



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



In the matter of:)
)
) ISCR Case No. 10-04633
)
)
Applicant for Security Clearance)

Appearances

For Government: Caroline H. Jeffreys, Esquire, Department Counsel
For Applicant: *Pro se*

05/30/2012

Decision

WHITE, David M., Administrative Judge:

Applicant incurred numerous delinquent mortgage and credit card debts since 2009. He repaid one small debt in 2010, and another in 2012 from the settlement proceeds of a personal-injury claim. More than \$58,000 in delinquent debt remains outstanding, without demonstrated capability to meaningfully address it. He failed to mitigate resulting security concerns. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

Applicant submitted a security clearance application (SF 86) on January 14, 2010. On September 30, 2011, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant, 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 for Determining Eligibility for Access to Classified Information* effective within the Department of Defense on September 1, 2006.

Applicant answered the SOR in writing (AR) on October 28, 2011, and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on November 17, 2011, and the case was assigned to me on November 22, 2011. DOHA issued a Notice of Hearing on December 19, 2011, and I convened the hearing, as rescheduled due to inclement weather, on January 23, 2012. The Government offered exhibits (GE) 1 through 6, which were admitted without objection. Applicant offered exhibit (AE) A, which was admitted without objection, and testified on his own behalf. I granted Applicant's request to leave the record open until February 21, 2012, for submission of additional evidence. DOHA received the transcript of the hearing (Tr.) on February 1, 2012. Applicant timely submitted additional evidence, which I marked AE B and admitted without objection. The record closed as scheduled. Applicant submitted additional evidence on May 8, 2012, to which Department Counsel did not object, and I admitted it into the record as AE C.

Findings of Fact

Applicant is a 51-year-old employee of a defense contractor, where he has worked for 33 years with a security clearance. He has no military service, and earned an associate's degree in 2004. He is married for the second time, and has a 14-year-old adopted daughter who lives with his former wife. He pays \$600 per month in child support. His current wife does not work outside their home.¹ In his response to the SOR, Applicant denied the allegations in SOR ¶¶ 1.b, 1.h, 1.i, and 1.j, and admitted those in SOR ¶¶ 1.b through 1.g.² Applicant's admissions, including his responses to DOHA interrogatories,³ are incorporated in the following findings.

Applicant attributes his financial problems to becoming over-extended while earning a substantial portion of his income for overtime work, then losing much or all of the overtime income due to a reduced company workload in late 2008 and 2009. During his interview with an investigator from the Office of Personnel Management (OPM) on February 22, 2010, he said that he had resumed working 60 to 70 hours per week during the preceding month, and with available overtime he planned to pay off his delinquent debts by the end of that year. During his hearing, he said that he was not working overtime, that only one of the debts he discussed with the OPM investigator had been resolved, and that he predicted he would be offered substantial overtime work in the near future.⁴

In November 2009, Applicant was involved in an automobile accident that was not his fault. He attempted to settle his resulting claims for the other driver's \$100,000 policy limits, but ultimately settled for \$30,000, of which his attorney was to retain

¹GE 1; Tr. 25, 27, 46, 50-51.

²AR.

³GE 2 and GE 3.

⁴GE 2; Tr.25-27, 29-30, 40-41.

\$10,000 and he was to receive the remaining \$20,000 within a few days following his hearing. His lack of overtime income during the last several years was unrelated to any injuries resulting from this accident. Applicant stated that his intention was to apply the proceeds from this settlement toward payments on all of his delinquent accounts, but only provided evidence of one \$750 payment to settle the debt alleged in SOR ¶ 1.a, as discussed further below. He provided no evidence of what he did with the remaining settlement funds during the four weeks that the record remained open.⁵

Applicant denied SOR ¶ 1.a, claiming this was a medical debt that arose from his automobile accident and should have been paid by the other driver. It was apparently among the damages covered by their settlement agreement, since Applicant's attorney paid the collection agency holding the account \$750 on January 26, 2012, to resolve the debt.⁶

Applicant also denied owing the \$150 gym-membership debt alleged in SOR ¶ 1.j, because he paid it on February 3, 2010. This account had been placed for collection in November 2009.⁷

Applicant admitted owing the six delinquent credit card debts, totaling \$46,285, as alleged in SOR ¶¶ 1(b) through 1(g). The creditors and amounts due are confirmed by the four credit reports in the record. Applicant testified that he had been in contact with some of these creditors and made arrangements to begin making payments, but had not made any as of the date of the hearing. His two post-hearing submissions purport to show check numbers and payment amounts toward these six accounts, but no corroborating documentation was provided and the purported amounts differ from those he said he agreed to pay.⁸

SOR ¶¶ 1.h and 1.i allege significant delinquent balances on Applicant's first and second home mortgages. He took out these two loans, for \$204,000 and \$75,000 respectively, in June and August 2006 to buy and pay for upgrades on his home. His credit report dated September 11, 2011, shows him to have been 11 months delinquent on both loans, in the amounts of \$16,183 and 7,903. During June 2011, Applicant was accepted by his lender for a trial loan modification period to address his delinquent first mortgage. However, this modification required monthly payments that were substantially higher than the original monthly payments that he could not afford to make. He decided to make a hardship withdrawal from his 401(k) retirement savings account in order to bring the loan current and resume payments on the original terms. On September 1, 2011, he withdrew \$17,811 from his 401(k) account, and as of October 1, 2011, he owed only one monthly payment on his first mortgage. He said that he made current

⁵AR; AE A; AE B; GE 3; Tr. 23, 39-40, 49-50.

⁶AR; AE B; Tr. 27-29.

⁷AR; GE2; Tr. 13, 37.

⁸GE 2 through GE 6; AE B; AE C; Tr. 29-34.

monthly payments on that loan thereafter, but provided no documentation to prove that despite saying that he would do so. He made no provision for the income tax implications of his early withdrawal of 401(k) funds, and did not demonstrate the availability of funds to pay any associated taxes and penalties. He said he is attempting to renegotiate terms for repayment of his second mortgage, but has not made any payments on that loan since it became delinquent in September 2010. As of the hearing date, the amount past due on the second mortgage was approximately \$12,200.⁹

The estimated budget figures that Applicant submitted in response to DOHA interrogatories are no longer accurate, and substantially overstate his available net income. He requested that I leave the record open so he could submit updated budget information, document his use of the \$20,000 settlement funds, submit proof that his first mortgage payments are current, and explore whether a debt consolidation program would be beneficial. Applicant was given four weeks after the hearing to document that progress in debt resolution, and present a solvent budget that would avoid ongoing and additional delinquencies. As noted above, his attorney paid the \$750 medical bill for which Applicant originally denied responsibility, but he provided no documentation to corroborate progress toward resolving the other debts of remaining concern, or to establish his current budgetary situation. He has undergone no financial counseling.¹⁰

Applicant provided no evidence concerning the quality of his professional performance, or the duties and responsibilities involved in his work. He also provided no evidence from any acquaintances, coworkers, supervisors, or family members concerning his character, or his reputation for trustworthiness, responsibility, or integrity.

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions (DCs) and mitigating conditions (MCs), which are to be 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, these guidelines are applied in conjunction with the factors listed in AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶¶ 2(a) and 2(c), the entire process is a conscientious scrutiny of applicable guidelines in the context 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.

⁹AR; GE 3; GE 4; AE B; AE C; Tr. 29-31, 34-37, 41-43, 48.

¹⁰AR; AE B; AE C; Tr. 31-34, 36, 40-57.

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 the 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, “[t]he applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision.” Section 7 of Executive Order 10865 provides: “[a]ny determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.”

A person applying for access to classified information seeks to enter 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.

Analysis

Guideline F, Financial Considerations

The security concerns relating to the guideline for financial considerations are 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 evidence raised security concerns under two Guideline F DCs, as set forth in AG ¶ 19(a) “inability or unwillingness to satisfy debts”; and AG ¶ 19(c) “a history of not meeting financial obligations.” There is no evidence of deceptive or illegal financial practices, or financial issues caused by any misconduct on Applicant’s part. His SOR-alleged financial problems began with a reduction in the amount of overtime available for him to work in late 2008, and have largely continued to date. During September

2011, he used money from a hardship withdrawal of his 401(k) retirement savings to bring his first mortgage loan current, but failed to demonstrate payments to maintain that status thereafter. He paid the \$150 delinquent debt, alleged in SOR ¶ 1.j, in February 2010; and paid the \$750 delinquent debt, alleged in SOR ¶ 1.a, in January 2012. His claims of making progress toward resolution of the remaining delinquencies listed in the SOR remain completely uncorroborated. Applicant hopes to have increased opportunities to work overtime in the future, but did not demonstrate a budget or financial plan that might restore his ability to satisfy his debts or end his history of not meeting financial obligations. The evidence establishes that all but the smallest two of the delinquent debts set forth in the SOR remain of security concern, thereby shifting the burden to Applicant to prove mitigation.

The guideline includes five conditions in AG ¶ 20 that could mitigate the security concerns arising from Applicant's financial problems:

- (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 incurred substantial mortgage and credit card debt from 2006 to present that exceeded his ability to repay starting in early 2008. These were voluntary decisions reflecting poor judgment and little foresight. His current lack of sufficient income or budgetary discipline to address these debts in a meaningful way precludes a finding that such circumstances are unlikely to recur or that his judgment has improved. The ongoing nature of more than \$58,000 in delinquent debts, and the failure to establish an achievable plan to address them, prevent a finding of significant mitigation under AG ¶ 20(a).

Little, if any, mitigation under AG ¶ 20(b) was established either. Applicant's financial problems were caused by his voluntary choices to incur expenses beyond his foreseeable ability to repay, even had more opportunity for overtime been available to him. He did not demonstrate responsible actions in response to his financial difficulties, or take meaningful action to arrange resolution of those debts.

Applicant has not undergone personal financial counseling. He resolved one \$150 delinquent debt before his hearing, and paid the delinquent \$750 medical debt out of his settlement proceeds, but demonstrated no other progress toward resolution of more than \$58,000 in remaining delinquent debt. Thus, mitigation was not established under AG ¶¶ 20(c) and (d). Applicant did not dispute that he formerly owed any of the debts alleged in the SOR, so AG ¶ 20(e) has no relevance in this case.

As the Appeal Board has ruled concerning the successful mitigation of security concerns arising from financial considerations, "[a]n applicant is not required to show that [he] has completely paid off [his] indebtedness, only that [he] has established a reasonable plan to resolve [his] debts and has 'taken significant actions to implement that plan.'"¹¹ This applicant was offered the opportunity to, but did not demonstrate a reasonable plan to resolve his ongoing delinquent debts, or the means to implement such a plan in the foreseeable future, even after receiving \$20,000 in settlement funds from an automobile accident.

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.

¹¹ISCR Case No. 06-12930 at 2 (App. Bd. Mar. 17, 2008) (quoting ISCR Case No. 04-09684 at 2-3 (App. Bd. Jul. 6, 2006)).

I considered the potentially disqualifying and mitigating conditions in light of all pertinent facts and circumstances surrounding this case. Applicant's substantial delinquent debt to numerous creditors is recent and ongoing. He voluntarily undertook all of the financial obligations that he is now unable or unwilling to meet. He is a mature and experienced individual, who is fully accountable for his situation. The potential for pressure, coercion, exploitation, or duress from his financial situation is undiminished, and he has not demonstrated a sufficient pattern of financial responsibility to show that the financial concerns are unlikely to continue or recur.

Overall, the record evidence creates substantial doubt as to Applicant's present eligibility and suitability for a security clearance. He failed to meet his burden to mitigate 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 ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b through 1.i:	Against Applicant
Subparagraph 1.j:	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.

DAVID M. WHITE
Administrative Judge