline for consideration. Under that guideline, “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 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.”¹⁶ The burden in these proceedings is placed squarely on an applicant. Here, Applicant denied 16 specific delinquent debts noted in his credit reports, but failed to provide any documentary evidence showing that they have been paid, disputed, addressed, or are otherwise unfounded. In light of these facts, Financial Considerations Disqualifying

¹¹ See also ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

¹² ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

¹³ See also EO 12968, § 3.1(b) and EO 10865 § 7.

¹⁴ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

¹⁵ *Id.*

¹⁶ AG ¶ 18.

Conditions AG ¶ 19(a) (inability or unwillingness to satisfy debts) and AG ¶ 19(c) (a history of not meeting financial obligations) apply. With such conditions raised, it is left to Applicant to mitigate security concerns.

There are multiple debts at issue, amounting to about \$87,500 in delinquent and past due debt. Applicant attributes these debts to his loss of a job in late 2006 or 2007, although the record shows that he quickly found full-time employment as a barber. He failed to explain how his barber's income did not help him forestall the acquisition of the significant debt now at issue. He also failed to provide any documentary evidence indicating that he has addressed any of the debts at issue, or, with regard to child support balances, showing that he is presently current on those obligations. In addition, his PFS indicates that his expenses exceed his income. Under these facts, neither Financial Considerations Mitigating Conditions 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*) nor FC MC AG ¶ 20(d), (*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*) applies.

Applicant was divorced in 2007 and was laid off from his appraiser position in about October 2006. He points to the loss of that job as the root of his current financial distress. The facts show that he quickly found work as a barber after he lost his job, thus demonstrating responsible behavior in the face of mounting debts. However, Applicant failed to explain how the loss of that one position, so closely followed by the acquisition of a full-time barbering job and other subsequent jobs held simultaneously with the barber's position, led to the acquisition of approximately \$87,500 in debt. Lacking that nexus, and in light of his PFS, it is unclear that the entirety of the debt at issue is attributable to that one event. Therefore, 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*) only applies in part.

In failing to provide evidence demonstrating any attempts to address his debts or rectify his current financial situation, Applicant's record remains scant. There is no documentary evidence that he has received financial counseling, addressed any of the debts at issue, or is now in timely payment on his child support obligations. Lacking such substantiating evidence, neither AG ¶ 20(c) (*the person has received or is receiving counseling for the problem and there are clear indications that the problem is being resolved or is under control*) nor AG ¶ 20(d) (*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*) applies.

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 an applicant's conduct and all the circumstances. The 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 eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. As noted above, the ultimate burden of persuasion is on the applicant seeking a security clearance.

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. In choosing a decision without a hearing, however, there are scant facts of record. It is noted that Applicant is a mature man who has maintained multiple full-time positions over the past few years. He completed his secondary education. Divorced, he is appreciative of his financial obligations to his children.

The debt at issue was apparently first acquired in late 2006 or 2007, after he was laid off from a steady job. Shortly after losing his job, however, he found full-time work as a barber in about October 2006. Since February 2008, he has complemented that employment with secondary full-time positions. Applicant denies having any delinquent child support-related debts, but failed to provide any documentation showing that the related debts noted in his credit reports have been addressed. Similarly, he failed to show that any of the debts at issue in the SOR have been disputed, paid, settled, addressed, or unsubstantiated. The burden is on an applicant in these proceedings. Consequently, the mere denial of the delinquent debts at issue is insufficient to mitigate or otherwise dispel the security concerns raised by the delinquent debts noted on his credit reports.

Furthermore, Applicant failed to provide evidence that he is currently living within his means or that he has made progress in improving his financial situation. In addition, there is no evidence that he has received debt or financial counseling. Given the facts of record, I conclude that Applicant failed to meet his burden and that security concerns remain unmitigated. 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.p:	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 access to classified information. Clearance denied.

ARTHUR E. MARSHALL, JR.
Administrative Judge