



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



In the matter of:)
)
-----) ISCR Case No. 10-08154
)
)
Applicant for Security Clearance)

Appearances

For Government:
Jeff Nagel, Esq., Department Counsel

For Applicant:
Barry M. Sax, Esquire

March 29, 2012

DECISION

ROSS, Wilford H., Administrative Judge:

Applicant submitted his Electronic Questionnaire for Investigations Processing (e-QIP) on June 17, 2010. (Government Exhibit 1.) On April 27, 2011, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) 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.

Applicant answered the SOR in writing on June 16, 2011, and requested a hearing before an administrative judge (Answer). Department Counsel was prepared to proceed on July 14, 2011. This case was assigned to me on July 19, 2011. DOHA issued notices of hearing on July 27, 2011, and August 3, 2011. I convened the hearing

as scheduled on September 9, 2011. The Government offered Government Exhibits 1 through 7, which were received without objection. Applicant testified on his own behalf, and submitted Applicant Exhibits A through K, which were also received without objection. Applicant asked that the record remain open for the receipt of additional documents. Applicant submitted Applicant Exhibit L, which was admitted without objection. DOHA received the transcript (Tr.) of the hearing on September 21, 2011. The record closed on October 3, 2011. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

Findings of Fact

Applicant is 52 and married. He has a Master's degree in Business Administration. He is employed by a defense contractor in the financial management area and seeks to retain a security clearance in connection with his employment.

Guideline F, Financial Considerations

The Government alleges that Applicant is ineligible for clearance because he is financially overextended and, therefore, at risk of having to engage in illegal acts to generate funds. Applicant admitted paragraphs 1.b, 1.d, and 1.g of the SOR. Those admissions are findings of fact. Paragraphs 1.a, 1.c, 1.e, and 1.f were denied. He also submitted additional information to support his request for a security clearance.

Applicant's financial difficulties began in approximately 2006. At that time, during his honeymoon, he suffered a hand injury that required surgery. Applicant went to an out of network provider for the surgery, had to pay \$10,000 out of pocket, and was not reimbursed by his insurance provider. (SOR 1.f.) (Tr. 33-34.) In addition, in 2008, Applicant's wife lost her job and was unemployed for a period of time. She became self-employed in the 2010 time frame. (Tr. 102.)

The SOR sets out five delinquent consumer debts, which total \$66,223. (SOR 1.b, 1.c, 1.d, 1.f, and 1.g.) The SOR also alleges a delinquent real estate mortgage and a delinquent home equity line of credit. (SOR 1.a, and 1.e.) The existence and status of these debts is supported by credit reports concerning Applicant dated June 25, 2010; April 8, 2011; July 14, 2011; and two dated September 9, 2011. (Government Exhibits 4, 5, 6, and 7; Applicant Exhibit I.) The current status of these debts is as follows:

1.a. Applicant denied that he owed \$172,000 for a home equity line of credit that was delinquent. The actual delinquency on this account is approximately \$10,000 to \$15,000. He testified that negotiations were taking place with the lender to reduce the amount owed, with Applicant making a lump-sum payment to begin the process. (Tr. 36-39, 72-78, 113-115.) The day after the hearing, September 10, 2011, Applicant received a letter from the creditor stating, "Our records indicate that above account has been charged off, please contact my office to arrange **reduced payment arrangements or a settlement for less than the balance.**" There is a hand-written notation indicating that an offer may be submitted by September 27, 2011. (Applicant Exhibit L at PH G1.)

(Emphasis in original.) Applicant also submitted documentation showing that he had made two \$300 payments on this account between January and September 2011. (Applicant Exhibit L at PH G2.) No further information was provided. This debt is unresolved.

1.b. Applicant admitted that he owed \$13,000 for a delinquency on an automobile that was repossessed. (Applicant Exhibit D.) He stated that there were negotiations with the successor creditor on this account. (Tr. 30-32, 80-81, 89-91, 115-117.) Applicant Exhibit L at PH E is a letter dated September 21, 2011, from the current collection agent indicating that Applicant had agreed to pay \$9,880.04 on this account in five payments, three monthly payments of \$500, and two of \$4,190.02. Applicant's counsel represented that the first payment had been made, but no receipt was provided. (Applicant Exhibit L at 3.) No further information was provided. Given the lack of a history of Applicant making consistent payments over a period of time, and based on the state of the record I cannot find that this debt is resolved.

1.c. Applicant denied that he owed \$2,980 for a delinquent credit card account. He submitted documentation from the credit card holder showing that he had made four payments totalling \$940 from May to August 2011. According to Applicant, this was in accordance with an agreement with the credit card owner. His balance had been reduced to \$2,040. (Tr. 39-40, 117-118; Applicant Exhibit I at 19.) This debt is being resolved.

1.d. Applicant admitted that he owed \$2,243 for a delinquent credit card account. He testified that a \$100 payment had recently been made on that account, and that he anticipated making further payments. (Tr. 40, 91, 120.) No documentation was submitted showing the current status of this account, or that any payments had been made. This debt is unresolved.

1.e. Applicant denied that he owed \$611,000 for a delinquent mortgage. According to Applicant, he had reached an agreement with the mortgage company to modify his mortgage. (Tr. 40-42, 65-72, 94-97.) In a letter dated March 29, 2011, and attached to his Answer, the mortgage company required Applicant to make three payments of a specified amount on May 1, June 1, and July 1, 2011, as part of a Trial Period Plan. He actually made these payments on May 20, June 29, and August 1, 2011. (Applicant Exhibit L at PH F.) According to Applicant, the mortgage company is deciding whether his late payment for July 2011 abrogates the modification agreement. (Tr. 120-123.) Applicant supplied no additional information as to that issue. The two most current credit reports indicate, "Paying under a partial payment agreement," and "Current, was past due 180 days or more." (Government Exhibit 7; Applicant Exhibit I.) Considering all of the available evidence, I find that this debt is being resolved.

1.f. Applicant denied that he owed \$21,000 for a delinquent credit card account. He submitted evidence that he had reached a payment arrangement with this creditor in March 2011 and had been fulfilling it with regular monthly payments. (Tr. 42, 123-126; Applicant Exhibit L at PH A.) This debt is being resolved.

1.g. Applicant admitted that he owed \$27,000 for a delinquent credit card account. He states that there have been continuing negotiations with the successor creditor to reach an agreement on a payment plan with a lump-sum payment followed by monthly payments on a reduced balance. (Tr. 42-43, 101-102, 108-109, 126-127.) In a letter to Applicant dated August 30, 2011, the successor creditor states, "Do you realize you have not kept your word with us? You have failed to keep your promise to pay \$8400.00 on 08-22-11, nor have you offered an explanation or alternate arrangement." There is a hand-written notation stating, "Contacted credit service dept to discuss negotiation of reduced payment amount over extended monthly period. Anticipated date Sep 30, 2011." (Applicant Exhibit L at PH H.) No additional information was provided. This debt is not resolved.

Applicant owed \$66,223 in delinquent consumer debt: \$23,980 of that debt has been paid or resolved; and \$42,243 remains unresolved. In addition, it appears that the delinquency concerning his first mortgage had been resolved. However, the delinquency concerning his home equity line of credit is not resolved.

Applicant submitted a budget after the hearing, which appears to show that he can make all of his payments and have a reserve of approximately \$400 per month. However, this budget indicates payments on debts that have not yet been resolved, and does not show how Applicant can make the two \$4,190.02 payments on his auto delinquency. (Applicant Exhibit L at PH I.)

Mitigation

Applicant submitted letters from two co-workers, and two friends from outside work. He is described as someone who "always demonstrated strong moral character and sound judgment," is "a very honest and forthright individual," "a person with a strong moral fiber," and "a trustworthy asset." (Applicant Exhibits E, F, G, and H.)

Policies

Security clearance decisions are not made in a vacuum. 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 as appropriate 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 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. In addition, the administrative judge may also rely on his or her own common sense, as well as knowledge of the law, human nature, and the ways of the world, in making a reasoned decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that, “Any 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. 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, “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, and has the ultimate burden of persuasion as to obtaining a favorable clearance 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. Security clearance decisions include, by necessity, consideration of the possible risk that 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.

Finally, as emphasized in Section 7 of Executive Order 10865, “Any 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.” 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(a), an “inability or unwillingness to satisfy debts” is potentially disqualifying. Similarly under AG ¶ 19(c), “a history of not meeting financial obligations” may raise security concerns. Applicant, by his own admission, and supported by the documentary evidence, had considerable delinquent debts, a mortgage, and a home equity line of credit, on which he could not make regular payments. The evidence is sufficient to raise these potentially disqualifying conditions.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Under AG ¶ 20(a), disqualifying conditions may be mitigated where “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.” In addition, AG ¶ 20(b) states that disqualifying conditions may be mitigated where “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.”

The evidence shows that neither of the above mitigating conditions apply to Applicant. As discussed above, his delinquent debts are several years old, and only recently has he even begun to negotiate settlements or make any payments. His finger surgery, and his wife’s layoff, may have had an impact on his ability to pay his debts, but he presented insufficient evidence to show that he has behaved responsibly under the circumstances. It is Applicant’s burden to show that his financial situation has changed for the better. He has not met that burden.

Applicant has not received financial counseling. There is also insufficient evidence to show that his current financial situation is stable. Accordingly, I cannot find that “there are clear indications that the problem is being resolved or is under control,” as required by AG ¶ 20(c).

Applicant has made, and is fulfilling, payment arrangements with two creditors. He appears to have successfully modified his mortgage. However, he does not have a long track record of fulfilling his promises, and the evidence is insufficient for me to make a finding that he will carry through with making his planned payments. Based on the particular facts of this case, at this time, I cannot find that he has “initiated a good-faith effort to repay overdue creditors or otherwise resolve debts,” as required by AG ¶ 20(d).

Applicant does not dispute the fact that he owes these debts. Accordingly, AG ¶ 20(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,” does not apply.

This is a close case. Applicant has begun to get his financial house in order, and I have considered that fact in making my decision. Given the extent of his debts, and the

fact that he had not yet made arrangements for all of them by the time the record closed, he has not met his burden. Paragraph 1 is found against Applicant.

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. 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. 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.

I considered the potentially disqualifying and mitigating conditions in light of all the relevant facts and circumstances surrounding this case. Applicant's financial difficulties were not a result of poor judgment on his part. Under AG ¶ 2(a)(2), I have considered the facts of Applicant's debt history. As stated above, he has resolved approximately half of the past due indebtedness. In addition, he successfully modified the mortgage on his residence, resolving that particular debt. However, he has been extremely slow to resolve the debts, and several are still unresolved. Based on the record, I cannot find that there have been permanent behavioral changes under AG ¶ 2(a)(6). Accordingly, I find that there is the potential for pressure, coercion, exploitation, or duress (AG ¶ 2(a)(8)); and that there is a likelihood of recurrence (AG ¶ 2(a)(9)).

If he resolves all of his delinquent debts, and shows the ability over a longer period of time to make his planned payments, he may be eligible for a clearance in the future. He is not eligible now.

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated the security concerns arising from his financial situation. Accordingly, the evidence supports denying his request for a security clearance.

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 :	Against Applicant
Subparagraph 1.b :	Against Applicant
Subparagraph 1.c :	For Applicant
Subparagraph 1.d :	Against Applicant
Subparagraph 1.e :	For Applicant
Subparagraph 1.f :	For Applicant
Subparagraph 1.g :	Against Applicant

Conclusion

In light of all of the circumstances presented by the record, 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.

WILFORD H. ROSS
Administrative Judge