



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



In the matter of:)	
)	
)	ISCR Case No. 10-03057
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Alison O’Connell, Esquire, Department Counsel
For Applicant: *Pro se*

June 16, 2011

Decision

MATCHINSKI, Elizabeth M., Administrative Judge:

Applicant overextended himself on consumer credit cards to pay for necessities, but also for discretionary items such as a family cruise, swimming pool supplies and repairs, and sporting events. As of September 2010, he owed about \$87,896 in delinquent debt. He retained an attorney in January 2011 to help him resolve his financial issues, but it is too soon to conclude that his financial problems are behind him. Clearance denied.

Statement of the Case

On September 10, 2010, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a statement of reasons (SOR) detailing the security concerns under Guideline F, Financial Considerations, which provided the basis for its preliminary decision to deny him a security clearance and to refer the matter to an administrative judge. DOHA took action 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 on September 1, 2006.

Applicant submitted an undated response to the SOR and requested a hearing. On January 6, 2011, the case was assigned to me to conduct a hearing and to determine whether it is clearly consistent with the national interest to grant or continue a security clearance for him. I scheduled a hearing for January 26, 2011.

I convened the hearing as scheduled. Eight Government exhibits (Ex. 1-8) and four Applicant exhibits (Ex. A-D) were admitted without objection. Applicant also testified, as reflected in a transcript (Tr.) received on February 4, 2011.

Findings of Fact

The SOR alleged under Guideline F, Financial Considerations, that Applicant owed delinquent debt totaling \$87,896 to nine consumer credit lenders or their assignees as of September 2010 (SOR 1.a-1.i). Applicant admitted the alleged debts. His admissions are incorporated as findings of fact. After considering the pleadings, transcript, and exhibits, I make the following additional findings of fact.

Applicant is a 53-year-old senior designer who started with his current employer, a defense contractor, in January 1980. After 13 years on the job, he was laid off in October 1993. Applicant worked as a senior mechanical designer for another company from July 1994 until October 2000, when he returned to work for his current employer. On June 7, 2004, Applicant applied for his first security clearance. (Ex. 1, 2.) All his financial accounts were in good standing (Ex. 8), and a secret-level security clearance was granted him in May 2005. (Ex. 1; Tr. 33.) He is required to maintain a secret clearance for his duties. (Ex. C.)

Applicant and his spouse have been married for 27 years. They have two sons, who are now 16 and 21. (Ex. 1, 2; Tr. 31.) He owns his home, which was purchased around June 1985. (Ex. 1.) He has refinanced the mortgage on the home several times since then. In July 2001, he paid off his \$128,000 mortgage loan by taking on a new loan of \$168,750. In September 2002, he refinanced with a \$225,000 loan. He has had his present mortgage since 2003, when he took out a \$230,000 loan. In July 2006, he took on a second mortgage of \$100,000 (Ex. 7.), which he used to pay household expenses such as school tuition. (Tr. 71.) As of November 2010, he owed about \$203,000 on his primary mortgage and \$88,000 on his second mortgage. (Ex. 4.) His monthly payments totaled \$2,403 (Ex. 5), and he was current in his payments. (Ex. 4.)

Over the past 20 years (Ex. 8.), Applicant relied heavily on consumer credit to pay for day-to-day necessities, such as groceries for the family, gasoline for his vehicle, car repairs (e.g., \$1,000 for a transmission), and clothing. He used credit to pay for braces for his sons at \$3,500 apiece, and he spent \$1,200 on the purchase and then repair of a computer. Applicant also used credit cards to pay for plumbing and other work required in conjunction with an \$85,000 to \$90,000 addition to the family home in 2002¹ (Tr. 35.), and

¹ Applicant financed the home construction through a home equity loan and he also borrowed funds from his in-laws. (Tr. 35.)

to pay for other home improvements (e.g., \$1,000 for a fence, \$1,000 for a new roof on the garage). He had a swimming pool installed on his property in 1998 at a cost of around \$5,000 with supplies. (Ex. A; Tr. 64.) Applicant also relied on consumer credit (convenience checks) to cover part of the \$100,000 to \$150,000 in estimated private school tuition and hockey programs and equipment for both sons.² (Tr. 35-36, 43-44.) In October 2007, the family took a cruise costing around \$4,500 that Applicant paid for by credit. One son took a school trip to Italy at a cost of \$2,300. Applicant bought a dog on credit, and with veterinary bills, incurred another \$1,500 in debt. He bought two new beds for his sons at \$1,500. Entertainment expenses (eating out, video games, sporting equipment and tickets to events) were often charged to credit accounts. Applicant planned on paying off his high consumer credit balances with the equity in his home and with his 401(k) assets. (Ex. A.)

Around late 2007, Applicant lost the opportunity to work overtime. Depending on the hours worked, he had earned up to \$1,200 to \$1,500 in extra pay a month. (Tr. 37.) He exhausted his 401(k) assets of \$20,000 in an effort to maintain his good credit. (Ex. A; Tr. 42.) Even with his spouse’s income, Applicant could no longer afford to make the monthly minimum payments. Applicant considered taking on a part-time job, but he hoped overtime would resume. (Tr. 38.) He also contacted an attorney, who informed him that there was no law that forced him to address his debts absent a summons. (Tr. 45.) Based on this advice, Applicant stopped making payments on several accounts, as reflected in the following table.

Debt in SOR	Delinquency History	Payment Status
1.a. \$9,799 charged off credit card	Individual revolving account opened Oct. 2003, \$20,000 high credit; last activity Nov. 2008, \$1,198 past due on \$9,799 balance Nov. 2009. (Ex. 4-7.)	Unpaid.
1.b. \$11,250 charged off credit card	Individual revolving account opened Dec. 2007, \$9,100 credit limit; last activity Oct. 2008, \$11,250 past due balance Dec. 2009; for collection as of Oct. 2010 (Ex. 4-7); creditor awarded court judgment of around \$11,000 late Dec. 2010. (Tr. 46-47)	Unpaid.

² Applicant used checks sent by the credit card lenders when he did not have the funds in his checking account to cover “school bills, hockey bills, and anything else.” (Tr. 36.)

1.c. \$16,676 charged off credit card	Individual revolving account opened Dec. 1999, \$12,200 credit limit, current May 2004 (Ex. 8); last activity Apr. 2008, \$13,700 for collection Sep. 2008, \$16,676 balance Apr. 2010. (Ex. 4-7.)	Unpaid.
1.d. \$11,186 charged off credit card	Individual revolving account opened Nov. 2007, \$9,900 credit limit; last activity Nov. 2008, \$11,186 charged off balance Apr. 2010. (Ex. 4-7.)	Unpaid.
1.e. \$9,978 charged off credit card	Individual revolving account opened May 2005, last activity Dec. 2008; \$1,902 past due on \$9,978 balance Jun. 2009. (Ex. 4-6.)	Unpaid.
1.f. \$16,455 charged off credit card	Individual revolving account opened Dec. 2004, last activity Dec. 2008; \$16,455 charged off balance Jun. 2009. (Ex. 4-6.)	Unpaid.
1.g. \$9,986 charged off credit card	Individual revolving account opened Feb. 2002; last activity Dec. 2008, \$9,986 charged off balance May 2009. (Ex. 4, 6.)	Unpaid.
1.h. \$1,226 credit card collection debt	Individual revolving charge opened Mar. 2008, \$605 credit limit; last activity Oct. 2008, \$1,219 for collection May 2010, \$1,245 balance Oct. 2010. (Ex. 4, 7.)	Unpaid.
1.i. \$1,340 credit card collection debt	Individual revolving charge opened Jul. 2008, last activity Oct. 2008; \$1,340 for collection Jun. 2009. (Ex. 4, 6, 7.)	Unpaid.

At times, Applicant used convenience checks from credit card lenders to make his credit card payments. (Tr. 69.) When he could no longer meet the monthly minimum payments on his credit cards, Applicant sought the assistance of a debt management company. (Tr. 29-30.) On October 2, 2008, he was presented a plan to resolve the debts identified in the SOR together with another debt of \$3,019 not alleged in the SOR. Under the debt management plan, Applicant was to pay \$1,626 per month to the company to resolve past-due credit card debt totaling \$77,679 by September 2013. Applicant could not afford the monthly payment because his spouse also had debt that she was repaying, so

he did not pursue it further. (Tr. 30, 43.) Nor did he make any effort to contact his creditors directly. (Ex. 3.)

On December 16, 2009, Applicant executed an Electronic Questionnaire for Investigations Processing (e-QIP) to update his security clearance. In response to the financial record inquiries, he answered “Yes” only to question 26.g, “Have you had any bills or debts turned over to a collection agency?” However, he listed the debts in the SOR (SOR 1.h under the name of the furniture retailer) and indicated “all debts are 90-180 days overdue, i.e. questions h, m & n.” (Ex. 1.) His credit was checked on December 25, 2009, and the indebtedness was confirmed. (Ex. 7.)

Applicant apparently expressed his willingness to resolve his delinquent debts during a January 29, 2010, interview with an authorized investigator for the Department of Defense.³ Around June 2010, DOHA asked Applicant to provide documentary proof of any efforts by him to resolve his indebtedness and to complete a personal financial statement. On June 25, 2009, Applicant informed DOHA that he had made no payments. He attributed his credit card problems to a rise in the interest rates on his accounts, to loss of his overtime, and the lack of home equity. He indicated that he did not have the money available to pay the debts, but he planned to work on resolving them in the near future. Applicant’s average monthly expenses exceeded his and his spouse’s joint net income by about \$1,000. (Ex. 3.)

From July 2010 to December 2010, overtime was again available at work, and Applicant averaged an extra 10 hours a week at \$60 an hour. (Tr. 39-40.) He used some of this extra money to repay a loan from his father-in-law for his son’s high school tuition. (Tr. 56.) Around January 25, 2011, he retained the attorney who had advised him back in 2008 to stop making payments on his credit cards. Applicant paid \$1,500 of the retainer fee and owes another \$900. (Tr. 57.) This attorney may negotiate with Applicant’s creditors (Ex. B; Tr. 28.), although Applicant is also considering bankruptcy. (Tr. 47.) Applicant has made no payments on any of his debts “because it’s just too much, too much money to—there’s too many of them.” (Tr. 46.)

Applicant no longer uses any personal credit cards. (Tr. 56-57.) He has about \$300 in his checking account and nothing in savings. (Tr. 57.) As of June 2010, he was spending about \$200 per month eating out and \$250 per month on gifts. (Ex. 3.) As of January 2011, he had reduced his restaurant and gift expenses, but he was still eating “a lot of fast food stuff” and averaging “\$200 or less” per month on gifts. (Tr. 52-54.) Applicant pays about \$160 per month for four cell phones. (Ex. 3.)

Applicant earns about \$82,000 annually from his full-time job with the defense contractor. Because he is in a union, he receives a raise each year set at 1.5% of his salary. For the past three years, Applicant’s spouse has been employed in the biomedical industry earning between \$62,000 and \$63,000 a year. (Tr. 33.) She retired in 2005 after 25 years with an airline, although she is not presently collecting a pension. Applicant’s

³ DOHA referenced the subject interview in its interrogatories (see Ex. 3). The report of the interview was not available for my review.

spouse worked as a stenographer for six months, but she was otherwise unemployed before starting her present job around 2006. (Tr. 34, 69.) As of January 2011, Applicant was managing to pay his mortgages on time, despite expenses that appeared to exceed the household income. (Tr. 50-55.) On occasion, he falls behind on his cable television and water bills. (Tr. 56.) Applicant's spouse is paying \$1,300 per month on her own debt. She owes primarily loans, but she is also paying \$450 per month to a debt management program. (Tr. 67, 76.)

As of January 2011, his younger son was still attending private high school, at a tuition cost of \$600 per month. (Tr. 43, 60.) Applicant's older son was living at home and working part-time. (Tr. 31-32.)

Applicant has not allowed his personal financial problems to negatively affect his work for the defense contractor. Applicant currently supports a program activity that has required him to handle and control sensitive data. The program's technical leader has observed Applicant's work performance for the past four years. He has no concerns about Applicant's personal integrity or his ability to safeguard sensitive information. He considers Applicant to be a valuable contributor and is of the opinion that Applicant's removal from the program would be a "major set-back" to the program activity and the Government agency that they serve. (Ex. C.) The company's regional security manager has had a professional relationship with Applicant since 2006. He has confidence in Applicant's continuing ability to protect classified information "while he is working out his personal finances." (Ex. D.)

Policies

The U.S. Supreme Court has recognized the substantial discretion the Executive Branch has in regulating access to information pertaining to national security, emphasizing that "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). 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 required to be considered 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 overall 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 reasonable, logical, and based on the evidence of 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 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 sensitive 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 (EO) 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 about finances 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.

Applicant failed to adequately monitor his or his spouse’s spending, and he took advantage of several credit card offers extended to him. He used convenience checks on his credit cards to pay for private school tuition for his sons, but also to pay other credit card accounts. He took out home equity loans to cover some expenses. By October 2008, he could no longer make the monthly minimums on about \$77,679 in accrued credit card debt. AG ¶ 19(a), “inability or unwillingness to satisfy debts,” and AG ¶ 19(c), “a history of not meeting financial obligations,” are implicated. AG ¶ 19(b), “indebtedness caused by frivolous or irresponsible spending and the absence of any evidence of willingness or intent to pay the debt or establish a realistic plan to pay the debt,” aptly describes his financial behavior. Moreover, AG ¶ 19(e), “consistent spending beyond one’s means, which may be indicated by excessive indebtedness, significant negative cash flow, high debt to income ratio, and/or other financial analysis,” also applies. As of June 2010, he was operating at a monthly deficit around \$1,000, which did not include any payments on his delinquent credit card accounts. He was still struggling to meet his financial obligations as January 2011, as evidenced by late payments at times on his cable and water bills.

None of the mitigating conditions under AG ¶ 20 apply. Applicant's financial problems are ongoing, as shown by his negative cash flow and inability to make payments on his past-due credit card debts. 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 pertinent. 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," also does not apply. While the loss of overtime around late 2007 was unexpected, his financial problems are largely due to overspending, including for discretionary vacations, hockey camps for his sons, and entertainment. Certainly it is understandable that Applicant would want the best education for his sons, but it is difficult to justify the continuing expenditure of \$600 per month in private school tuition for his younger son when he has an outstanding financial judgment around \$11,000 against him. Applicant has failed to handle his personal finances responsibly.

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," also does not apply. Applicant just retained an attorney to address these debts through some negotiated settlements or even a bankruptcy. As of the close of the record, he had no plan in place to resolve his delinquencies, even with respect to repaying the recent judgment. Furthermore, while he was no longer using any credit cards, he had not shown that he had reduced his expenses to the point where I can conclude that his spending is under control. Applicant is credited with having looked into repaying his debts through a debt management plan around October 2008, when he realized that he could no longer afford the monthly minimum payments on his credit cards. But AG ¶ 20(d), "the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts," is not implicated because he has made no payments on any of his past-due accounts. Overtime earnings between July 2010 and December 2010 went to repay his father-in-law, who covered the costs of school tuition for Applicant's younger son.

As of January 2011, Applicant had no savings and only \$300 in checking account funds. He had yet to pay \$900 of his attorney's retainer fee. It does not appear that he has the financial assets to resolve his delinquent debt in the near future. The Financial Considerations concerns are not mitigated.

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 conduct and all relevant circumstances in light of the nine adjudicative process factors listed at AG ¶ 2(a).⁴ Applicant's financial problems are of his own making. As the years went by, he

⁴The adjudicative process requires assessment of the following factors:

(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

continued to take advantage of credit card offers, including convenience checks which he at times deposited into his checking account when he did not have the funds to pay for school tuition, vacations, even hockey bills. He operated “with the illusion that [he] would have the ability to pay [his debts] off down the road with equity in the house, the stock market, proceeds of whatever.” (Tr. 36.) By October 2008, he was so financially overextended that he could no longer make the monthly minimum payments on his credit card accounts.

Applicant has not allowed his poor financial judgment to extend into the workplace, where he has been a valuable contributor and has handled sensitive information appropriately. Also in Applicant’s favor, he has been candid about his financial problems from the start. He disclosed his debts on his e-QIP and even admitted at his hearing that the creditor identified in SOR 1.b recently obtained a judgment against him. But neither his work record nor his candor are sufficient to overcome the financial concerns. He has yet to demonstrate that he can live within his means, and he remains under a substantial financial burden that is not likely to be resolved in the near future. Based on the facts before me, I cannot conclude that it is clearly consistent with the national interest to continue Applicant’s eligibility for access to classified information.

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-1.i: Against Applicant

Conclusion

In light of 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.

Elizabeth M. Matchinski
Administrative Judge

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.