



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



In the matter of:)
)
) ISCR Case No. 10-00845
)
)
Applicant for Security Clearance)

Appearances

For Government: D. Michael Lyles, Esquire, Department Counsel
For Applicant: Eric A. Eisen, Esquire

February 8, 2011

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the Government’s security concerns under Guideline F, Financial Considerations. Applicant’s eligibility for a security clearance is denied.

On September 23, 2010, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing the security concerns under Guideline F. 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 (AG) effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant answered the SOR in writing on October 12, 2010, and requested a hearing before an administrative judge. The case was assigned to me on November 19, 2010. DOHA issued a Notice of Hearing on December 22, 2010. I convened the hearing as scheduled on January 19, 2011. The Government offered Exhibits (GE) 1 through 4.

Applicant did not object and they were admitted. Applicant and a witness testified. Applicant offered Exhibits (AE) A through H, which were admitted without objections. DOHA received the hearing transcript (Tr.) on January 28, 2011.

Findings of Fact

Applicant admitted all SOR allegations. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is 41 years old. He married in 1994 and divorced in 2005. He has two children from his first marriage, ages 12 and 9. He pays \$2,600 a month for child support. He remarried in 2008. He received his bachelor's degree in 1993 and his master's in business in 1998. From 1993 to 1996, he was a critical care nurse. He left nursing to attend graduate school and worked part-time during this time. After earning his master's degree he worked from 1998 to 1999 for an insurance company. He worked for a commercial bank from 1999 until 2006. He was the president of the bank and supervised about 30 people. He was earning about \$110,000 annually. He is presently employed by a federal contractor.¹

In 2006, Applicant decided to leave his banking job and pursue his own business interests. He was involved in five business ventures, two involved real estate. He secured some loans from the bank where he previously worked and used his personal savings to fund the businesses. He explained that he researched the types of businesses, he created business plans, and he determined the probability of their success.²

Prior to 2006, Applicant had a history of meeting his financial obligations. After Applicant left his job at the bank in 2006, he purchased an ongoing business, Business C. He assumed the debt of the business and used some of his personal savings for the purchase. In mid-2007, he purchased another business, Business D that required additional funding. He used a line-of-credit he obtained to help fund this business. He started a third business, Business E, toward the end of 2007. Business D was not making a profit at this point. He secured loans for the businesses. From 2006 to 2007, Applicant indicated that his businesses had a positive net income. Applicant sold some real estate in 2008, and made about a \$15,000 profit. He used this money to fund his businesses. He also had a car wash business prior to leaving the bank. It was successful and his business partner essentially bought him out. Applicant made about \$45,000 profit from the transaction. He used this money to pay a debt not alleged and to capitalize two of his other businesses. In 2008, Applicant obtained another loan from the same bank where he worked to finance one of his businesses. The initial loan was for \$45,000 and it was later refinanced for \$75,000. Applicant and another person are the guarantors on that loan. The loan has been charged-off and was not alleged in the

¹ Tr. 22-26, 37-38, 43, 145-151.

² Tr. 25-33; AE C, D.

SOR. He is also making payments on another loan of approximately \$69,000 on a second mortgage on other property he owned that was sold. He is current on this loan's payments.³

Applicant accumulated approximately \$193,000 in delinquent debts that are alleged in SOR ¶¶ 1.a through 1.f. He attributed the debts to the unfavorable economic climate in 2008 that affected the different businesses he started. Business D was dependent on tourism. Applicant stated that the debts in SOR ¶¶ 1.a, 1.b, and 1.e are with the same bank, and have been consolidated into one account.⁴

During the time when Applicant was purchasing businesses, he did not believe he was overextended. He stated he had success rising through the ranks at the bank and he had experience loaning people money for business enterprises. Applicant stated he has paid other creditors that are not included in the SOR.⁵

The debt in SOR ¶ 1.d (\$16,654) is the amount in arrearage on the mortgage of Applicant's primary residence (\$186,000) that he purchased in 2005. He stopped paying the mortgage and contacted the creditor in an attempt to modify the loan. He was unable to do so because he had insufficient income and he failed to meet the creditor's criteria for modification. Applicant then negotiated a "short sale" on the property.⁶

The debt in SOR ¶ 1.a (\$62,648) is a home equity loan on the primary residence. Applicant obtained the loan in 2006. He used it to start a business and paid the loan until approximately September 2009, when he was no longer able to make the payments. The balance was written-off in 2009 by the creditor. A lien on the property was released in exchange for a \$3,759 payment that was connected with the "short sale" on the property in November 2010. The \$3,759 was not paid by Applicant, but rather it reduced the total amount he owed on the debt to the creditor (\$58,889). The lien affected the title so it had to be resolved before the "short sale." The debt still exists, but the creditor is not pursuing payment of it because it has been charged-off. Applicant acknowledged he still owes the debt in SOR ¶ 1.a.⁷

The debt in SOR ¶ 1.b (\$4,852) is a line-of-credit from the bank where Applicant was formerly employed. It was renewed annually. It was drawn on when needed and was reduced with payments at times. The debt was charged-off. Applicant has not paid

³ Tr. 31-33, 104-133, 159-164. I have not considered this debt for disqualifying purposes, but will consider it when analyzing mitigating conditions, all of Applicant's financial issues, and in my "whole-person" analysis.

⁴ Tr. 99-100, 167-171.

⁵ Tr. 142.

⁶ Tr. 41-43, 51-61; AE B.

⁷ Tr. 51-61, 81-87, 93-96, 167-170; AE B.

the debt. He contacted the creditor and discussed repayment of the debt. He was told by the bank representative that when his income stabilized a repayment plan could be worked out. Applicant has been employed for about a year and a half, but believes at this time he is not in a position to resolve the debt.⁸

The debt in SOR ¶ 1.c (\$44,636) is a credit card debt. Applicant had negotiations with the creditor to resolve the debt, but was unsuccessful. Mediation of the debt in October 2010 was unsuccessful. The creditor sued Applicant. A bench trial was scheduled for December 21, 2010, and the case was dismissed without prejudice. Applicant is hoping to settle the debt. He acknowledged that about \$40,000 of the debt is principal and the remainder is interest and penalties. He used the credit card for both business and personal expenses. He believes he has made reasonable settlement offers. The creditor gave him two options and neither was agreeable to Applicant because he would not have been able to maintain the payments.⁹

The debt in SOR ¶ 1.e (\$42,224) was a revolving line-of-credit obtained from the bank where Applicant had been employed. He used this money for different business transactions. The debt is charged-off and Applicant has not made any payments to resolve it.¹⁰

The debt in SOR ¶ 1.f (\$26,033) was a personal loan obtained in 2007, that was used for Applicant's businesses. The original debt was purchased by a company. Applicant has asked the creditor in writing to propose a resolution. He sent them a letter in September 2009. They have been uncooperative. They will not provide a written settlement offer. Applicant hopes to receive some written correspondence so he can address this debt. He is concerned about their questionable tactics. Based on their tactics and his experience with telephone contact with them, he does not believe further telephone calls would be constructive. The debt remains unpaid and unresolved.¹¹

Applicant stated he intends to repay his delinquent debts. He explained that it is important to him both professionally and personally to resolve these debts. He explained that although he could walk away from the debts, it is important to his professional life to address them. He stated he continued to communicate with the creditor in SOR ¶¶ 1.a, 1.b and 1.e, after the debts were written-off. He provided emails to document his communication.¹²

Applicant estimated he presently earns between \$60,000 and \$65,000, and he has the potential to increase his earnings to \$80,000 to \$100,000. If his earnings

⁸ Tr. 41, 81-87, 96-97.

⁹ Tr. 40, 61-67, 101-104; AE E, H.

¹⁰ Tr. 40-41, 61.

¹¹ Tr. 67-76; AE F.

¹² Tr. 44-50, 171-175; AE H.

increased, it would also increase his ability to repay his delinquent debts.¹³ Applicant has approximately \$800 in liquid assets. He does not have any money in savings, investments, or retirement accounts. He and his wife keep their assets separate. He shares living expenses with her. He resolved other debts that were not part of the SOR. He estimated he owes about \$176,000 in delinquent debts. He hopes to settle the amount for less, if he can negotiate reasonable payment plans with the creditors. He stated he believed he could settle all of his delinquent debts for about \$30,000. He stated he lives within his means.¹⁴

Applicant provided character letters and other documents that I have considered. The letters described him as a person with extraordinary leadership skills, impeccable ethics, and sound judgment. He is considered tough, very intelligent, and a team player. His integrity and honesty are his trademarks. He executed his professional duties with caution and thoughtfulness.¹⁵

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, which are 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 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. 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, an "applicant is

¹³ Tr. 77-79.

¹⁴ Tr. 38, 76-78, 122-123, 138, 175-179.

¹⁵ Tr. 34-36; AE G.

responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel and has the ultimate burden of persuasion to obtain a favorable security 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 of 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 for access to classified or sensitive information).

Analysis

Guideline F, Financial Considerations

The security concern for Financial Considerations is 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 guideline notes several conditions that could raise security concerns. I have considered all of the disqualifying conditions under AG ¶ 19 and conclude the following are potentially applicable:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant has delinquent debts that are unpaid and unresolved. He does not have the financial means to resolve the debts at this time. I find there is sufficient evidence to raise these disqualifying conditions.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. I have considered the following mitigating conditions under 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;
- (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.

Applicant admitted he is responsible for the debts alleged in the SOR and explained their status. He secured a home equity loan, two lines-of-credit, a business loan, and credit card expenditures that were used to finance businesses he was starting and involved in. He also used the credit card for personal expenses. Applicant was an experienced businessman who was involved in numerous business ventures. His business ventures were unsuccessful. He obtained financing and pursued other business ventures before his initial ones were profitable. He became overextended and was unable to make the payments on his obligations. Applicant attributed his business failures to the downturn in the economy. It is well known that the United States experienced an economic downturn in 2007 and 2008. It is unfortunate that this was the period of time Applicant was exercising his entrepreneurial endeavors. However, Applicant continued to pursue new business ventures before his others were profitable. He chose to repeatedly make a decision to obtain money on credit and take a risk and invest in new business ventures. To some extent, the economic downturn affected his businesses. However, the fact remains that Applicant was overextended. I have considered AG ¶ 20(b) and conclude Applicant's financial problems were affected by the downturn in the economy. However, they were equally affected by him overextending his credit before he could confirm his initial business investment was profitable. Instead Applicant, an experienced businessman, continued to invest in new opportunities and seek additional credit. He agreed to the terms of the financing and

agreed to take the risks associated with his business ventures. I find AG ¶ 20(b) only partially applies. I find under the circumstances Applicant did not act responsibly.

The delinquent debts have not been paid or resolved, so they cannot be mitigated through the passage of time. Applicant is now employed earning a salary and is no longer involved in pursuing business ventures. AG ¶ 20(a) partially applies because at this time he is unlikely to be involved in new business ventures. However, Applicant's past behavior does cast doubt on his reliability and good judgment. He continued to obtain credit and overextend himself when his businesses were not profitable.

Applicant is unable to pay his delinquent debts. He is hopeful that his income will increase and he will be in a better position to resolve his debts in the future. He understands that it is important for his professional credibility to pay his creditors. He is hoping he will be able to reach a reasonable settlement agreement or payment plans on his delinquent debts. He has not ignored the fact that he has substantial delinquent debt, but he is not in a position to pay it. At this time, I cannot find that there are clear indications the problem is being resolved or is under control, or that he has made good-faith efforts to repay his creditors. I find AG §§ 20(c) and 20(d) do not apply. There is no evidence to support the applicability of AG ¶ 20(e).

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 the 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 the facts and circumstances surrounding this case. By Applicant's own estimate he owes approximately \$176,000 to creditors. He left a job where he earned approximately \$110,000 to pursue business ventures. He obtained loans and lines-of-credit as investment capital. He was involved in several business ventures at the same time. The

economy affected his businesses to a certain extent, but he also was overextended. Applicant stated he intends to repay his creditors, but at this juncture he does not have the means and has not begun the process. It is too early to conclude that Applicant's financial problems are under control and not a security concern. 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 failed to mitigate the security concerns arising under the guideline for Financial Considerations.

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:	Against Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	For Applicant
Subparagraph 1.e:	Against Applicant
Subparagraph 1.f:	Against Applicant

Conclusion

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

Carol G. Ricciardello
Administrative Judge