



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



In the matter of:)	
)	
)	ISCR Case No. 10-03112
)	
Applicant for Security Clearance)	

Appearances

For Government: J. Theodore Hammer, Esquire, Department Counsel
For Applicant: *Pro se*

March 29, 2011

Decision

ANTHONY, Joan Caton, Administrative Judge:

After a thorough review of the pleadings, testimony, and exhibits in this case, I conclude that Applicant failed to rebut or mitigate the Government’s security concerns under Guideline F, Financial Considerations. His eligibility for a security clearance is denied.

Applicant submitted a security clearance application (SF 86) on June 18, 2008. On November 17, 2010, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) 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 for SORs issued after September 1, 2006.

On December 10, 2010, Applicant answered the SOR in writing and elected to have a hearing before an administrative judge. The case was assigned to me on February 8, 2011. I convened a hearing on March 2, 2011, to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for

Applicant. The Government called no witnesses and introduced six exhibits, which were marked Ex. 1 through 6 and admitted to the record without objection. Applicant testified and called two witnesses. He introduced eight exhibits, which were identified and marked as Applicant's Ex. A through H and admitted to the record without objection. DOHA received the transcript (Tr.) of the hearing on March 10, 2011.

Findings of Fact

The SOR contains eleven allegations of financial conduct that raise security concerns under AG ¶ 18, Financial Considerations (SOR ¶¶ 1.a. through 1.k.) In his Answer to the SOR, Applicant admitted all eleven allegations. Applicant's admissions are accepted as findings of fact. (Answer to SOR.)

Applicant is 37 years old and employed by a government contractor as an aviation mechanic. From 1992 until 2002, he served on active duty in the United States military. Upon leaving military service, he received an honorable discharge. He was first awarded a security clearance in 1992. (Ex. 1; Tr. 39-40.)

After leaving the military in December 2002, Applicant was unemployed for about five months and lived with his parents. Between 2003 and April 2006, Applicant was steadily employed but did not work in his area of specialty. In April 2006, he acquired work with a private company as an aviation mechanic at the pay rate of \$16 per hour. From that employer, he received salary increases to \$19 per hour. (Ex. 1; Tr. 47-53.)

Applicant began work with his present employer in June 2008. For that employer, he served as a civilian contractor in Iraq for 18 months in 2008 and 2009. His annual salary during his service in Iraq was \$160,000. (Ex. 1; Tr. 46-47.)

Applicant married for the first time in March 1999. He and his wife divorced in September 2002. No children were born to the marriage, and Applicant has no financial responsibilities to his first wife. (Ex. 1; Tr. 53-54.)

Applicant married for a second time in May 2006. He and his wife have a four-year-old son. Applicant's second wife is employed as an educator. Applicant worked for his employer in State A after returning from Iraq in September 2009. His wife and child lived in a home they own in State B. In June 2010, Applicant's wife and child joined him in State A, where the family now lives and rents an apartment. They have been unable to rent their home in State B and continue to make mortgage payments on that home each month. (Tr. 53-55, 57-59.)

The SOR alleges eleven delinquent debts totaling \$23,719. Five of the debts are in charged-off status. The alleged charged-off debts and their amounts are: SOR ¶ 1.a. (\$8,876)¹; SOR ¶ 1.b. (\$3,056); SOR ¶ 1.c. (\$852); SOR ¶ 1.f. (\$2,941); and SOR ¶ 1.h.

¹ Three debts alleged on the SOR are owed to a credit union. Those debts are alleged at SOR ¶¶ 1.a., 1.b., and 1.f. At his hearing, Applicant asserted that the creditor credit union obtained a judgment against

(\$2,005.) Six debts are in collection status. These debts and their amounts are: SOR ¶ 1.d. (\$648); SOR ¶ 1.e. (\$818); SOR ¶ 1.g. (\$2,407); SOR ¶ 1.i. (\$953); SOR ¶ 1.j. (\$409), and SOR ¶ 1.k. (\$754). (SOR)

At his hearing, Applicant acknowledged that he had some credit problems during his military service. He also acknowledged that his credit problems increased after he left the military in 2002. (Tr. 60-65.)

When he was interviewed by an authorized investigator from the U.S. Office of Personnel Management in February 2010, Applicant stated that he was able to meet all current obligations and to begin paying his delinquent debts. He told the investigator he would contact the creditors holding his delinquent accounts and negotiate settlements. However, when Applicant responded to DOHA interrogatories in July 2010, he stated that he lacked sufficient discretionary income to satisfy his creditors. He also stated that his and his wife's vehicle loans, their home mortgage loans, and all other loans and credit accounts were in his wife's name because of his poor credit. (Ex. 5 at 3-8; Ex. 6; Tr. 89, 112, 148-150.)

At his hearing, Applicant stated he had not satisfied any of the debts alleged in the SOR. However, he provided documentation to establish that he had satisfied three delinquent debts that were not alleged in the SOR. One of the debts was a medical debt for \$2,317. The second debt was for \$60, and the third debt was for \$93. (Ex. G; Ex. H; Ex. 3 at 9; Tr. 83-89.)

Applicant and his wife have a combined annual gross income of approximately \$135,000. He reported that he and his wife have a combined annual net income of approximately \$97,000. Applicant provided a current personal financial statement. His net monthly income was \$4,300, and his wife's net monthly income was \$4,000. From their total net monthly income of \$8,300, Applicant and his wife listed the following monthly expenses: first mortgage on home in State B, \$810; second mortgage on home in State B, \$297; apartment rent in State A, \$2,100; preschool/daycare for child, \$760; wife's student loan, \$141; automobile loan, \$267; truck loan, \$396;² cell phones, \$200; automobile insurance, \$133; water, \$60; sewer, \$50; gas, \$72; electricity, \$126; cable, \$55; Applicant's 2009 Federal income taxes, \$193;³ groceries, toiletries, household

him for a deficiency owed on a vehicle repossession in 2003. He believed he received notification of the judgment in about 2004. He did not pay the judgment. Applicant stated that the debt alleged at SOR ¶ 1.a. was for a vehicle loan. He stated that the debt alleged at SOR ¶ 1.b. was for a personal loan, and the debt alleged at SOR ¶ 1.f. was for a credit card. However, in his personal subject interview of February 2010, Applicant recognized the debt alleged at SOR ¶ 1.f. as the past due amount on a vehicle loan with a balance of \$14,442. He further identified the debt as the remainder owed after the 2003 automobile repossession. (Ex. 5 at 4-5; Tr. 68-70.)

² Applicant's wife purchased a 2010 truck for Applicant in her name for \$18,000. He traded his existing truck for the new truck and received a trade-in credit of \$4,000. (Tr. 95-96, 110-111.)

³ Applicant failed to authorize sufficient Federal tax deductions from his salary when he worked in Iraq in 2009. He currently pays \$193 a month to satisfy a 2009 Federal tax debt of \$11,000. (Tr. 90-91.)

needs, \$1,000; gasoline, \$520; clothing, entertainment, school expenses, \$700; credit card, \$125; medical expenses, \$50; automobile property taxes, \$100. Applicant's net monthly remainder is \$145. He has not had financial credit counseling. (Ex. D; Tr. 107, 115-116.)

Applicant's knowledge of his financial obligations was limited. He stated that his wife handled their financial matters and had specific knowledge of his debts. He stated: "My wife handles all [financial matters]. Like I said, I make the money, she takes care of it." (Tr. 101-102,108-110.)

Applicant's wife testified and affirmed that she had assumed responsibility for the family's finances. She stated that she had had credit counseling while her husband was serving in Iraq. She observed that she and her husband lived "paycheck to paycheck." (Tr. 128, 130,136.)

Applicant and his wife identified a plan to address his delinquent debts. They stated that they hoped to rent their home in State B and use the rent money to pay a portion of their monthly mortgage, thereby releasing about \$700 of their monthly income to pay down debts. Additionally, Applicant's wife expects to receive a \$3,000 raise in the coming school year, and they also plan to use that money to resolve some of his delinquent debts. (Tr. 96-96-99,129-132, 136.)

Applicant's supervisor testified on his behalf. He stated that Applicant was dependable, possessed strong technical skills, and led by example with a positive work attitude. The supervisor appreciated Applicant's ability to bring people together in the workplace. (Tr. 175-177.)

A military officer who has known Applicant for 20 years provided a letter of character reference for Applicant. He praised Applicant's integrity, honesty, and trustworthiness. (Ex. F.)

A co-worker who also knows Applicant socially provided a letter of character reference. He stated that in his judgment Applicant "demonstrates integrity in his work and the highest character in our friendship." (Ex. E.)

Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security, and it has emphasized that "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information." *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant Applicant's eligibility for access to classified information "only upon a finding that it is

clearly consistent with the national interest to do so.” Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.

When evaluating an applicant’s suitability for a security clearance, an administrative judge must consider and apply the revised adjudicative guidelines (AG). 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, the administrative judge applies these 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 applicant or proven by Department Counsel. . . .” The applicant has the ultimate burden of persuasion in seeking 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 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 conditions that could raise security concerns. Under AG ¶ 19(a), an "inability or unwillingness to satisfy debts" is potentially disqualifying. Similarly, under AG ¶ 19(c), "a history of not meeting financial obligations" may raise security concerns. Applicant accumulated substantial delinquent debt and was unable or unwilling to pay his creditors. This evidence is sufficient to raise these potentially disqualifying conditions, requiring a closer examination.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Several Guideline F mitigating conditions could apply to the security concerns raised by Applicant's financial delinquencies. Unresolved financial delinquency might be mitigated if it "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." (AG ¶ 20(a)) Additionally, unresolved financial delinquency might be mitigated if "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." (AG ¶ 20(b)) Still other mitigating circumstances that might be applicable include evidence that "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" (AG ¶ 20(c)) or "the individual has initiated a good-faith effort to repay overdue creditors or otherwise resolve debts." (AG ¶ 20(d)) Finally, if "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 options to resolve the issue," then AG ¶ 20(e) might apply.

Applicant admitted a history of financial difficulties which began in at least 2003, when he defaulted on a vehicle loan and the vehicle was repossessed. In about 2004, the creditor served Applicant with a judgment, which he did not satisfy. The vehicle loan and all other delinquent debts alleged in the SOR remain unsatisfied. With the exception of a five-month period of unemployment when he left military service in 2002, Applicant

has been steadily employed. In 2008 and 2009, he served as a civilian contractor in Iraq and earned an annual salary of \$160,000. At present, Applicant and his wife have a combined yearly net income of approximately \$97,000.

Applicant failed to provide documentation that he had voluntarily satisfied any of the eleven debts alleged on the SOR. He provided documentation that corroborated payment of three debts, totaling \$2,370, which were not alleged on the SOR.

Applicant has not received financial counseling. His monthly remainder is \$145. His wife acknowledged that, despite a yearly net income of approximately \$97,000, she and Applicant live paycheck to paycheck. While Applicant admitted his financial delinquencies, it was not clear that he understood his financial problems or how to resolve them. He relies on his wife to manage their joint finances, and he plans to resolve his financial delinquencies at some unspecified future date. He has no plan in place to respond to future financial contingencies. I conclude that none of the Financial Consideration mitigating conditions fully applies to the facts of Applicant's case.

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. Applicant is a mature person of 37 years. His financial problems began at least eight years ago. Despite ongoing financial problems, he has failed to take an interest in his financial obligations, and he has left all financial decisions and actions to his wife. He has not taken affirmative action to live within his means and to pay or resolve his substantial delinquent debts. His lack of attention to his financial delinquencies continues to raise security concerns. Despite a steady income for several years, he has failed to budget his income to satisfy his many debts, and he has not sought credit counseling.

Overall, the record evidence leaves me with questions and doubts about Applicant's judgment and his eligibility and suitability for a security clearance. For these reasons, I conclude Applicant failed to mitigate the security concerns arising from his financial delinquencies.

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.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.

Joan Caton Anthony
Administrative Judge