



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



In the matter of:)	
)	
)	ISCR Case No. 10-03731
)	
Applicant for Security Clearance)	

Appearances

For Government: Daniel Crowley, Esq., Department Counsel
For Applicant: *Pro se*

03/12/2012

Decision

HEINY, Claude R., Administrative Judge:

Applicant has 24 delinquent debts, which remain unpaid. He failed to rebut or mitigate the security concerns under financial considerations. Clearance is denied.

History of the Case

Applicant contests the Department of Defense's (DoD) intent to deny or revoke his eligibility for an industrial security clearance. Acting under the relevant Executive Order and DoD Directive,¹ the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) on October 11, 2011, detailing security concerns under Guideline F (Financial Considerations) and Guideline E (Personal Conduct).

¹ Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (DoD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the DoD on September 1, 2006.

On October 31, 2011, Applicant answered the SOR and requested a hearing. On January 12, 2012, I was assigned the case. On January 19, 2012, DOHA issued a Notice of Hearing for the hearing held on February 2, 2012.

The Government offered exhibits (Ex.) 1 through 6, which were admitted into evidence without objection. Applicant testified and did not submit any documents. On February 13, 2012, DOHA received the hearing transcript (Tr.).

Findings of Fact

In Applicant's Answer to the SOR, he admits the allegations. His admissions are incorporated herein. After a thorough review of the pleadings and exhibits, I make the following findings of fact.

Applicant is a 29-year-old aircraft structures mechanic who has worked for a defense contractor since February 2009, and seeks to obtain a security clearance. Applicant called no witnesses other than himself, and produced no work or character references. He worked for his current company from January 2004 until March of 2006, at which time he was unemployed. (Tr. 23) He remained unemployed until August or September 2006. (Tr. 27) He held a job as an aircraft mechanic in another city before moving back to his current job. (Tr. 23)

The SOR alleges, and Exs. 1 through 6 substantiate, 24 delinquent accounts totaling \$8,600. Many of the SOR delinquent accounts appear on Applicant's November 2006 credit bureau report (CBR) as well as on his more recent CBRs. (Ex. 2 - 6) The delinquent debts include a vehicle repossession (SOR 1.u, \$3,380) a utility bill (SOR 1.v, \$223), a cleaning fee when he moved out of an apartment (SOR 1.x, \$528), and 21 medical bills (\$4,500). His student loan (\$4,288) was paid by a \$300 monthly garnishment. (Ex. 5, Tr. 31) As of September 2010, that loan had been paid. (Ex. 5) He believes the majority of the medical bills may be related to his children's asthma. (Tr. 32) He had insurance, but the amounts in question may have been co-payments required of him at the time of treatment. (Tr. 32)

In February 2010 and March 2010, Applicant was interviewed about his delinquent debts. At that time, he had not tried to settle any of the debts because his income was used providing for the basic needs for his family. He is married and has four children ages 11, 9, 6, and 2. He provided a personal financial statement in August 2011, indicating his net monthly income was \$4,550, his monthly expenses were \$4,368, and his net monthly remainder (monthly income less monthly expenses) was \$181. (Tr. 5) His current annual base pay is approximately \$50,000. (Tr. 25) His wife works full-time making \$11 hourly. (Tr. 25) He and his wife have separated in the past, but are currently living together.

Applicant is current on his \$613 monthly mortgage payments. (Tr. 27) In 2002, he purchased a Ford Focus. He then bought a Ford Expedition and his father-in-law took over payments on the Focus. However, his father-in-law hurt his back and stopped

making payments. (Tr. 33) Applicant could not make the payments because he had moved and was unemployed. (Tr. 33-34) The vehicle was repossessed in 2005. He listed a \$2,675 debt on his Electronic Questionnaires for Investigations Processing (e-QIP). (Ex. 1) In January 2004, he purchased another vehicle, but then the engine went bad. It was repossessed in March 2007. (Tr. 28) That debt (\$1,322) does not appear on the SOR, but he listed it on this e-QIP. (Ex. 1) He also co-signed on a car for his mother which was also repossessed. On his e-QIP he listed that repossession as a \$12,776 debt. (Ex. 1, Tr. 30) He also listed his student loans on his e-QIP. (Tr. 30)

Applicant listed a number, but not all, his delinquent accounts on his e-QIP. The medical bills were not listed on his e-QIP. He asserts when he completed his e-QIP he did not have a list of all his bills, and was told to write down what he had, so he did. (Tr. 22) During his February 2010 interview, he acknowledged his debts. In his answer to the SOR, he neither admits nor denies the personal conduct concern for not disclosing all of his delinquent accounts.

Applicant has had no financial counseling. (Tr. 27) He is thinking of hiring a company to assist him in paying his delinquent accounts. (Tr. 36)

Policies

When evaluating an applicant's suitability for a security clearance, the 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 must 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 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 interests of 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 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 classified information. Such decisions entail a certain degree of legally permissible extrapolation of 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

Adjudicative Guideline (AG) ¶ 18 articulates the security concerns relating to financial problems:

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.

Additionally, an individual who is financially irresponsible may also be irresponsible, unconcerned, negligent, or careless in properly handling and safeguarding classified information. Behaving responsibly or 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 repay debts as agreed. Absent substantial evidence of extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a position of risk that is inconsistent with holding a security clearance. An applicant is not required to be debt free, but is required to manage his finances to meet his financial obligations.

Applicant has a history of financial problems going back to at least 2006. He has 24 delinquent accounts totaling approximately \$8,600. Eight of Applicant's debts were under \$60 each. Disqualifying Conditions AG ¶ 19(a), "inability or unwillingness to satisfy debts" and AG ¶ 19(c), "a history of not meeting financial obligations," apply.

Five Financial Considerations Mitigating Conditions under AG ¶ 20 are potentially applicable:

- (a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;
- (b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances;
- (c) the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control;
- (d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and
- (e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

Applicant meets none of the mitigating factors for financial considerations. His financial difficulties are both recent and multiple. He was unemployed for six months during 2006. That was a factor beyond his control, but it occurred more than five years ago. Even the eight debts of less than \$60 each have not been paid. He has not acted reasonably in addressing his delinquent accounts. He has received no credit or financial counseling, has failed to demonstrate that his financial problems are under control, and does not have a plan to pay them. He has not made a good-faith effort to satisfy his debts.

Guideline E, Personal Conduct

The Government has shown Applicant did not list all of his medical debts on his e-QIP, but this does not prove the Applicant deliberately failed to disclose information about his finances. The Applicant has denied intentional falsification. When he completed the form he did not have information on all of his debts and was told to put down what he had, which he did. His failure to disclose all of his debt does not, in itself,

prove that he did so in a deliberate effort to conceal those facts from the government. The Applicant's statements about his intent or state of mind at the time he executed the e-QIP are relevant and material, but not conclusive. An intent to deceive or mislead the government does not require direct evidence and can be inferred from circumstantial evidence, but this is not the case here. When his statements are weighted in light of the evidence as a whole, I find his answers on his e-QIP were not a deliberate omission, concealment, or falsification and, therefore, none of the disqualifying conditions under personal conduct apply.

Applicant did not list all of his delinquent medical debt, but his e-QIP answers put the government on notice that he was experiencing financial problems. He indicated he had property repossessed, had defaulted on a loan(s), had bills turned over to a collection agency, had his wages garnished, had been more than 180 days delinquent on his debts, and was currently more than 90 days delinquent on his debts. He listed a number of his outstanding obligations. The listing of this adverse financial information was sufficient to indicate he had or was currently experiencing financial problems and further investigation into his finances would be warranted.

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. Half of the delinquent accounts were medical bills, which are not the type of debt that indicates poor self-control, lack of judgment, or unwillingness to abide by rules and regulations. The other three debts were an unpaid utility bill, a cleaning bill when he left an apartment, and a vehicle repossession. Money was not spent frivolously. Although it is noted that this repossession is but one of three vehicles that have been repossessed. He stated an

intent to resolve his delinquent obligations, but to date, has done little to address his delinquent accounts.

This decision should not be construed as a determination that Applicant cannot or will not attain the state of true reform and rehabilitation necessary to justify the award of a security clearance. The awarding of a security clearance is not a once in a lifetime occurrence, but is based on applying the factors, both disqualifying and mitigating, to the evidence presented. Under Applicant's current circumstances, a clearance is not recommended. Should Applicant be afforded an opportunity to reapply for a security clearance in the future, having paid the delinquent obligations, established compliance with a repayment plan, or otherwise addressed the obligations, he may well demonstrate persuasive evidence of his security worthiness. However, a clearance at this time is not warranted.

The issue is not simply whether all his debts are paid – they are not – it is whether his financial circumstances raise concerns about his fitness to hold a security clearance. (See AG ¶ 2 (a)(1).) Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant not mitigated the security concerns arising from his 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, Financial Considerations: AGAINST APPLICANT

Subparagraphs 1.a – 1.x: Against Applicant

Paragraph 2, Personal Conduct: FOR APPLICANT

Subparagraph 2.a: For Applicant

Conclusion

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

CLAUDE R. HEINY II
Administrative Judge