



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



In the matter of:)
)
) ISCR Case No. 10-00949
)
Applicant for Security Clearance)

Appearances

For Government: Tovah A. Minster, Esq., Department Counsel
For Applicant: *Pro se*

January 26, 2012

Decision

LOUGHRAN, Edward W., Administrative Judge:

Applicant has not mitigated financial considerations security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On May 20, 2011, 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 (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 in writing on August 1, 2011, and elected to have the case decided on the written record in lieu of a hearing. Department Counsel submitted the Government's written case on September 16, 2011. A complete copy of the file of relevant material (FORM) was provided to Applicant, who was afforded an

opportunity to file objections and submit material to refute, extenuate, or mitigate the security concerns. Applicant received the FORM on November 21, 2011. Applicant submitted documents that were marked Applicant Exhibits (AE) A through E and admitted without objection. The case was assigned to me on January 19, 2012. The Government exhibits included in the FORM are also admitted.

Findings of Fact

Applicant is a 50-year-old employee of a defense contractor. He is applying for a security clearance. He is a high school graduate. He is married with three minor children, an adult child, and two adult stepchildren.¹

Applicant has had financial difficulties for a number of years. He and his wife filed Chapter 7 bankruptcy in September 2002, and their debts were discharged in December 2002. Applicant stated that the bankruptcy was necessary because he and his wife lost their jobs.²

Applicant filed Chapter 13 bankruptcy in April 2004. The bankruptcy was dismissed in June 2006 because of material default in plan payments. Applicant stated that his car was wrongly repossessed in the early 2000s. He was able to obtain the car back from the finance company. Upon an attorney's advice, he filed Chapter 13 bankruptcy in order to place the car payments under the control of the bankruptcy court.³

The SOR alleges 17 delinquent debts, 5 unpaid judgments, and Applicant's bankruptcies. All of the debts and judgments appear on at least one credit report. Applicant admitted owing the \$2,379 judgment that was filed in January 2005, as alleged in SOR ¶ 1.q. He also admitted owing the \$461 debt alleged in SOR ¶ 1.s and the \$100 debt alleged in SOR ¶ 1.w. He admitted partial responsibility for the \$12,214 judgment alleged in SOR ¶ 1.d. He denied owing the remaining debts.⁴

Applicant's Chapter 13 bankruptcy records indicate that, when the bankruptcy was dismissed, he owed more than \$11,000 to the finance company that held his car loan. SOR ¶ 1.d alleges a \$12,214 judgment awarded to the company that financed the car loan. Applicant admitted that the finance company obtained a judgment of about \$12,000 against him, but he stated the judgment is being paid by wage garnishment. He submitted a pay statement showing that his wages are garnished \$336 per pay period. The recipient of the garnishment is not identified in the pay statement.⁵

¹ Items 5-7.

² Items 4, 6-10; AE A, E.

³ Items 4, 6-9, 11; AE A, E.

⁴ Items 4, 6-9; AE A, E.

⁵ Items 4, 11; AE A, B, E.

Applicant shares the same name as his father, and he stated that debts are inaccurately listed on his credit report. In December 2010, he retained a law firm “to assist him in disputing negative and false reports and/or entries that are currently contained in [his] credit bureau reports.” He also subscribes to a credit monitoring service. The law firm disputed all the debts in the SOR that Applicant denied owing. Several debts were deleted from Applicant’s credit report, including the debts alleged in SOR ¶¶ 1.f, 1.v, and 1.x. The names of the creditors and collection companies for the other debts that have been deleted from Applicant’s credit report do not directly correlate to any of the remaining debts alleged in the SOR. SOR ¶¶ 1.h, 1.i, 1.j, 1.m, 1.t, and 1.u allege medical debts without naming the creditor.⁶ Without knowing the name of the creditor, I am unable to determine whether these are valid debts.

SOR ¶¶ 1.c and 1.e allege judgments of \$3,350 and \$3,419 awarded to the same plaintiff. Applicant stated that the two judgments are duplicate and inaccurate entries on his credit report. The judgments appear to represent different suits, because the credit report lists different case numbers. I will give Applicant the benefit of the doubt and consider it to be one lawsuit. SOR ¶ 1.k alleges a delinquent \$5,090 debt to a collection company on behalf of a creditor with a name that is similar to the name on the judgments. The 2011 credit report lists this as a \$3,409 debt, with a \$5,090 balance.⁷ This appears to be the underlying debt that resulted in the judgment against Applicant.

The debts alleged in SOR ¶¶ 1.g (medical debt - \$885), 1.l (cable/Internet provider - \$1,886), 1.n (bank - \$1,293), 1.o (collection company - \$200), and 1.p (car loan - \$5,692) are listed on the April 2011 credit report. The judgment and debt alleged in SOR ¶¶ 1.r (judgment - \$1,301) and 1.y (insurance company- \$490) are listed on the September 2009 credit report, but not the April 2011 credit report.⁸

Applicant stated that his financial issues resulted from the loss of his job and a loss of income. He worked in real estate for a period, but he left the business when the real estate market slowed and then collapsed. He stated that he was “trying to work out payments” for his debts. Except for the garnishment addressed above, he submitted no evidence of payments toward any of his delinquent debts.⁹

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 to be used in evaluating an applicant’s eligibility for access to classified information.

⁶ Items 4, 6-9; AE C-E.

⁷ Items 4, 6-9; AE E.

⁸ Items 8, 9.

⁹ Items 4, 6, 7; AE A, E.

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 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 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* 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 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 and was unable or unwilling to pay his financial obligations. The evidence is sufficient to raise the above disqualifying conditions.

Conditions that could mitigate financial considerations security concerns are provided under AG ¶ 20. The following 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.

Applicant successfully disputed a number of debts, including those alleged in SOR ¶¶ 1.f, 1.v, and 1.x. SOR ¶¶ 1.h, 1.i, 1.j, 1.m, 1.t, and 1.u allege medical debts without naming the creditor. Without additional information, I am unable to determine that these are valid debts. The judgment and debt alleged in SOR ¶¶ 1.r and 1.y are listed on the September 2009 credit report, but not the April 2011 credit report. The two judgments and the debt alleged in SOR ¶¶ 1.c, 1.e, and 1.k represent the same debts. I find that AG ¶ 20(e) is applicable to the debts and judgments alleged in SOR ¶¶ 1.e, 1.f, 1.h, 1.i, 1.j, 1.k, 1.m, 1.r, 1.t, 1.u, 1.v, 1.x, and 1.y.

Applicant and his wife filed Chapter 7 bankruptcy in 2002 after they both lost their jobs. He may have had some additional periods of unemployment, and he lost income from his real estate activities when the real estate market collapsed. These events were beyond Applicant's control. To be fully applicable, AG ¶ 20(b) also requires that the individual act responsibly under the circumstances.

When the debts I gave Applicant credit for under AG ¶ 20(e) are eliminated, there remain three judgments and seven delinquent debts that are Applicant's responsibility. The total amount owed on those accounts was in excess of \$28,000. Applicant established that his wages are being garnished \$336 per pay period. He did not submit evidence of how long the garnishment has been in effect or the balance due on the judgment. He did not submit proof of payments of any other debt.

There is insufficient evidence for a determination that Applicant acted responsibly and made a good-faith effort to repay or otherwise resolve his delinquent debts. His financial issues are recent and ongoing. I am unable to determine that they are unlikely to recur. They continue to cast doubt on Applicant's current reliability, trustworthiness, and good judgment. AG ¶¶ 20(a) and 20(c) are not applicable. AG ¶ 20(b) is partially applicable. AG ¶ 20(d) is partially applicable to the judgment that is being paid by garnishment. It is not applicable to any of the other debts. I find that security concerns remain 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 the facts and circumstances surrounding this case. I have incorporated my comments under Guideline F in my whole-person analysis. Applicant has a history of financial problems, including a Chapter 7 bankruptcy, a Chapter 13 bankruptcy that was dismissed because of material default in plan payments, and a number of delinquent

debts and unpaid judgments. The limited information in the record has not convinced me that Applicant's finances are sufficiently in order to warrant a security clearance.

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. I conclude Applicant has not mitigated 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
Subparagraphs 1.a-1.c:	Against Applicant
Subparagraphs 1.d-1.f:	For Applicant
Subparagraph 1.g:	Against Applicant
Subparagraphs 1.h-1.k:	For Applicant
Subparagraph 1.l:	Against Applicant
Subparagraph 1.m:	For Applicant
Subparagraphs 1.n-1.q:	Against Applicant
Subparagraph 1.r:	For Applicant
Subparagraph 1.s:	Against Applicant
Subparagraphs 1.t-1.v:	For Applicant
Subparagraph 1.w:	Against Applicant
Subparagraphs 1.x-1.y:	For 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.

Edward W. Loughran
Administrative Judge