



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



In the matter of:)
)
) ISCR Case No. 10-03203
)
Applicant for Security Clearance)

Appearances

For Government: Philip J. Katauskas, Esquire, Department Counsel
For Applicant: *Pro se*

March 25, 2011

Decision

ANTHONY, Joan Caton, Administrative Judge:

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

Applicant completed a Questionnaire for Investigations Processing (e-QIP) on August 21, 2009. On December 16, 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 January 12, 2011, Applicant answered the SOR in writing. He elected to have a hearing before an administrative judge. The case was assigned to me on February 8, 2011. A Notice of Hearing, setting Applicant's hearing for March 2, 2011, was issued February 16, 2011. I convened the hearing as scheduled 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 five exhibits, which were marked Ex. 1 through 5 and admitted to the record without objection. Applicant testified and called three witnesses. He did not introduce any exhibits.

At the conclusion of the hearing, I left the record open until close of business on March 9, 2011, so that Applicant could, if he wished, provide additional information for the record. Applicant timely filed a letter containing additional information and six documents. Department Counsel did not object to Applicant's post-hearing submissions. I marked the seven post-hearing submissions as Applicant's Ex. A through Ex. G, and they were admitted to the record. DOHA received the transcript (Tr.) of the hearing on March 9, 2011.

Findings of Fact

The SOR contains four allegations of disqualifying conduct under Guideline F, Financial Considerations. Applicant admitted the four allegations and offered additional information. Applicant's admissions are accepted as findings of fact. (SOR; Answer to SOR.)

Applicant is 41 years old and employed by a government contractor as a security compliance principal leader. He has worked for his present employer for approximately ten years.¹ His gross annual salary in 2010 was approximately \$108,000. (Ex. 1; Ex. 3 at 5; Tr. 70.)

Applicant served on active duty in the U.S. military from 1987 to 1999. He was first awarded a security clearance in 1988. During his military career, he received numerous medals and citations, including the Meritorious Service Medal, the Joint Service Commendation Medal, the Joint Service Achievement Medal, four good conduct medals, the National Defense Service Medal, and the Armed Forces Expeditionary Medal. Applicant received an honorable discharge in September 1999. (Ex. 1; Ex. B; Tr. 64-65.)

Applicant has been married and divorced twice. One child was born to each of his marriages, and his two minor children live with their mothers. Applicant provides his former wives with \$2,053 in child support each month.² (Ex. 1; Ex. 3 at 5; Tr. 13-14, 30-31, 35.)

¹ Applicant worked for his present employer from November 1999 to May 2003. He then left to work for another employer for about 18 months. He returned to his current employer in September 2004 and has worked for his current employer since that time. (Ex. 1.)

² Applicant pays \$753 a month to his first ex-wife for the support of their 14-year-old daughter. He pays approximately \$1,250 a month to his second ex-wife for the support of their three-year-old son. He also pays an additional \$50 in child support arrearages to the second ex-wife each month, for a total of

Applicant and his first wife, a U.S. citizen, were married overseas. They divorced in 2004, after 14 years of marriage. Applicant married his second wife, who was not a U.S. citizen, in 2005. As a foreign citizen, Applicant's second wife had no credit rating in the United States. Consequently, Applicant assumed financial responsibility for all purchases they made as a couple. In August 2007, Applicant's second wife gave birth to their son. (Ex. 1; Tr. 25-26.)

Applicant and his second wife purchased a home together in February 2006. The home was secured by a first mortgage of \$320,600. Applicant's wife was on the deed to the home but not on the first mortgage. In 2008, Applicant and his wife acquired a second mortgage, also secured by the home, which they used to pay for home improvements. Applicant's wife was a signatory to the second mortgage.³ In 2008, Applicant's annual gross income was approximately \$107,000; his wife's annual gross income was approximately \$75,000. The SOR alleged at ¶ 1.c. that Applicant owed a bank \$35,363 on the second mortgage, which had been charged off as a delinquent debt. The SOR alleged at ¶ 1.d. that the first mortgage was in foreclosure status, that the balance on the mortgage loan was \$306,000, and that Applicant owed the lender \$34,874 in past due payments on the mortgage loan. (SOR; Ex. 4 at 9; Ex. 5 at 2; Tr. 31-32, 35-39, 63, 70.)

During their marriage, Applicant and his second wife informally agreed that she would pay each month for day care for their infant son, and she would make required monthly payments on their two automobiles. Applicant agreed to pay the mortgage on their home and their monthly telephone, electric, and cable charges. (Tr. 50-51.)

In October 2009, when Applicant was interviewed by an authorized investigator from the U.S. Office of Personnel Management, he reported that in December 2008, he had separated from his second wife because she had a drinking problem and behaved aggressively, but would not seek help. In his January 2011 Answer to the SOR and in testimony at his hearing, Applicant stated he came home from a trip at Christmastime in 2008 and found that his wife had abandoned their home, taking with her their 17-month-old son, an automobile, and about half of their joint household goods. Applicant's statements about his second wife's abandonment of their home were corroborated by two witnesses: his first wife and his long-time colleague and friend, who is also his manager at work. (Answer to SOR; Ex. 2 at 4; Tr. 25, 77, 104.)

After his wife abandoned their home, Applicant tried for several days to contact her, but she would not respond. He was angry and upset. He feared his wife might leave the United States with their son. He informed his supervisors of the situation. He was unable to contact his wife for approximately one month. (Tr. 110-112.)

approximately \$1,300. He is current on his child support payments to both ex-wives. (Ex. 3 at 5; Tr. 35, 67.)

³ In November 2008, Applicant and his wife listed the home for sale for \$365,000. The property did not sell, and Applicant removed it from the market on July 1, 2009. (Ex. F.)

In January 2009, Applicant's wife appeared unexpectedly at their residence to pick up something, and she left after five minutes. A month later, the holder of Applicant's wife's car note called him to report that she was not making her monthly payments. Applicant was able to contact his wife. He asked her if she intended keep the vehicle. She advised him that she did not want to keep and pay for the vehicle. She asked that Applicant take possession of the vehicle. Applicant sought and obtained police permission to pick up his wife's vehicle in another jurisdiction, and after taking possession, attempted to sell it. (Tr. 25-26.)

Applicant's wife refused to pay any debts or financial obligations incurred during the marriage. Creditors began to contact Applicant for payment of debts that his wife had formerly agreed to pay. Applicant continued to pay the first and second mortgage debts for about nine months after his wife left the home. Thereafter, without his wife's income, he was unable to pay the two mortgages, pay his wife's and his financial obligations, and pay child support for his two children. His wife also refused to participate in Applicant's attempts to refinance the two mortgages. Lacking sufficient funds to make the monthly mortgage payments, Applicant released the home to the holder of the first mortgage in October 2009. (Tr. 26-27, 32-36, 46-47.)

At his hearing, Applicant acknowledged that he had not initiated contact with the mortgage lender since releasing the home in October 2009. He reported that he received some communications from the lender about the foreclosure status of the home. However, he did not know if the home had been sold through foreclosure.⁴ He stated that he would provide a letter from the lender indicating that he would not be liable for a deficiency if foreclosure does not resolve his indebtedness on the home. However, he failed to provide the letter in his post-hearing submissions. (Tr. 36, 40-41, 53-55.)

The SOR alleged at ¶ 1.a. that Applicant owed a \$57 medical debt to an unspecified creditor. The SOR alleged at SOR ¶ 1.b. that Applicant owed a \$608 medical debt to an unspecified creditor. Both debts bear the same account number. In his answer to the SOR, Applicant admitted both debts but stated he was unable to identify the creditors. At his hearing, he stated that he had checked with his former wives and neither was able to identify the debts or the creditors. The debts have not been paid. Applicant stated he would pay the debts if they were his. He has not filed written disputes of the debts with credit bureaus. Applicant reported that he had last received credit counseling in 2001. (SOR; Answer to SOR; Tr. 55-60, 66.)

Applicant's total net monthly income is \$6,025. His monthly expenses total \$5,861 and include the following: rent, \$1560; groceries, \$425; credit card payment, \$160; utilities (cell phone, cable, and internet), \$497; car expenses (includes insurance and gasoline), \$350; car security, \$18.95; medical expenses (medication), \$40; child

⁴ In a post-hearing submission, Applicant reported that on March 9, 2011, he had contacted the lender, who stated that the property was in "pre-foreclosure" status. He also provided a mortgage interest statement (Form 1098) from the lender showing that real estate taxes of \$3,014 had been paid for tax year 2010. (Ex. A; Ex. B.)

support, \$2,053; miscellaneous (includes bank card), \$135; and car payment, \$622.50.⁵ Applicant's monthly net remainder is \$164. (Ex. 3 at 5; Tr. 68-69.)

Applicant's three witnesses praised his character and strong work ethic. His former supervisor stated that Applicant was noted in his organization for his integrity and professionalism. He added, "I would trust him with my life." Applicant's first wife, who is also a co-worker, characterized Applicant as diligent, a hard worker, and a good care-giver to his children. (Tr. 76-102.)

Applicant's performance appraisals for 2008, 2009, and 2010 rated his professional achievements as "highly effective" and "superior." He is a valued employee who is recognized for his outstanding technical and leadership skills. (Ex. C; Ex. D; 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 an 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 the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are useful 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.

⁵ In March 2010, when the electrical system on his previous vehicle needed repairs of approximately three to four thousand dollars, Applicant traded the car and purchased a used 2006 Cadillac. As of September 2010, he had made six of 60 required payments on the vehicle and owed a balance of \$25,081. (Ex. 3 at 11; Tr. 45.)

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 about 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 two conditions that could raise security concerns in this case. 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.

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.

The financial delinquencies alleged on the SOR are current and ongoing. Additionally, Applicant reports a monthly net remainder of \$164, suggesting that he has few reserves in the event of a financial emergency. Under these circumstances, future financial delinquency could occur. Moreover, he has not received financial counseling since 2001, and there is no clear indication that his financial problems are being resolved or are under control. He has not initiated a good-faith effort to repay his creditors or otherwise resolve his delinquent debts. I conclude that AG ¶¶ 20(a), 20(c), and 20(d) do not apply to the facts in this case.

Applicant's financial difficulties appear to have begun in 2008 when his second wife abruptly abandoned their home and refused to pay debts that she and Applicant had acquired together in their marriage. When this happened, Applicant's wife's income of \$75,000 a year was no longer available to help in the payment or refinancing of their two home mortgages. As a consequence, Applicant could not meet his mortgage payments on the house, and he was unable to sell the property because of the downturn in the housing market. Applicant relinquished the home to the mortgage lender in 2009, with the expectation that the property would go into foreclosure status.

Applicant was directly affected by two unforeseen events beyond his control: his wife's abandonment and the downturn in the real estate market. Applicant was unable to pay two mortgages on his home as well as monthly child support of approximately \$2,053. These facts suggest that AG ¶ 20(b) might apply in mitigation.

It is important, however, to recognize that AG ¶ 20(b) has two parts: the identification of events beyond an individual's control that could cause a failure to meet financial obligations and an examination of the individual's subsequent actions to assess whether he or she acted responsibly when faced with an uncontrollable event that precluded meeting financial obligations.

Applicant could do little about market conditions that prevented him and his second wife from selling their home in 2008. Additionally, Applicant could not take action to pay or refinance his mortgages without the cooperation of his estranged second wife. However, after relinquishing his home to the mortgage lender in October 2009, Applicant failed to remain in contact with the creditors holding his first and second mortgages. He failed to provide documentation corroborating his statement that he would not owe a deficiency after his property was sold at foreclosure. At his hearing, he had no information about the current status of the debts alleged at SOR ¶¶ 1.c. and 1.d.

To date, \$34,874 remains unpaid and past due on Applicant's first mortgage account, which totals \$306,000. An additional \$35,363 has been charged off on a second mortgage debt. Applicant learned after his hearing that his property is in pre-foreclosure status. I conclude that Applicant's failure to remain in contact with his creditors about the status and prospects for resolution of his mortgage loans was not responsible and that AG ¶ 20(b) applies only in part to the facts of his case.

Applicant was also passive in determining the status of the two lesser debts alleged on the SOR. After being on notice since December 16, 2010, Applicant had not attempted to contact the creditors, nor had he written to the credit bureaus to challenge the legitimacy of the debts alleged at SOR ¶¶ 1.a. and 1.b. As a result, they too remain unresolved. I conclude that AG ¶ 20(e) does not apply in this 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 adult of 41 years. His employers and coworkers consider him to be an outstanding professional and of excellent character. They reported that he carries out his professional duties with energy and care. He has served his country with honor and distinction in the U.S. military. He was dealt a serious blow domestically when his wife abandoned his home, took their young son with her, and refused to pay debts that she and Applicant had incurred together during their marriage.

Applicant has been steadily employed with his current employer for approximately ten years. His total net monthly income is \$6,025. His net monthly expenses total \$5,861. His net monthly remainder is \$164.

In 2010, despite owing considerable unresolved mortgage debt, he purchased an automobile and committed to 60 monthly payments of \$622. His additional automobile-related expenses are approximately \$369, resulting in total automobile-related expenses each month of approximately \$1,000. In spite of recent serious financial difficulties, he has not sought financial counseling since 2001. His lack of attention to his financial delinquencies continues to raise security concerns. Moreover, he lacks a realistic plan to satisfy his financial obligations, raising concerns about his judgment and potential financial vulnerability.

Applicant may find it beneficial to seek professional financial counseling and legal advice about resolving his debts and acquiring financial stability in the near term. Applicant can reapply for a security clearance one year after the date that this decision becomes final. If he wishes, he can produce new evidence that addresses the Government's current security concerns.

Overall, the record evidence leaves me with questions and doubts at the present time as to Applicant's eligibility and suitability for a security clearance. Accordingly, I conclude, after a careful review of the facts of his case, the financial considerations adjudicative guideline, and the whole-person analysis, that 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.d.:	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Joan Caton Anthony
Administrative Judge