



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



In the matter of:)
)
) ISCR Case No. 10-01494
)
)
Applicant for Security Clearance)

Appearances

For Government: Jeff Nagel, Esq., Department Counsel
For Applicant: Virginia C. Cobb, Personal Representative

September 22, 2011

Decision

GOLDSTEIN, Jennifer I., Administrative Judge:

Applicant has not mitigated financial considerations security concerns caused by his long history of inaction on his delinquent accounts, despite a significant monthly net remainder of income over expenses. Eligibility for access to classified information is denied.

Statement of the Case

On March 1, 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) effective after September 1, 2006.

Applicant answered the SOR on March 24, 2011, and requested a hearing before an administrative judge. The case was assigned to me on April 29, 2011. DOHA issued

a notice of hearing on May 3, 2011, and the hearing was convened as scheduled on May 24, 2011. The Government offered Exhibits (GE) 1 through 6, which were admitted without objection. The Applicant offered Exhibits (AE) A through L, which were admitted without objection, and testified on his own behalf. The record was held open for Applicant to submit additional information. On July 6, 2011, Applicant submitted a packet of 58 pages, marked AE M, which was admitted without objection. DOHA received the transcript of the hearing (Tr.) on June 3, 2011.

Findings of Fact

Applicant is a 31-year-old employee of a defense contractor. He is unmarried and has no children. He served in the Marine Corps from October 1998 to October 2003. From April 2004 through October 2008 he served in the Air Force Reserve. While in the Marines, he was the recipient of a Good Conduct Medal, a Navy and Marine Corps Achievement Medal, and a Certificate of Commendation. (GE 1; GE 4; AE M; Tr. 23-31.)

After Applicant left the Marine Corps, he decided to be a full time student. He took out student loans to support himself. However, he was unable to complete his studies because it was not financially feasible, even with the assistance of the "GI Bill." Applicant relocated to another city and obtained a job with a government contractor. He has held a security clearance since approximately October 2006, with no violations. He serves as a chief steward for his union. (GE 1; Tr. 23-31, 86.)

In 2008, Applicant failed to file his Federal Income Tax Return (allegation 1.a). He was unable to articulate a reason for his failure to file his 2008 Federal Taxes. He further admitted that he did not file state or Federal tax returns for tax years 2008, 2009, and 2010 until the day before the hearing. He claimed he is owed both state and Federal refunds for each year but only provided a copy of his 2008 Federal tax return. (AE A; AE B; Tr. 32-33, 72-77.)

The SOR alleges ten delinquent debts totaling \$23,508 as listed on credit reports obtained in 2009-2011. (GE 2; GE 3; GE 6.) On June 20, 2011, Applicant contracted a debt management company to help him resolve his financial delinquencies. He has an agreement with the debt management firm to pay \$385 on the 10th and 25th of each month, which will eventually pay off five of his delinquent accounts. He made his first payment under this plan on or about June 27, 2011. (AE M.) His debts are as follows:

Allegation 1.b alleges that Applicant is indebted on a judgment filed against him in 2005 for \$1,053. This debt was for a personal loan that he acquired in 2004 or 2005. He failed to pay this debt because he had no income while he was in school. Applicant claims the debt was satisfied through an involuntary garnishment totaling \$1,454.58. However, a bill from the collection agent still shows a delinquent balance of \$330.03. Applicant disputes the remainder of this debt. He says he filed a claim with the FTC against this creditor. However, he failed to provide documentation substantiating a basis to dispute this debt. (GE 4; AE C; AE D; Tr. 33-35.)

Allegation 1.c alleges that Applicant is indebted to a collection agent for a credit union in the amount of \$187. Applicant settled this debt in full on May 17, 2011, as evidenced by a letter from the creditor. (AE E; Tr. 37.)

Allegation 1.d alleges that Applicant is indebted to a collection agent for a cable television service in the amount of \$289. Applicant testified that he is saving up to pay this debt in full. He testified that he attempted to negotiate a payment plan with this creditor but was unsuccessful. This debt is listed on his debt management plan. (AE M; Tr. 37.)

Allegation 1.e alleges that Applicant is indebted to a collection agent for a music store in the amount of \$1,712. This debt remains unpaid. Applicant testified that he had attempted to contact this creditor but was unable to reach it. It is unclear whether this debt is included in Applicant's debt management plan. There is a debt totaling \$1,747 listed in the paperwork from the debt management company, but the creditor's names do not match the debt alleged in the SOR and found in the credit reports. (GE 2; GE 3; GE 6; AE M; Tr. 38.)

Allegation 1.f alleges that Applicant is indebted to a collection agent for a bank in the amount of \$428. Applicant does not recall how he incurred this debt. He testified that he had contacted this creditor and arranged to pay this debt in the weeks after the hearing. He presented a canceled check for \$188.65 dated May 31, 2011, as evidence he is fulfilling this obligation. This debt is also included in Applicant's debt management plan. (AE M; Tr. 50.)

Allegation 1.g alleges that Applicant is indebted on a student loan account in the amount of \$14,384. Applicant testified that the original creditor demanded a payment of 60% of the outstanding balance before it would offer a payment arrangement. The account has now been placed with a collections agent and Applicant is working with the collections agent to create a \$600 per month payment plan. Applicant failed to present documentation that he made any payments under this arrangement. He did, however, list this creditor in his debt management plan. (AE M; Tr. 50-52.)

Allegation 1.h alleges that Applicant is indebted on an account in the amount of \$1,154. Applicant disputed this debt at hearing. He indicated that he called this creditor and the creditor had no record of the debt. He failed to provide documentation that he disputed this debt. (Tr. 52-54.)

Allegation 1.i alleges that Applicant is indebted to a collection agent for a gym in the amount of \$1,185. Applicant testified that he believes this debt is a duplicate of the debt alleged in 1.j. He tried to contact this creditor to dispute this debt, but he was unsuccessful. (Tr. 54-55.)

Allegation 1.j alleges that Applicant is indebted to a different collection agent for the same gym in the amount of \$966. Applicant testified he paid this debt. He presented a letter from this creditor indicating that on March 24, 2011, this account had a zero balance. This debt has been satisfied. (AE H; Tr. 55.)

Allegation 1.k alleges that Applicant is indebted to a collection agent for a medical account in the amount of \$2,150. Applicant contacted this creditor to inquire about this debt. He testified that the creditor had no record of the debt. He contacted the doctor involved in the treatment and was again told there was no record of a debt. He indicated he intended to dispute the debt on his credit report. He failed to present evidence establishing he followed through on his promise to dispute this debt. (Tr. 55-56.)

Applicant had one additional new debt that appeared on his most recent credit report to a cable company in the amount of \$385. Applicant has listed this debt for repayment with the debt management company. (GE 6; Tr. 71.)

Applicant's Personal Financial Statement indicates he has monthly expenses of \$3,596 each month and has a monthly net income of \$6,200. Therefore, he has \$2,604 left over. He testified he spends some of his monthly surplus to help his father. Applicant also received a \$25,000 judgment in his favor in 2006. He spent the \$11,000 he received (after attorney's fees were satisfied) on paying off his vehicle. He has a small 401K plan with approximately \$1,200 invested in it. He has no other assets. (GE 4; Tr. 70-89.)

Applicant presented 17 character reference letters from colleagues, superiors, former fellow Marines (including his commanding officer), and family members. Each letter indicates Applicant has a professional demeanor and expresses a positive opinion of Applicant's trustworthiness. His performance evaluations all reflect Applicant is "outstanding," "reliable," and "excellent." He also introduced documentation that he is seeking counseling, although the counseling does not appear to be related to Applicant's financial matters. (AE M.)

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 and mitigating conditions, 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, 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 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.

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, 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. Three are potentially applicable in this case:

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

(g) failure to file annual Federal, state or local income tax returns as required or the fraudulent filing of the same.

Applicant accumulated delinquent debts and is unable or unwilling to pay his obligations. His delinquencies have been on-going for several years, without resolution, despite a large judgment in his favor and a monthly surplus of over \$2,000. His history of unwillingness to pay his delinquent debts and file his Federal and state income tax returns in a timely manner raise significant security concerns. The evidence is sufficient to raise the disqualifying conditions listed above.

Five 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.

Applicant's many SOR-listed debts became delinquent over the past five to six years. He still owes many of the listed debts. Allegation 1.b was mostly repaid through involuntary garnishment, but still has an outstanding balance of \$330 that remains unresolved. Applicant failed to present sufficient evidence concerning his dispute over this remaining debt. Allegation 1.c was repaid after Applicant received the SOR, directly prior to the hearing. Allegations 1.d, 1.f, and 1.g, are listed in the debt management plan that Applicant entered after the hearing, and toward which he has only made one payment,. Applicant failed to adequately address allegations 1.e and 1.h at hearing or in his post hearing evidence. Allegation 1.i is a duplicate of 1.j, which was satisfied after receipt of the SOR. Allegation 1.k was allegedly disputed, although Applicant failed to present evidence that he disputed this account with the creditor or the credit bureaus.

Applicant failed to show that his failure to file his Federal 2008 tax return and his significantly delinquent accounts were due to conditions beyond his control or occurred under such circumstances that further debt is unlikely to recur. He could not explain why he did not file his 2008 tax returns until 2011. Instead, it appears that Applicant actively ignored these financial obligations and tax filing obligations, since becoming a government contractor in 2006, until his clearance was in jeopardy. While his recent actions to file his taxes and efforts to repay his debts are noteworthy, given his history of delinquencies it is unclear whether Applicant will follow through with his promises to repay his remaining outstanding debts through the debt-management company and/or formally dispute the debts he does not believe are his. His actions with respect to his debts fail to establish a pattern of responsibility. There is insufficient evidence, to date, that he has initiated a good-faith effort to repay his overdue creditors or otherwise resolve his unpaid debts, in order to support application of AG ¶¶ 20(a), 20(b), 20(c), 20(d), or 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 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. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

Applicant is well respected by his colleagues, superiors, former fellow Marines (including his commanding officer), and family members. He is gainfully employed and has successfully held a security clearance in the past. He honorably served in the Marines and Air Force. Despite his accomplishments, he has failed to demonstrate good judgment when it comes to satisfying his financial delinquencies. He has been unable to satisfy his past due accounts, despite a \$2604 monthly surplus. His choices, with respect to his debts, do not demonstrate the judgment, reliability, or trustworthiness

needed to hold a security clearance. There are significant unresolved concerns about Applicant's finances and judgment.

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, 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
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	Against Applicant
Subparagraph 1.f:	Against Applicant
Subparagraph 1.g:	Against Applicant
Subparagraph 1.h:	Against Applicant
Subparagraph 1.i:	For Applicant
Subparagraph 1.j:	For Applicant
Subparagraph 1.k:	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.

Jennifer I. Goldstein
Administrative Judge