



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



In the matter of:)
)
) ISCR Case No. 10-04808
)
)
 Applicant for Security Clearance)

Appearances

For Government: David F. Hayes, Esquire, Department Counsel
For Applicant: *Pro se*

04/03/2012

Decision

MATCHINSKI, Elizabeth M., Administrative Judge:

Applicant and his spouse became financially overextended after Applicant quit his job to work as a freelance illustrator in 2008. He attempted to supplement the household income by trading in stock options. In 2009, he tapped his personal credit to support his online trading, and he ran up \$161,000 in delinquent credit card debt by March 2011. He made some payments on the debts until August 2011, and in February 2012, he started paying \$1,640 per month under a debt management plan. A longer track record of payments is needed before I can safely conclude that his financial problems are behind him. Clearance denied.

Statement of the Case

On October 19, 2011, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR)¹ to Applicant, detailing the security concerns

¹Presumably due to inadvertent mistake, Applicant’s middle name was listed incorrectly in the SOR.

under Guideline F (Financial Considerations) why it was unable to find that it is clearly consistent with the national interest to grant him a security clearance. DOHA took the action 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 on September 1, 2006.

Applicant answered the SOR allegations on November 15, 2011, and he requested a hearing. On February 7, 2012, the case was assigned to me to conduct a hearing to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. On February 14, 2012, I scheduled a hearing for March 13, 2012.

I convened the hearing as scheduled. Seven Government exhibits (GEs 1-7) and one Applicant exhibit (AE A) were admitted without objection. Applicant also testified, as reflected in a transcript (Tr.) received on March 21, 2012.

Findings of Fact

The SOR alleges under Guideline F that as of October 19, 2011, Applicant owed about \$160,924 on seven past-due credit card accounts (SOR 1.a-1.g). Applicant admitted the debts, which in a separate letter dated November 18, 2011, he attributed to “a lengthy combination of circumstances involving job changes, economic downturn, prolonged unemployment and unbudgeted emergencies.” After considering the pleadings, exhibits, and transcript, I make the following findings of fact.

Applicant is a 47-year-old high school graduate. After completing one year of college, he served in the United States military from September 1984 to June 1991, primarily as a graphic artist. (GE 1; Tr. 38-41.) He held a secret security clearance, which was granted to him around February 1988. (GE 1; Tr. 30, 42.) Near the end of his enlistment, he did some freelance illustration work for local advertising agencies. He continued to freelance after his discharge from the military until March 1992, when he started working as a desktop applications specialist/illustrator for a private company. (GE 1; Tr. 43.)

In September 2001, Applicant and his spouse married. (GE 1; Tr. 38.) In December 2001, they purchased their residence, taking out a \$247,350 mortgage. They refinanced their home loan in October 2004, taking on debt of \$300,000. In December 2005, they took out a second mortgage of \$45,000. They paid their home loans on time and satisfied their second mortgage in July 2009. As of August 2009, the principal balance of their first mortgage was \$257,661. (GE 3.) They paid off the loan in September 2009 (GEs 4, 5), when his spouse took out a mortgage in her name only. (Tr. 57.)

Applicant and his spouse have two sons, who are under age ten. (GE 1; Tr. 39.) In January 2008, Applicant resigned from his job after 17 years to care for their sons after school. (Tr. 46.) He and his spouse decided she should keep her position because she had greater opportunities for advancement and a higher salary (\$90,000 as opposed to his \$74,000 peak salary). (Tr. 24, 45, 74.) Applicant was confident that he could earn about \$50,000 annually as a freelance illustrator. He left his employment with work in hand and the promise of steady projects to come. (Tr. 24, 46-47.) At the time, he had considerable personal credit available to him, although he was generally making only minimum balance payments on his accounts. (Tr. 48.)

Applicant had an online brokerage account for trading in stock options, which he opened in 2006 or 2007 with an initial outlay of \$400.² (Tr. 53-54.) Within six months of leaving his steady job, he closed the 401(k) into which his former employer had contributed between \$4,000 and \$5,000, and he transferred the funds into his trading account. (Tr. 54.)

Due to the economic downturn, demand for Applicant's illustration services began to decline around April 2008. (Tr. 25.) He began to trade options in the U.S. stock market to supplement his limited income from freelance work, while he searched aggressively for employment that would stabilize his income. (Tr. 54-55.) For one month, Applicant held a sales position with a company selling credit-processing hardware and software to small businesses. He quit because he earned only \$250, which was not enough to cover his gasoline costs. (Tr. 25.) Some months, Applicant earned sufficient income from stock options trading to pay his expenses. On occasion, he used his personal credit to cover under-performing months. By October 2008, online trading provided his only source of income. Applicant began to tap his unused personal credit to increase his capital for trading. (Tr. 26.) He made some large deposits from his personal credit card accounts to his online brokerage account, "as a last chance to eke out an income."³ (Tr. 68.) As of early 2009, his income from trading options was no longer enough to service his increasing debt. (Tr. 27.) Applicant began falling behind in his payments to his credit card lenders. His minimum payments were not enough to cover the interest on his balances. By July 2009, he had stopped paying on the credit card accounts in the SOR. As of September 2009, he owed around \$147,381 on those

²Applicant testified that he had spent "the better part of five years devouring everything [he] could to educate [himself] about the market prior to opening a brokerage account." (Tr. 49.) He did not believe in the "buy and hold strategy" of 401(k) accounts, so he did not contribute to the 401(k) account with his previous employer. (Tr. 50-51.) He wanted control over his own retirement assets. (Tr. 51.)

³Applicant estimates that he used at least \$50,000 of his personal credit over the course of his trading, most of it toward the end. (Tr. 68.) He explained his rationale as follows:

Obviously my goal was to cover my expenses each month and my big fault is not recognizing the treadmill I was on in time. When I did recognize that, it was almost too late, the damage had been done and putting more money into the [brokerage] account, I was hopeful I could turn it around. I had confidence that I could. Unfortunately, the circumstances with the economy, and the market and the increased volatility made that a challenge for professionals with 50 years [of] experience, as well as myself.

accounts.⁴ (GE 3.) He also stopped trading around that time because he had no access to funds needed to continue trading. (Tr. 56.)

In September 2009, Applicant began working as a diplomatic security guard for his present employer. (GE 1; Tr. 27.) On September 9, 2009, he applied for the security clearance required for his employment. (GE 1; Tr. 23.) Applicant began investigating options to resolve his debt. Chief among his concerns were the federal income tax implications from any debt cancelled by his creditors. Applicant accepted no settlement offers because he and his spouse could not afford additional tax liability. (GE 2; Tr. 27-28, 70.) Applicant looked into bankruptcy, but his household income was too high to qualify. (Tr. 28, 70.) His credit card debts went unpaid while his income from his defense contractor employment went to his spouse to stabilize their household finances. (Tr. 28, 56.) Applicant's spouse had incurred significant credit card debt of her own in an effort to pay the household expenses when he was not contributing income. She refinanced their mortgage in her name in September 2009, and she consolidated her debt. (Tr. 57.) As of April 2011, the principal balance of the mortgage was around \$274,303, and her monthly payment was \$2,223. Applicant's spouse was also paying \$1,648 per month to a debt consolidation company to address about \$81,107 of her own consumer credit debt under a four or five year repayment plan. (GE 2; Tr. 63.)

As of May 2010, the accounts in the SOR had been charged off with an aggregate debt balance of \$159,599. In addition, Applicant owed \$27,410 on four other credit accounts, including two with balances of \$7,248 and \$15,078, on which he was making payments, but had been closed by the credit grantors. (GE 4.) Applicant made \$149 payments twice monthly toward the \$7,248 debt to reduce the balance to \$4,466.09 as of March 2011. He paid \$285 per month on the \$15,078 Visa card debt to reduce the balance to \$11,943.05. (GE 2.)

Sometime in 2010, Applicant began to negotiate repayment terms with the creditors listed in the SOR. It took longer than he had anticipated to arrange repayment terms because he was unable to meet the payments demanded by the creditors or collection agencies. (GE 2.) As of April 12, 2011, when Applicant responded to DOHA inquiries about his finances, he had repayment arrangements in place on the debts in SOR 1.a, 1.b, 1.d, and 1.e-1.g, as follows:

- A collection agency for the \$11,911.03 balance in SOR 1.a offered to settle for a lump sum payment of \$3,573.31 if received by March 21, 2011. On April 15, 2011, Applicant paid a first of four \$200 monthly payments under a payment plan under which the creditor agreed to accept \$120 per month starting in August 2011. (GE 2.)
- On March 21, 2011, the collection agent for the debt identified in SOR 1.b offered to accept \$11,017.20 to settle the \$20,031.28 debt, if paid in a lump sum by April

⁴The credit card account in SOR 1.g was reported as current on his September 2009 credit report (GE 3), although on subsequent credit reports (GEs 4-6), the account was listed as charged off with last activity in March 2009.

25, 2011. Applicant arranged to pay \$125 per month starting April 15, 2011. (GE 2.)

- He arranged for monthly payments of \$100 starting April 15, 2011, to the assignee collecting the \$27,048.79 balance in SOR 1.d. (GE 2.)
- On February 24, 2011, the assignee collecting the \$26,133.50 debt in SOR 1.e offered three options of repayment. The creditor agreed to settle the debt for a lump sum payment of \$15,680.10 by March 26, 2011, or for 12 monthly payments of \$1,742.23, with the initial payment due on March 26, 2011. Applicant was also given a third option of monthly payments as low as \$100 per month toward the full balance. On April 15, 2011, Applicant paid the first of three \$100 payments. After June 15, 2011, his payments increased to \$200 per month. (GE 2.)
- Applicant arranged to repay the \$26,211 balance of the account in SOR 1.f at \$100 per month (GE 2), although he presented no evidence of payments.
- Between June 29, 2010, and March 26, 2011, Applicant paid \$165.38 per month on the debt in SOR 1.g to reduce its balance to \$8,289.01.

As of April 12, 2011, Applicant estimated a monthly household net remainder of \$971 after he made the above payments totaling around \$1,224 and gave his spouse \$1,000 a month toward the mortgage. (GE 2; Tr. 80.) He was still in negotiations with the assignee collecting the \$41,476 balance owed the creditor identified in SOR 1.c. (GE 2.) About \$25,000 of the credit extended to him on that account had been lost in his options trading. (Tr. 76.) Applicant continued to make debt payments, as noted, until August 2011. (Tr. 66.)

The engine seized on Applicant's truck in late summer 2011. He borrowed \$5,000 from his father-in-law to repair the engine. Over the next few months, he neglected his past-due credit card accounts because he was repaying his father-in-law at \$1,500 per month. He paid off the family loan in December 2011. (Tr. 29, 58.)

On October 19, 2011, DOHA notified Applicant that it could not find that it was clearly consistent with the national interest to grant him access to classified information because of the seven credit card delinquencies in the SOR. On November 18, 2011, Applicant informed DOHA that while he was temporarily unable to meet all of his current financial obligations, he was confident that he could resolve his financial issues. He asked for a short time to finalize the details of a debt servicing agreement. (Answer.)

In early December 2011, Applicant's brother died suddenly while he was staying in Applicant's home. (Tr. 29, 58.) This difficult family circumstance delayed Applicant's efforts to resolve his debts. In January 2012, Applicant began to arrange for a debt repayment plan with his current debt consolidator. In early February 2012, he entered into a debt repayment program covering the seven debts in the SOR, as well as the two

closed, but current, accounts with balances now around \$3,500 and \$11,000. (Tr. 59.) On February 15, 2012, Applicant made the first of his \$1,640 monthly payments under a repayment plan to last “a couple of months past five years.” (Tr. 29, 77.) Applicant intends to satisfy his debt through the program. (Tr. 78.) There is a clause under the program where Applicant can defer payment to attend to unexpected financial emergencies. (Tr. 88.) There is also a mandatory education component under his debt management agreement. Applicant had no previous financial counseling. (Tr. 71-72.)

Applicant has \$181 in his brokerage account to keep it open. (Tr. 67.) He has no active credit card accounts. (Tr. 72.) He has no retirement assets, and has only \$100 in an account that he cannot presently access. (Tr. 73, 78.) Applicant and his spouse keep their finances separate. He covers the utility and heating expenses and gives his spouse \$600 per month toward the mortgage on his monthly net salary of \$2,905. Applicant’s spouse covers the rest of the household expenses on her net salary around \$5,582 per month. (GE 2; Tr. 77.)

A co-worker, with some supervisory authority, has worked with Applicant for more than two years. Applicant has contributed to improving and updating the company’s security-related guidelines, which are reviewed annually. Applicant has also demonstrated a strong work ethic and a high standard of professionalism, for which he has been rewarded with a work shift and hours more conducive to family time. This co-worker trusts Applicant “impeccably.” (AE A.)

Policies

The U.S. Supreme Court has recognized the substantial discretion the Executive Branch has in regulating access to information pertaining to national security, emphasizing that “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). 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 are required to 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 overall 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 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 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 that the applicant may deliberately or inadvertently fail to 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. 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 *a/so* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline F, Financial Considerations

The security concern 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.

Guideline F notes several conditions that could raise security concerns. AG ¶ 19(a), “inability or unwillingness to satisfy debts,” and AG ¶ 19(c), “a history of not meeting financial obligations,” are established. Applicant ran up significant amounts of debt on several personal credit card accounts in 2008 and 2009. He relied on credit to cover his share of household expenses when he lacked a steady income as a freelance illustrator. He also tapped at least \$50,000 of his personal credit to trade in stock options. About \$25,000 of the \$41,476 owed the lender in SOR 1.c was lost in his options trading. By July 2009, he stopped paying on seven credit card accounts when his minimum monthly payments no longer covered the interest on the debts. By March 2011, the outstanding debt on his past-due accounts exceeded \$161,000. Moreover, although he made timely payments on four credit card accounts not alleged in the SOR, the additional \$27,410 in debt is further evidence of his overreliance on consumer

credit. AG ¶ 19(e), “consistent spending beyond one’s means, which may be indicated by excessive indebtedness, significant negative cash flow, high debt-to-income ratio, and/or other financial analysis,” also applies.

Concerning potentially mitigating conditions, AG ¶ 20(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,” cannot reasonably apply. By August 2011, when he stopped making payments under the terms negotiated with six of the seven lenders in the SOR, Applicant reduced his delinquent debt balance by \$4,072. While a substantial reduction over the brief, five-month span, his overall debt is too large and was incurred too recently to implicate AG ¶ 20(a).

Mitigating condition AG ¶ 20(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,” applies in limited part. Applicant had no control over the economy and lack of demand for his freelance illustration work. However, Applicant chose to leave a long-held job that provided him a stable income of \$74,000 annually. Even if he failed to foresee the volatility of the stock market in which he traded options, it was his decision to tap his personal credit to finance his trading. In so doing, he accepted the risk of loss. While AG ¶ 20(b) applies in mitigation of his failure to make any payments toward his delinquencies from August or September 2011 until February 2012, his financial problem was largely due to his very poor financial judgment.

AG ¶ 20(d), “the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts,” is implicated because of Applicant’s payments to his creditors from March 2011 to August 2011 and his first payment of \$1,640 under the new debt consolidation plan. His debt repayment plan is a credible means to address his delinquencies under AG ¶ 20(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.” Yet, it would be premature to give full mitigating weight to AG ¶ 20(c) or AG ¶ 20(d). Despite her annual salary of \$90,000, Applicant’s spouse incurred an estimated \$81,107 in credit card debt to maintain their household when Applicant was not meeting his share of their obligations. Their household debt burden suggests a history of living beyond their means. Applicant’s spouse is making monthly payments of \$1,648 under her own debt consolidation program. Together, Applicant and his spouse had a monthly net remainder of \$971 when he was paying \$1,224 toward his credit card debts. Under his new debt consolidation agreement, Applicant has committed an additional \$416 of his income to his debt repayment, which leaves them with a net discretionary remainder of \$555. While it appears that he can afford the \$1,640 monthly payment, one payment is not enough to guarantee that his financial problems will be resolved, or that he can be counted on to handle his personal finances responsibly. Applicant is not continuing to accrue delinquent debt, but he also does not have substantial reserves in the event of any unexpected costs. He has only \$181 in his

options trading account, no 401(k) assets of his own, and “non-existent” bank savings. (Tr. 67.)

Whole-Person Concept

Under the whole-person concept, the administrative judge must consider the totality of an applicant’s conduct and all relevant circumstances in light of the nine adjudicative process factors in AG ¶ 2(a).⁵

Applicant has been a good employee for the defense contractor while under a very sizeable debt burden that he began to repay in 2011. He has a credible plan in place to address his delinquencies. The DOHA Appeal Board has held that an applicant is not required, as a matter of law, to establish resolution of every debt alleged in the SOR. An applicant need only establish a plan to resolve financial problems and take significant actions to implement the plan. See ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008). Applicant raised very serious doubts about his financial judgment by using at least \$50,000 of his personal credit to engage in options trading in a volatile market. In assessing whether Applicant has taken significant actions to implement his debt resolution plan, one payment is not sufficient to establish a meaningful track record from which I could reasonably conclude that his financial problems are likely to be resolved. At some future date, Applicant may be able to overcome the security concerns raised by his demonstrated financial irresponsibility. For the reasons noted above, I am unable to conclude that it is clearly consistent with the national interest to grant Applicant a security clearance at this time.

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
Subparagraph 1.a-1.g:	Against Applicant

⁵ The factors under AG ¶ 2(a) are as follows:

- (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;
- (9) the likelihood of continuation or recurrence.

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.

Elizabeth M. Matchinski
Administrative Judge