



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



In the matter of:)	
)	
[Name Redacted])	ISCR Case No. 10-07976
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Paul M. DeLaney, Esquire, Department Counsel
For Applicant: *Pro se*

06/13/2012

Decision

HOGAN, Erin C., Administrative Judge:

On February 28, 2012, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing the 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 (AG), effective within the Department of Defense for SORs issued after September 1, 2006.

On March 12, 2012, Applicant answered the SOR and requested that his case be decided on the written record. Department Counsel prepared a File of Relevant Material (FORM) on April 18, 2012. The FORM was forwarded to Applicant on April 20, 2012. Applicant received the FORM on May 9, 2012. He had 30 days to submit a response to the FORM. He timely submitted additional information which is admitted as Item 9. Department Counsel did not object to Applicant's additional information. The memorandum indicating Department Counsel's response is admitted as Item 10. On June 1, 2012, the FORM was forwarded to the hearing office and was assigned to me on that same date.

Based upon a review of the pleadings and exhibits, eligibility for access to classified information is denied.

Administrative Correction

The SOR alleges two paragraph 1.b's. I modified the second SOR ¶ 1.b to read SOR ¶ 1.bb.

Findings of Fact

In his answer to the SOR, Applicant admits all of the SOR allegations. (Item 4)

Applicant is a 57-year-old male employed by a Department of Defense contractor seeking to obtain a security clearance. He has been employed with the company since October 2004. From 1989 to 2003, he was a civil service employee. He was granted a confidential security clearance in the past. He divorced his first wife in May 2003. He married his current wife in January 2008. He has no children. (Item 5)

After Applicant completed his most recent security clearance questionnaire on December 26, 2009, a background investigation was initiated. (Item 5) His background investigation revealed that he filed for Chapter 7 bankruptcy in August 2001. His debts were discharged in January 2002. (SOR ¶ 1.a: Item 8 at 3) He currently has nine delinquent accounts, a total approximate balance of \$50,426. The delinquent accounts include a \$9,081 credit card account placed for collection in August 2005 (SOR ¶ 1.b: Item 7 at 1; Item 8 at 5); a \$1,069 account placed for collection in May 2006 (SOR ¶ 1.bb: Item 7 at 1-2; Item 8 at 13); a \$1,000 account placed for collection in January 2006 (SOR ¶ 1.c: Item 7 at 2; Item 8 at 13); and a \$1,401 account placed for collection in January 2006 (SOR ¶ 1.d: Item 8 at 9).

Additional delinquent accounts include: a \$2,466 account placed for collection in October 2005 (SOR ¶ 1.e: Item 8 at 9); a \$1,263 account placed for collection in December 2005 (SOR ¶ 1.f: Item 7 at 2); a \$1,100 account placed for collection in December 2005 (SOR ¶ 1.g: Item 7 at 3; Item 8 at 12, 14); a \$31,689 debt as a result of an automobile repossession in 2005 that was placed for collection (SOR ¶ 1.h: Item 7 at 3; Item 8 at 8); and a \$1,657 account that was placed for collection in February 2006 (SOR ¶ 1.i: Item 8 at 14).

On June 21, 2010, Applicant was interviewed by the agent conducting his background investigation. They discussed the debts alleged in SOR ¶¶ 1.b, 1.bb, 1.c, 1.d, 1.e, 1.g, 1.h, and 1.i. Applicant admitted that the debts belonged to him. He indicated the accounts became delinquent because he did not have the money to pay the debts. Applicant and his spouse encountered financial problems because they were spending more money than they were making. Applicant applied for his current job, which is located overseas, and has been earning a good income for the past several years. He intends to work overseas one more year and then move back the United States. He told the investigator he would work on settling his collection accounts when

he returns to the United States. He attempted to resolve his debts in 2004 by entering into an agreement with a debt consolidation company. He paid the company \$300 a month for eight months, but discontinued the agreement when he discovered the company was not paying his debts. (Items 6 at 9-10)

As of June 21, 2010, Applicant's net monthly income was \$6,200. His spouse's net monthly income was \$800. Their total net monthly income was \$7,000. Their total monthly expenses were \$2,350. Their monthly debt payments were \$738. These payments did not include any of the debts listed in the SOR. Their total expenditures were \$3,088. They have \$3,912 left over each month. (Item 6 at 10-11) Applicant provided an updated wage and earnings statement covering the period November 12-25, 2011. His net income for the two-week period was \$3,616.35. His approximate net monthly income increased to \$7,232. (Item 6 at 27)

Although not alleged in the SOR, Applicant resolved a 2003 tax debt which resulted from Applicant withdrawing his 401k account when he resigned from the civil service to make repairs on his home. This resulted in tax penalties. He paid \$208 a month until the debt was resolved. (Item 6 at 11, 17-20)

In his undated response to interrogatories, Applicant stated that he is making payments on the debt alleged in SOR ¶ 1.b. He seems to believe that he is not required to repay the debts alleged in SOR ¶¶ 1.bb, 1.c, 1.d, 1.e, and 1.g because they are charged off and the credit reports lists each debt as having a zero balance. He claims that the debts alleged in SOR ¶¶ 1.f and 1.i are the same debt and indicates that he is making payments on the debt. (Item 6 at 2-4)

In his response to the SOR, Applicant states that he has been working at an overseas location for five years. He would like to maintain his security clearance so that he can work overseas another five years. He indicates he has been paying towards the debt alleged in SOR ¶ 1.b. He agreed to settle the \$9,081 debt for \$3,000. He provided no proof that payments were being made towards this debt. He attached a credit report, dated January 30, 2012. The credit report indicates that all of the debts alleged in the SOR have been charged off. Applicant maintains he owes nothing on the debts because the accounts are charged off and have a zero balance. He is making payments towards the debt alleged in SOR ¶ 1.f. He provided a payment history which has been sporadic with the payments being a different amount each month. Between February 22, 2011, and March 9, 2012, he paid a total of \$486.35 towards this \$1,263 debt. (Item 4: Response to SOR at 21-22)

Although Applicant claims the debts alleged in SOR ¶ 1.f and SOR ¶ 1.i are the same debt, I find the debts are not duplicates. The account numbers do not match and the original creditor listed for the debt alleged in SOR ¶ 1.f is different from the creditor alleged in SOR ¶ 1.i. (Item 4 at 8, 11)

In his response to the FORM, Applicant requests that the bankruptcy allegation be removed because it has been 12 years since he filed and he believes it is now

irrelevant. He states that he paid a \$15,000 tax debt for tax year 2003 in October 2011. He paid two automobile loans in full and claims that he has no other outstanding bills. He hopes to retain his security clearance so he can continue to work overseas. (Item 9) The three debts which Applicant provided proof that he paid in response to the FORM are not alleged in the SOR. None of the debts alleged in the SOR have been resolved.

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 and mitigating conditions, which must be considered when 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 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 applicant or proven by Department Counsel. . . ." The applicant has the ultimate burden of persuasion for obtaining 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 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 *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 relating to the guideline 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 over-extended is at risk of having to engage in illegal acts to generate funds.

The guideline notes several disqualifying conditions that could raise security concerns. I find Financial Considerations Disqualifying Condition AG ¶19(a) (an inability or unwillingness to satisfy debts) and AG ¶19(c), (a history of not meeting financial obligations) apply to Applicant’s case. Applicant has a history of not meeting financial obligations. He filed for and received a discharge under Chapter 7 bankruptcy in January 2002. In 2006, he encountered financial problems and has numerous delinquent debts.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Several mitigating conditions potentially apply to Applicant’s case.

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) does not apply. While Applicant paid some debts that are not alleged in the SOR and provided proof that he is making some payments towards the debt alleged in SOR ¶ 1.f, the remaining delinquent accounts are unresolved. Applicant has a long history of financial problems. He has worked overseas for the last five years and has sufficient income to apply towards his delinquent accounts. He took no steps to resolve these debts. Questions remain about Applicant’s current reliability, trustworthiness, or good judgment.

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) partially applies because of Applicant’s 2002 bankruptcy was filed just prior his divorce from his first wife. However, Applicant’s

most recent financial problems resulted from Applicant and his current wife living above their means. In addition, for the past five years Applicant has had sufficient income to begin to resolve his delinquent debts, but has not taken steps to resolve the majority of his delinquent debts. Applicant has not demonstrated that he acted responsibly under the circumstances.

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) does not apply. Applicant has not received financial counseling. Although, it is likely that Applicant could have resolved a majority of the delinquent debts if he applied the \$3,912 left over each month in discretionary income to the debts, he chose not to do so. As a result his financial problems are unlikely to be resolved in the near future.

AG ¶ 20(d) (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts) does not apply. Applicant provided sufficient proof that the debt alleged in SOR ¶ 1.f is being repaid. While he claims payments are being made towards the debt alleged in SOR ¶ 1.b, he provided no additional documents corroborating this assertion. Applicant made no attempt to resolve the other delinquent debts alleged in the SOR. He has not initiated a good-faith effort to resolve his debts.

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 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 considered Applicant's employment history with a defense contractor. I considered his divorce in 2003 may have had an impact on his financial situation which resulted in his 2002 bankruptcy. However, Applicant's recent financial problems resulted from irresponsible spending.

Having earned a decent income for the past five years working at an overseas location, Applicant did not apply the extra income towards any of his delinquent debts.

The concern under financial considerations is not only about individuals who are prone to engage in illegal acts to generate funds. Another concern is that failure 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 which raises questions about an individual's reliability, trustworthiness, and ability to protect classified information. In other words, if an individual has trouble managing their finances, this can raise doubts about an individual's ability to handle and protect classified information. Applicant's history of financial problems raises doubts about his ability to handle and protect classified information. Mindful of my duty to resolve cases where there is doubt in favor of national security, I find Applicant failed to mitigate the concerns raised under financial considerations.

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.e:	Against Applicant
Subparagraph 1.f:	For Applicant
Subparagraphs 1.g – 1.i:	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

ERIN C. HOGAN
Administrative Judge