



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



In the matter of:)
)
) ISCR Case No. 10-05449
)
Applicant for Security Clearance)

Appearances

For Government: Alison O’Connell, Esq., Department Counsel
For Applicant: *Pro se*

May 18, 2011

Decision

LOUGHRAN, Edward W., Administrative Judge:

Applicant has not mitigated financial considerations security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On September 30, 2010, 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 (EO) 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 November 2, 2010, and requested a hearing before an administrative judge. The case was assigned to me on February 11, 2011. DOHA issued a notice of hearing on March 2, 2011, and the hearing was convened as scheduled on March 24, 2011. The Government offered exhibits (GE) 1 through 7,

which were admitted without objection. Applicant testified and submitted exhibits (AE) A through F, which were received without objection. DOHA received the hearing transcript (Tr.) on April 1, 2011.

Findings of Fact

Applicant is a 49-year-old employee of a defense contractor. He has worked for his current employer since September 2009. He is applying for a security clearance. He had a clearance in the past, but it lapsed. He has an associate's degree and certifications from a trade school. He was married from 1998 until his divorce in 2002. He married his second wife in 2002, and they divorced in 2010. He does not have any children.¹

Applicant stated his finances were sound until his 2002 divorce. His first wife was awarded a car in the divorce. The loan was still in Applicant's name, but she was supposed to make the payments. She did not maintain the payments, and the creditor obtained a judgment against Applicant. His attorney advised him to file bankruptcy. Applicant and his second wife filed Chapter 7 bankruptcy in February 2005. Included in the bankruptcy were debts accrued by his second wife before they married. The bankruptcy petition listed under Schedule D – Creditors Holding Secured Claims, a \$17,906 loan on a 2004 model car. Under Schedule E – Creditors Holding Unsecured Priority Claims, the petition listed \$471 owed to the county for taxes. Under Schedule F – Creditors Holding Unsecured Nonpriority Claims, the petition listed 25 debts totaling \$42,077. Applicant's dischargeable debts were discharged in May 2005.²

In order to be closer to his father who was ill, Applicant moved to his current geographic location and opened a repair business in 2005. His customers' income was tied to oil prices, which made Applicant's company also dependent upon oil prices. The company was profitable for a few years. When the economy slowed and oil prices rose sharply in 2008, he lost much of his business, and a number of his customers did not pay their invoices. He closed the business in late 2009. His father's health problems have been persistent, requiring regular treatment. His mother also developed medical problems requiring surgery. Applicant helped his parents with the incidental costs of their medical problems, including copayments and deductibles. Applicant also had an accident requiring medical treatment and time off work. He was unable to pay his bills, and a number of debts became delinquent.³

The SOR alleges 21 delinquent debts with balances totaling about \$30,000. The debts were accrued after Applicant's previous debts were discharged in bankruptcy. Applicant admitted owing all the debts, except the debts alleged in SOR ¶¶ 1.b (\$58), 1.n (\$1,139), 1.p (\$1,329), and 1.t (\$6,737), which he denied.

¹ Tr. at 22, 29-31, 34-37; GE 1, 2.

² Tr. at 20-25, 38; Applicant's response to SOR; GE 1, 3, 7.

³ Tr. at 23-33, 36, 39-46, 57-60; Applicant's response to SOR; GE 1, 3; AE B, D-F.

Applicant disputed owing the \$58 debt alleged in SOR ¶ 1.b. The debt was for a credit card machine from his business. He stated that he returned the machine. He did not submit any documentary evidence supporting the dispute. The debt is listed on the most recent credit report in evidence.⁴

Applicant admitted owing the credit card company alleged in SOR ¶ 1.n, but he denied owing the amount alleged in the SOR of \$1,139. He stated the amount should be at least \$500 less than alleged, because he had to place a \$500 deposit toward the card. The credit card company transferred the debt to a collection company. The debt is listed on the most recent credit report, showing the amount alleged in the SOR. Applicant did not submit any documentary evidence supporting his dispute.⁵

Applicant denied owing the \$1,329 debt to a telephone services company, as alleged in SOR ¶ 1.p. He did not submit any documentary evidence supporting his dispute. The debt is listed on the most recent credit report.⁶

SOR ¶ 1.q alleges an \$11,051 charged-off auto loan on a pick-up truck Applicant purchased in 2007. The truck has never been repossessed; Applicant still has it. He has not made a payment on the truck in more than a year. When he submitted his SF 86 in September 2009, he listed the loan as 90 days past due. The credit reports do not indicate any payments since 2009. Applicant stated that he is attempting to contact the collection company handling the debt to make payment arrangements.⁷

Applicant admitted owing the accounting company alleged in SOR ¶ 1.t, but he denied owing the \$6,737 alleged in the SOR. He stated the company overcharged his business for preparing the company's tax returns. He stated the actual amount owed should be about \$2,500. The debt is listed on the combined October 2009 credit report, as reported by Experian. It is not listed on the March 2010 Experian credit report or the July 2010 Equifax credit report. I accept Applicant's partial dispute of this debt, and I find that he owes the accounting company \$2,500, and not the \$6,737 alleged in the SOR.⁸

I find that the \$73 debt alleged in SOR ¶ 1.s is a duplicate of the \$76 debt alleged in SOR ¶ 1.a.⁹

Applicant has not made any payments toward any of the debts alleged in the SOR. He stated that he owes the Internal Revenue Service (IRS) about \$17,000 for

⁴ Tr. at 42; GE 4-6.

⁵ Tr. at 47-48; GE 4-6.

⁶ Tr. at 48-49; GE 4-6.

⁷ Tr. at 49-51; GE 1, 4-6.

⁸ Tr. at 51-53; GE 3-6.

⁹ Tr. at 51; GE 4-6.

back taxes. He has not filed his federal income tax return for tax year 2009. He stated that his tax return is complicated because of his business losses. He hired someone to prepare his returns, and he anticipated filing both his 2009 and 2010 tax returns by April 15, 2011. He has not received financial counseling. He stated he is barely making ends meet, with an estimated surplus of income over expenses of about \$80 per month. He has a plan to pay \$40 per month toward the \$445 debt alleged in SOR ¶ 1.e. The first payment was to be made in April 2011. He anticipated that he would be able to start paying his other delinquent debts in about four months.¹⁰

Applicant submitted a character letter attesting to his work ethic, responsibility, and honesty.¹¹

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 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, administrative judges apply the guidelines 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 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 the applicant or proven by Department Counsel." The applicant has the ultimate burden of persuasion to obtain a favorable security decision.

¹⁰ Tr. at 34, 45, 53-57, 62-69; GE 4. Applicant's tax issues were not alleged in the SOR and will not be used for disqualification purposes. They will be used in assessing Applicant's overall financial situation, in the application of mitigating conditions, and in analyzing the "whole person."

¹¹ AE C.

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 EO 10865 provides that adverse 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

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.

The guideline notes several conditions that could raise security concerns under AG ¶ 19. Two are potentially applicable in this case:

(a) inability or unwillingness to satisfy debts; and

(c) a history of not meeting financial obligations.

Applicant accumulated a number of delinquent debts and was unable or unwilling to pay his financial obligations. The evidence is sufficient to raise the above disqualifying conditions.

AG ¶ 20 provides conditions that could mitigate security concerns. The following 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 stated that he filed bankruptcy because his first wife did not pay the loan on the car she received in the divorce. He attributed his financial problems after the bankruptcy to his business, which failed because of high oil prices and the slowdown of the economy, his parents' medical problems, and his second divorce. Those events qualify as conditions that were outside his control. To be fully applicable, AG ¶ 20(b) also requires that the individual act responsibly under the circumstances. Applicant has been employed since 2009, but he has done nothing of significance to address his delinquent debts. He has unresolved tax issues, and he has a vehicle that he has not made a payment on in more than a year. There is insufficient evidence for a determination that Applicant acted responsibly and made a good-faith effort to repay or otherwise resolve his delinquent debts. He has not received financial counseling, and his finances are not under control. His financial issues are recent and ongoing. I am unable to determine that they are unlikely to recur. They continue to cast doubt on Applicant's current reliability, trustworthiness, and good judgment. AG ¶¶ 20(a), 20(c), and 20(d) are not applicable. AG ¶ 20(b) is partially applicable.

Applicant denied owing the debts alleged in SOR ¶¶ 1.b, 1.n, and 1.p. He did not submit any documentary evidence supporting the disputes. AG ¶ 20(e) is not applicable to those debts. He admitted owing the accounting company alleged in SOR ¶ 1.t, but he denied owing the amount alleged in the SOR of \$6,737. He stated the actual amount owed should be about \$2,500. AG ¶ 20(e) is applicable to the amount of the debt exceeding \$2,500; it is not applicable to the \$2,500 that Applicant admitted owing. AG ¶ 20(e) is applicable to the duplicate debt alleged in SOR ¶ 1.s. In sum, I find that financial concerns remain despite the presence of some mitigation.

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. I have incorporated my comments under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

I considered Applicant's favorable character evidence and the circumstances leading to his financial problems. However, at this time, his finances are not sufficiently in order to warrant a security clearance.

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. I conclude Applicant has not mitigated financial considerations security concerns.

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.r:	Against Applicant
Subparagraph 1.s:	For Applicant
Subparagraph 1.t:	Against Applicant ¹²
Subparagraphs 1.u-1.v:	Against Applicant

¹² I find against Applicant in the amount of \$2,500 only, not the \$6,737 alleged in the SOR.

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.

Edward W. Loughran
Administrative Judge