



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



In the matter of:)	
)	
)	ISCR Case No. 10-03919
)	
Applicant for Security Clearance)	

Appearances

For Government: Robert Kilmartin, Esq., Department Counsel
For Applicant: *Pro se*

06/22/2012

Decision

CURRY, Marc E., Administrative Judge:

Although Applicant’s financial problems were caused by circumstances beyond his control, he failed to establish that they are being resolved or are under control. Clearance is denied.

Statement of the Case

On January 11, 2012, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines 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) implemented by the Department of Defense on September 1, 2006.

Applicant answered the SOR on February 15, 2012, admitting all of the allegations except subparagraphs 1.g, 1.h, and 1.j, through 1.l. He requested a hearing,

and the case was assigned to me on April 12, 2012. A notice of hearing was issued on April 20, 2012, scheduling the case for May 8, 2012. I held the hearing as scheduled, considering Applicant's testimony, and receiving six Government exhibits, marked as Government Exhibits (GE) 1 through 6, and three Applicant exhibits (AE) marked as AE A through C. At Applicant's request, I left the record open for him to submit an additional exhibit. Within the time allotted, he did so, and I received it as AE D. DOHA received the transcript (Tr.) on May 16, 2012.

Findings of Fact

Applicant is a 40-year-old man with two children, ages 11 and 9. He has been married twice previously, from 1994 to 2000, and from 2001 to 2007. Both marriages ended in divorce. His two children are from his second marriage. Applicant and his ex-wife share joint custody, and the children split their time equally between both parents. (Tr. 14-15)

Applicant has a high school education. Since 2010, he has worked for a defense contractor as a material handler. He has held a security clearance since 1991. From 1991 to 2006, Applicant enjoyed a successful career working as a carpenter for various defense contractors. By 2006, he was a senior supervisory carpenter, the highest position among carpenters where he worked. (Tr. 15)

In 2006, Applicant was laid off from his job. The following year, he and his second wife divorced. Between losing his job in 2006 and gaining his current job in 2010, Applicant worked as a self-employed handyman. By 2008, however, his annual income had decreased from \$78,000 per year in 2006 to \$11,000 per year. (Tr. 37) Although his income has steadily increased since then, he has yet to make more than a third of the annual income he made before he lost his job in 2006. (Tr. 37)

Applicant's drastic decrease in salary led to his inability to pay his bills. By January 2012, he had accrued approximately \$36,000 in delinquent debt, including the deficiencies for two repossessed motorcycles totalling approximately \$21,000 (subparagraphs 1.k and 1.l), multiple utility bills totalling approximately \$2,000 (subparagraphs 1.a, 1.b, and 1.d), and a delinquent bank loan for approximately \$3,000.¹ (subparagraph 1.f)

Of the debts that Applicant denies, he contends that three of them, totalling \$7,325, were accrued by his second ex-wife. (subparagraphs 1.g, 1.h, 1.j) The domestic court ordered Applicant's ex-wife to pay these debts in a divorce decree. She did not pay them. (Tr. 29)

¹Applicant obtained the bank loan to help his mother defray costs she incurred after his father was disabled by a heart attack in 2006. (GE 2 at 13; Tr. 41)

In 2008, Applicant was arrested and charged with writing a bad check for \$2,100. (subparagraph 1.m) This occurred after he wrote a check to purchase concrete from a wholesaler. At the time, Applicant was working as a handyman. He needed the concrete to complete a job for one of his customers. After he completed the work, his customer did not pay him, and he did not have enough money in his business account to cover the check he had used to purchase the concrete. Consistent with the court order, Applicant paid the concrete manufacturer. (Tr. 24)

In 2010, Applicant's father died. Although Applicant's mother paid the majority of the funeral expenses, he contributed \$1,800. (Tr. 39) The restitution payment from the bounced check, in addition to the money contributed to Applicant's father's funeral expenses, further impeded Applicant's ability to satisfy his delinquencies.

Unable to afford to pay his debts, Applicant, in March 2010, decided to file for Chapter 7 bankruptcy protection. His attorney did not begin working on Applicant's case until Applicant paid him the \$1,350 fee. (Tr. 17) Because of Applicant's financial difficulties, it took him two years to pay the fee. (AE C)

As of May 21, 2012, Applicant's attorney had prepared the bankruptcy petition, but had not filed it. (AE D) Schedule F reports \$29,000 of unsecured debt. The only SOR debts listed in the bankruptcy are subparagraphs 1.f, a judgment for \$3,096, and the delinquency for one of the repossessed motorcycles, totalling \$13,000 (subparagraph 1.k). In an undated letter to Applicant, his attorney advised him to "make sure all creditors are listed" (underscore in the original, AE A at 1), and to provide their account numbers and addresses. (AE A at 1) All of the delinquent SOR creditors are listed in the credit reports that Department Counsel submitted. (GE 2-4)

Policies

The adjudicative guidelines list potentially disqualifying conditions and mitigating conditions. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, they are applied together with the factors listed in the adjudicative process. 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."

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 for obtaining a favorable security decision.

Analysis

Guideline F, Financial Considerations

Under this guideline, “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” (AG ¶ 18). Applicant satisfied the court-ordered restitution listed in subparagraph 1.m, therefore, I resolve it in his favor. The debts alleged in the other SOR delinquencies remain outstanding and trigger the application of AG ¶ 19(a), “inability or unwillingness to satisfy debts,” and AG ¶ 19(c), “a history of not meeting financial obligations.”

The following mitigating conditions under AG ¶ 20 are potentially applicable:

(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; and

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant’s financial problems began when he lost his job in 2006. Although he had no period of unemployment, his income since losing the job in 2006 has been, on average, less than two-thirds of what he earned in 2006. His financial problems were further exacerbated by his divorce in 2007 and the costs he shared related to his father’s disability and subsequent death. Unable to satisfy his delinquent debt, Applicant decided to file for Chapter 7 bankruptcy and gradually saved money each month over a two-year period for the attorney’s fee. AG ¶¶ 20(b) and 20(d) apply.

Although Applicant’s attorney has drafted the bankruptcy petition, he has not filed it. Further, Applicant’s bankruptcy attorney explicitly advised Applicant to provide all of the outstanding creditors for him to include in the petition. Applicant has not yet done so. Currently, only 2 of the 12 SOR debts are listed in the petition. If a debt is not scheduled for discharge and the creditor lacks actual knowledge of the bankruptcy case, the bankruptcy court may decide not to discharge it. (11 U.S.C. § 523(a)(3) (1994 & 1997 Supp)) Under these circumstances, I cannot conclude that the problem is under control. AG ¶ 20(c) does not apply.

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 the 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.

Applicant's financial problems were caused by circumstances beyond his control. Although he is attempting to discharge his debts through the Chapter 7 bankruptcy process, he has not yet provided his attorney with all of the information that he needs in order to file the petition. Under these circumstances, it is too soon to conclude that Applicant has mitigated the security concern.

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.l:	Against Applicant
Subparagraph 1.m:	For 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.

MARC E. CURRY
Administrative Judge