



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



In the matter of:)	
)	
)	ISCR Case No. 10-02344
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Mark Laverdiere, Esquire, Department Counsel
For Applicant: *Pro se*

March 28, 2011

Decision

HOGAN, Erin C., Administrative Judge:

On October 13, 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. 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 after September 1, 2006.

On November 16, 2010, Applicant answered the SOR and requested a hearing before an administrative judge. Department Counsel was ready to proceed on January 4, 2011. The case was assigned to me on January 10, 2011. On January 20, 2011, a Notice of Hearing was issued, scheduling the hearing for February 9, 2011. The hearing was held on that date. During the hearing, the Government offered six exhibits which were admitted as Government Exhibits (Gov) 1 – 6. Applicant testified and called two witnesses. He offered one exhibit with 19 attachments which was admitted as Applicant Exhibit (AE) A. The record was held open until February 23, 2011, to allow Applicant to submit additional documents. Applicant timely submitted three exhibits which were

admitted as AE B, C and D. Department Counsel's response to Applicant's post-hearing exhibits is marked as HE I. The transcript (Tr.) was received on February 15, 2011. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

Findings of Fact

In his answer to the SOR, Applicant admits SOR ¶¶ 1.a, 1.b, 1.c, 1.f, 1.h, 1.i, 1.l, 1.m, 1.n. He denies SOR ¶¶ 1.g, 1.j, 1.k, and 1.o.

Applicant is a 45-year-old male employed by a Department of Defense contractor seeking a security clearance. He has worked for his current employer since November 2009. He served in the U.S. Navy Reserves from March 17, 1999, to March 17, 2007. He held a security clearance during that time. He resigned his commission. In April 2010, he rejoined the Navy Reserves and began doing reserve duty in the fall 2010. His current rank is lieutenant. He has been married and divorced twice. His first marriage was from 1985 to 1998. Three sons, ages 15, 17, and 20, were born of this marriage. His second marriage was from 2000 to 2006. One daughter, age 8, was born of this marriage. (Tr. 17-18, 22; Gov 1)

Applicant's security clearance background investigation revealed that he has a history of financial problems. In June 1997 he filed for Chapter 7 bankruptcy. His debts were discharged in June 1997. Credit Reports dated November 25, 2009 and July 21, 2010, revealed the following delinquent accounts: a \$7,327 state tax lien entered against Applicant in July 2009 (SOR ¶ 1.b: Gov 5 at 1; Gov 6 at 2); a \$2,546 state tax lien entered against Applicant in 2001 (SOR ¶ 1.c: Gov 5 at 1; Gov 6 at 3); a \$22,872 federal tax lien entered against Applicant in 2001 (SOR ¶ 1.d: Gov 5 at 1; Gov 6 at 6); a \$17,882 state tax lien entered against Applicant in 2001 (SOR ¶ 1.e: Gov 5 at 1; Gov 6 at 4); two cable television accounts, \$68 and \$120, placed for collection (SOR ¶¶ 1.f, 1.m: Gov 5 at 1; Gov 6 at 8); five medical accounts placed for collection, the amounts \$174, \$50, \$108, \$220, and \$102 (SOR ¶¶ 1.g, 1.h, 1.j, 1.k, and 1.o; Gov 5 at 1; Gov 6 at 9); a \$227 utility account placed for collection (SOR ¶ 1.i: Gov 5 at 1); a \$375 charged off credit card account (SOR ¶ 1.l: Gov 5 at 2); and an \$88 record company account placed for collection (SOR ¶ 1.n: Gov 6 at 9).

Applicant and his first wife filed for bankruptcy in June 1997 because their income was not sufficient to pay their debts. Several of the debts were medical bills. His wife suffered a mild stroke at age 31, and his oldest son had an emergency appendectomy. They listed total assets of \$91,800 and \$13,918 in total liabilities. (Tr. 17-18, 23; Gov 2 at 3; Gov 4) He and his first wife separated in 1997 and divorced in 1998. Applicant stated that during his first marriage, his wife paid all of the bills including the tax returns. He discovered in the late 1990s that the taxes did not get paid. He is not sure of whether the federal and state tax returns were filed. In an interview with the investigator conducting his background investigation on January 22, 2010, Applicant indicated that he owed \$18,000 in state taxes for tax years 1995, 1996, 1997, and 1998.

He owed \$22,872 in federal taxes. He is not sure which tax years are past due for the federal tax debt. (Tr. 24, 43-44; Gov 2 at 5)

Applicant was paying approximately \$100 a month towards his state tax debt. He stopped payments in November 2009 when he changed jobs. He notified the state revenue services department to resume payments. He resumed payments in October 2010. The collections and compliance section of the state revenue services department provided a letter on February 3, 2011 indicating Applicant is on a voluntary payment plan where he sends two payments of \$50 each month. (Tr. 26-27; AE A at 21; AE B at 3-5)

Applicant claims he does not have the money to resolve the federal tax debt. He attempted to submit an offer in compromise a few years ago, but he began to experience financial problems again and was unable to follow through with the offer in compromise. He is attempting to contact the Internal Revenue Service (IRS) to arrange a payment plan towards his federal tax debt. (Tr. 25-26; A 22-23)

Applicant states that his financial problems were caused by insufficient income, and several periods of underemployment or unemployment. From July 1996 to April 2000, he worked as a congressional aide with an annual income of \$38,000. From August 2000 to December 2001, he served as the director of communications for his state's Governor. He quit that job to move so he could live near his children. He remarried in 2000. After moving, he had difficulty finding suitable employment. He worked a number of odd jobs and served several active duty Navy tours. (Tr 17-19; AE A at 3-4)

In 2004, he found a full-time job but was laid off in August 2005. He separated from his second wife in 2005. From August 2005 to 2007, he worked several temporary jobs but it was not enough to meet his financial obligations. He testified that his priority was to provide for his four children. He resigned his Navy Reserve commission in 2007. (Tr. 19-20)

Applicant was past-due on his child support obligations for his eight-year-old daughter. The balance was \$22,705 at one point. Applicant is currently paying child support. He pays \$534 monthly towards his sons' child support. He pays \$403 monthly towards his daughter's child support. Part of the amount goes towards his past due child support balance. The child support payments are deducted from his paycheck. (Tr. 28; Gov 2 at 5; AE D)

When Applicant was hired in his current position, he claims that he was only making enough income to pay his current bills. He rejoined the Navy Reserves and began doing duty in the fall 2010. He intends to use his drill pay towards his delinquent accounts. (Tr. 20, 36-38)

Around June 2010, Applicant contacted the creditors alleged in SOR ¶¶ 1.f, 1.g, 1.h, 1.i, 1.j, 1.m, 1.n, and 1.o. (AE C at 2-8) He sent additional letters on February 8,

2011 to the creditors alleged in SOR ¶¶ 1.f, 1.g, 1.h, 1.i, 1.j, 1.k, 1.m, and 1.o. (AE A at 24-27) Applicant disputes some of the medical bills for the debts alleged in SOR ¶¶ 1.g, 1.h, 1.j, 1.k, and 1.o. He claims some of the charges should have been covered by his health insurance, other accounts he does not recognize. The dispute is not resolved. (AE A at 27-28) In fact, Applicant contacted the collection agency for the medical bills requesting a summary of medical accounts. The collection company provided Applicant a list of 11 medical collection accounts, an approximate total of \$7,951.23. (AE A at 28)

On November 15, 2010, Applicant wrote a check to the creditor alleged in SOR ¶ 1.i in the amount of \$87.76. He claims the debt is now paid in full. It is not clear whether this account is resolved because the balance on the debt was \$227 and Applicant did not provide a statement from the creditor indicating the debt was resolved in full. (AE A at 15)

On November 15, 2010, Applicant wrote a check to the creditor alleged in SOR ¶1.i for \$187.78. It is not clear whether the account is resolved because the balance on the debt was \$375 and Applicant did not provide a statement from the creditor indicating the debt was resolved in full. (AE A at 17-19)

On January 6, 2011, Applicant submitted an application with a consumer credit counseling service to assist him with resolving his debts. He is in the process of completing the paperwork. No formal repayment agreement was completed at the close of the record. (Tr. 20; AE A at 9-14; AE C at 9) After the hearing, Applicant submitted a budget. He has \$37 left over each month after expenses. (AE D)

Appellant's awards and decorations include four Navy Achievement Medals. He received a letter of commendation from the Commander, Navy Region Northeast for his duties a public affairs representative in July 2000. He has had a distinguished career in public service. (AE A at 1-7)

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 must be considered when determining 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.

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 applicant or proven by Department Counsel. . . .” The applicant has the ultimate burden of persuasion as to obtaining 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 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 relating to the guideline 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 disqualifying conditions that could raise security concerns. I find AG ¶ 19(a) (an inability or unwillingness to satisfy debts); and AG ¶ 19(c)

(a history of not meeting financial obligations) apply to Applicant's case. Applicant has encountered difficulties meeting his financial obligations since the 1990s. He filed for bankruptcy in 1997. He has unresolved delinquent state and federal tax debts that have been past-due since the late 1990s. He owes approximately \$18,000 in delinquent state income taxes. He owes approximately \$22,872 in delinquent federal income taxes. He also has incurred additional consumer and medical debts since 2000.

An individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in their obligations to protect classified information. Behaving irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life. A person's relationship with his creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to pay debts under agreed terms. Absent evidence of strong extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a situation of risk inconsistent with the holding of a security clearance. An applicant is not required to be debt free, but is required to manage his finances in such a way as to meet his financial obligations.

The Government's substantial evidence and Applicant's own admissions raise security concerns under Guideline F. The burden shifted to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the security concerns. (Directive ¶E3.1.15) An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. (See ISCR Case No. 02-31154 at 5 (App. Bd. September 22, 2005))

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. The following mitigating conditions potentially apply:

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) is not applicable. Applicant has had recurring financial problems for more than 15 years. While Applicant is making payments on his state tax debt, he has not resolved the majority of his accounts including the federal tax debt. Although employed in a well-paying position since November 2009, he waited until the last minute to begin settling his accounts. It is too soon to conclude that all of the debts will be resolved. Applicant's past financial history, to include his tax debts and a previous bankruptcy in 1997, raise questions about his reliability, trustworthiness, and good judgment.

AG ¶ 20(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) partially applies. Applicant's past financial problems were partially caused by his two divorces, periods of unemployment, and medical bills incurred for his family's medical treatment. However, I cannot conclude

Applicant acted responsibly under the circumstances. Although, Applicant blames his first wife for not filing or paying their state and federal tax returns, he had an obligation to ensure that his annual tax returns were filed and paid. Upon learning of the tax debts, he neglected to enter into repayment agreements even while employed in well-paying jobs. He is paying towards his state debt, but has not entered into an agreement with the IRS. He claims he suffered from periods of underemployment, but resigned his commission from the Navy Reserves in March 2007 even though he could have used this extra income. He claims that supporting his childrens' needs were his priority, but his child support payments were past due over \$22,000. Aside from the tax debts and the past-due child support debt, the majority of Applicant's remaining delinquent accounts are less than \$300. This reflects financial irresponsibility as opposed to an inability to pay his accounts.

AG ¶ 20(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) does not apply. Applicant just recently contacted a consumer credit counseling agency. At the close of the record, he had not entered into a repayment agreement with the consumer credit counseling agency. He also had not entered into a repayment agreement with the IRS. It is too soon to conclude that his delinquent accounts will be resolved in the near future.

AG ¶ 20(d) (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts) partially applies. Applicant made payments towards two of his debts. However, I cannot conclude that the debts are resolved because his payments were less than the balance owed on the debt and he did not provide a statement from the creditor verifying the debt was resolved. He is making regular payments towards his state tax debts and is paying his monthly child support obligations. However, he has not been proactive towards resolving his other delinquent accounts, including the federal tax debt. While he has been employed in his current position since November 2009, he made no attempt to resolve his delinquent accounts until June 2010. His efforts at that time consisted of sending a letter to his creditors. He did not actively follow up with the creditors after sending he letters. It appears that Applicant was going through the motions as opposed to making a good-faith effort to resolve his delinquent accounts.

AG ¶ 20(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) potentially applies to the medical collection accounts that Applicant is disputing. However, it is premature to conclude Applicant successfully disputed these accounts. The collection agency provided Applicant an itemized listing of the medical accounts. The list includes six additional medical collection accounts. One of the accounts has a balance of \$6,874.83. The outcome of the dispute is uncertain. Applicant did not provide sufficient evidence to successfully dispute the medical accounts.

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. I considered Applicant's record of favorable duty performance with the Navy Reserves. I considered Applicant's periods of unemployment and underemployment. Some were beyond his control, some resulted from personal choices. While Applicant made payments towards two of his delinquent accounts and is making payments towards his state income tax debt, the majority of the debts remain unresolved. Applicant did not demonstrate a good-faith effort to resolve his delinquent accounts. He did not mitigate the concerns raised under 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
Subparagraphs 1.a -1.o:	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.

ERIN C. HOGAN
Administrative Judge