



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



In the matter of:)	
)	
-----)	ISCR Case No. 10-03810
)	
Applicant for Security Clearance)	

Appearances

For Government: Fahryn Hoffman, Esquire, Department Counsel
For Applicant: Pro se

01/16/2013

Decision

MARSHALL, Jr., Arthur E., Administrative Judge:

On May 30, 2012, the Department of Defense (DOD) issued to the above-referenced Applicant a Statement of Reasons (SOR). The SOR enumerated security concerns arising under Guideline F (Financial Considerations). DOD took action under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) implemented by the DOD on September 1, 2006.

In a response dated July 27, 2012, Applicant admitted all eight allegations and requested a hearing before a Defense Office of Hearings and Appeals (DOHA) administrative judge. DOHA assigned the case to me on September 20, 2012. The parties initially agreed to a hearing date of October 25, 2012, and a notice setting the hearing for that date was issued on September 28, 2012. Upon request and absent objection, the hearing date was ultimately moved to November 13, 2012. The hearing was convened as scheduled. Applicant gave testimony and offered no documents. The Government offered 12 documents, which were accepted into the record without objection as exhibits (Exs.) 1-12. The transcript (Tr.) of the proceeding was received on November 20, 2012, and the record was closed. Based on a review of the testimony, official case file, and exhibits, I find Applicant failed to meet his burden of mitigating security concerns related to financial considerations. Clearance is denied.

Findings of Fact

Applicant is a 44-year-old engineer who has worked for the same defense contractor for the past year. He has a high school diploma. He served in the U.S. Navy for eight years, during which time he received considerable Naval training and earned multiple certifications. Although he has worked on multiple contracts over the years as a civilian, he has been continuously employed for the past 15 years.¹ He has three children from an earlier marriage. He is responsible for paying the same amount of child support to his ex-wife until their youngest child reaches the age of 18. That child is currently 14. Applicant married his current spouse in 2010.

Applicant and his first wife experienced marital difficulties that led to their separation between 2007 and 2008. At the time, the couple was financially stable, and Applicant's estranged wife assumed custody of their children. Their state required Applicant to pay \$1,700 a month for child support to his spouse, based on his then-current annual salary of \$50,000. Applicant's estranged wife moved to another state with their children before their 2009 divorce. That state required Applicant pay a lump sum of \$2,200 in monthly child support to the children's mother.² Applicant found the sum difficult to budget. He contemplated looking for a second job to meet his child support and other obligations. Instead, he found a position paying \$80,000 a year in another city. He then moved in order to accept the position. Despite the raise, the new city was a costlier place in which to live. He had difficulty paying his increased rent and utilities (\$1,200), and debts were acquired. In completing his security clearance application (SCA) in April 2009, he attributed his delinquent debts to his divorce. He further noted that he was currently working on getting all of his delinquent debt satisfied.

Applicant remarried in 2010. When he first began co-habiting with his present wife, he started paying half of her monthly mortgage payment (\$1,600), thus increasing his monthly financial expenses by \$400. During questioning in both December 2011 and February 2012, he noted that he was trying to work on his delinquent debts.

Applicant's salary recently rose to \$100,000 per year. At his present salary, he is able to live within his means. Consequently, he feels can now "slowly dig [himself] outside of [his distressed financial] situation," although he has not received financial counseling or thus far articulated a strategy to address the approximately \$38,000 in delinquent debt currently at issue.³ In his July 2012 response to the May 2012 SOR, Applicant noted that he acknowledged the eight debts referenced and wrote that he

¹ Tr. 30. During this period, Applicant experienced no period(s) of unemployment.

² There was some indication that the total might be reduced to about \$1,200 in the past year, but despite Applicant's requests for a reduction, none was implemented.

³ The delinquent debts, cited in the SOR in allegations ¶¶ 1.b-1.h, range from \$17,418 to \$446.

would specifically work with five of those accounts within the “next 30 days.”⁴ Applicant, however, provided no documentary evidence showing any attempt to address any of these delinquent debts.⁵

One of the delinquent accounts at issue is related to a \$7,536 credit card balance (SOR allegation ¶ 1.g). The balance involves a corporate credit card Applicant used for personal use (SOR allegation ¶ 1.a). Although Applicant and a former employer discussed his outstanding balance when he left that employer for a new job, the debt is owed by Applicant directly to the lender. The former employer is not left liable for the sum.⁶ Applicant admits he is solely liable for the balance shown.

As previously noted, Applicant is presently living within his means. After all his current obligations are met, he retains a monthly remainder of about \$1,300. He turns this sum over to his wife, who manages their financial affairs. She is aware of the delinquent debts at issue.

Policies

When evaluating an applicant’s suitability for a security clearance, an administrative judge must consider the AG. In addition to brief introductory explanations for each guideline, the AG list potentially disqualifying conditions and mitigating conditions. 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. Under AG ¶ 2(c), this process is a conscientious scrutiny of a number of variables known as the “whole-person concept.” The administrative judge must consider all 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.

⁴ At Tr. 41, Applicant noted that he tried to contact the creditors noted at SOR allegations ¶¶ 1.b-1.c “in the last couple a days,” but that he was unable to make progress on resolving the debts. He stated that he was unaware of those two debts until he received the May 2012 SOR. He provided no evidence of any effort to address these two debts or otherwise initiate contact with these two creditors in the “next 30 days,” as indicated in his response to the SOR, or at anytime between June 2012 and November 2012.

⁵ Tr. 19-20. Applicant stated that he made a \$25 payment on the debt noted at SOR allegation ¶ 1.f as part of a settlement, but he provided no corroborating evidence. Tr. 44. He also testified, without supporting evidence, that he had attempted to return the automobile noted at SOR allegation ¶ 1.g. Tr. 45-47. Otherwise, Applicant maintains that he has been satisfying other debts not reflected in the SOR, but no evidence of such effort was offered. Tr. 20.

⁶ Tr. 36-39.

The Government must present evidence to establish controverted facts alleged in the SOR. An applicant is responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . .”⁷ The burden of proof is something less than a preponderance of evidence. The ultimate burden of persuasion is on the applicant.⁸

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 those 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 about potential, rather than actual, risk of compromise of classified information.

Section 7 of Executive Order (EO) 10865 states 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 EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified/sensitive information). “The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”⁹ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such information.¹⁰

Based upon consideration of the evidence, Guideline F (Financial Considerations) is the most pertinent to this case. Conditions pertaining to this AG that could raise a security concern and may be disqualifying, as well as those which would mitigate such concerns, are set forth and discussed below.

Analysis

Guideline F - Financial Considerations

Under Guideline F, failure or an 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.¹¹ It also states that an individual who is financially overextended is at risk of having to

⁷ See also ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

⁸ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

⁹ *Id.*

¹⁰ *Id.*

¹¹ AG ¶ 18.

engage in illegal acts to generate funds.¹² Applicant admits that he acquired approximately \$38,000 in delinquent debt. This is sufficient to raise Financial Considerations Disqualifying Condition AG ¶ 19(a) (*inability or unwillingness to satisfy debts*) and AG ¶ 19(c) (*a history of not meeting financial obligations*). With such conditions raised, it is left to Applicant to overcome the case against him and mitigate security concerns.

Applicant admits liability for the delinquent debts at issue. Since 2009, he has maintained that he is working on his debts, but no evidence of such efforts was shown at the 2012 hearing. He continues to attribute his neglect of those debts to the financial strains caused by his separation and divorce (circa 2007-2009), and the financial burden associated with his child support payments. However, with an income that has doubled from \$50,000 to \$100,000 since 2009 and a present net monthly remainder of about \$1,300, citing to the financial drains of a 2009 divorce and child support formula carries significantly diminished weight. He similarly failed to provide documentary evidence that he has developed a rapport with his creditors concerning his debts or received financial counseling that might help him manage his debt.

Despite his present net monthly remainder, Applicant provided no information indicating that he has a plan. At first blush, financial distress caused by a divorce could be cited to invoke application of Financial Consideration Mitigating Condition AG ¶ 20(b) (*the conditions that resulted in the behavior 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*). However, Applicant failed to document actions showing that he acted responsibly in the face of meeting related obligations. Given the facts and evidence and presented, none of the other mitigating conditions apply.

Whole-Person Concept

Under the whole-person concept, an administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of an applicant's conduct and all the circumstances. An administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a). Under AG ¶ 2(c), the ultimate determination of whether to grant a security clearance must be an overall commonsense judgment based on careful consideration of the guidelines and the whole-person concept. In addition, what constitutes reasonable behavior in such cases, as contemplated by FC MC ¶ 20(b), depends on the specific facts in a given case.

I considered the specific facts and circumstances in this case. Applicant is a mature and direct man who served his country for eight years in the U.S. military, and worked for the U.S. government as a civilian for many years. He has succeeded professionally and doubled his salary over the past few years. He always has made his child support a priority. However, despite affirmations in his 2009 SCA, his May 2012

¹² *Id.*

