



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



In the matter of:)
)
) ISCR Case No. 10-09907
)
Applicant for Security Clearance)

Appearances

For Government: Robert J. Kilmartin, Esquire, Department Counsel
For Applicant: *Pro se*

January 27, 2012

Decision

ANTHONY, Joan Caton, Administrative Judge:

After a thorough review of the pleadings, testimony, and exhibits, I conclude that Applicant failed to rebut or mitigate the Government’s security concerns under Guideline F, Financial Considerations. His eligibility for a security clearance is denied.

Statement of the Case

Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) on June 1, 2010. On July 7, 2011, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, Financial Considerations. DOHA acted 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’s notarized answer to the SOR was received by DOHA on October 12, 2011. He elected to have a hearing before an administrative judge. The case was assigned to me on November 29, 2011. I convened a hearing on January 6, 2012, to

consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. The Government called no witnesses and introduced seven exhibits, which were marked Ex. 1 through 7 and admitted to the record without objection. Applicant testified, called no witnesses, and introduced four exhibits, which were identified and marked as Applicant's Ex. A through D and admitted to the record without objection. DOHA received the transcript (Tr.) of the hearing on January 10, 2012.

Findings of Fact

The SOR contains four allegations of financial conduct that raise security concerns under AG ¶ 18, Financial Considerations (SOR ¶¶ 1.a. through 1.d.) In his Answer to the SOR, Applicant admitted all four allegations. Applicant's admissions are accepted as findings of fact. (Answer to SOR.)

Applicant, who possesses a Bachelor of Science degree in computer science and a master's degree in business management and practical theology, is 57 years old and the father of two adult children. In 1980, he enlisted in the U.S. military, where he served on active duty for 20 years. In March 2000, he received an honorable discharge. (Ex. 1; Tr. 18-19.)

Applicant was married for the first time in 1976. He and his first wife divorced in 1984. In 1985 or 1986, Applicant experienced financial problems related to the debts from his first marriage, and he filed for bankruptcy. (Ex. 1; Ex.2; Tr. 43-44.)

Applicant married his second wife in 1987. In 1990, Applicant's home was foreclosed upon when he was unable to make his mortgage payments. The property was sold, and Applicant's debt was satisfied. (Ex. 2; Tr. 44.)

In 1980 and in 1995, during his military service, Applicant was awarded security clearances. In 2008, Applicant took a position as a senior cost schedule analyst with a government contractor. His current employer is now sponsoring him for a security clearance. (Ex. 1; Tr. 18-19, 43.)

The SOR alleges four delinquent debts totaling approximately \$78,777. The alleged debts and their amounts are: SOR ¶ 1.a. (\$33,778); SOR ¶ 1.b. (\$1,863); SOR ¶ 1.c. (\$12,259); and SOR ¶ 1.d. (\$30,877).

When Applicant was interviewed by an investigator from the U.S. Office of Personnel Management (OPM) about his financial situation in June 2010, he told the investigator that he did not recognize a delinquent credit account debt of \$1,863, which had appeared on his June 2010 credit bureau report. He told the investigator that he would try to find out more about the debt, and if it was his, he would pay it. This debt is alleged on the SOR at ¶ 1.b. Before the hearing, Applicant contacted the creditor and satisfied the debt. Applicant provided evidence to corroborate that the debt had been satisfied. (Ex. 2; Ex. 5; Ex. 6; Tr. 44.)

In 2008, Applicant's daughter established a beauty salon business. Applicant told the OPM investigator that to help his daughter finance the business, he acquired a credit card, which he allowed her to use for her business expenses. When the business failed, Applicant's daughter was unable to pay the debt accumulated on the account. Applicant made a few payments on the credit card account, but the account was referred for collection. This debt is alleged in the SOR at ¶ 1.c. In his personal security interview, Applicant estimated that his last payment on the account occurred in 2009. However, he provided a letter from the creditor, dated October 31, 2011, corroborating that the debt had been settled in full. (Ex. 2; Ex. 7; Tr. 45.)

Applicant provided credible evidence that the debts alleged at SOR ¶¶ 1.b. and 1.c. had been satisfied in full. At hearing, the Government conceded that only the debts alleged at SOR ¶¶ 1.a. and 1.d. remained of security significance. (Ex. 6; Ex. 7; Tr. 44-45.)

Applicant told the OPM investigator that he opened the credit card account identified at SOR ¶ 1.a. in 1999. He used the card to pay expenses associated with his daughter's beauty salon business. He acknowledged the debt as his, and he told the investigator that he planned to satisfy the debt in full in the future. He provided a letter he wrote to the creditor, dated September 26, 2011, reciting his several attempts to contact the creditor's agents and expressing his willingness to resolve the account. (Ex. 2; Ex. A; Tr. 40-41.)

Applicant also acknowledged responsibility for the delinquent debt alleged at SOR ¶ 1.d. The debt arose when he and his wife purchased a time-share property in 2005 or 2006. Applicant stated that he stopped making payments on the property in 2008. (Tr. 46-46.)

The debts alleged at SOR ¶¶ 1.a. and 1.d. total approximately \$64,655. Applicant stated that he does not have payment plans in place for the two debts, but he plans to pay them at some unspecified time in the future by using proceeds from his 401k plan. Applicant claimed he was ill-advised by a financial counseling service he retained, and he dismissed the counselors who were assisting him. (Tr.35, 48-49.)

In April 2011, Applicant provided a personal financial statement. The statement showed his gross salary was \$4,351 per month. He reported that his wife's net monthly salary was \$936. He also reported that he received \$1,500 each month in military retirement pay. (Ex. 3.)

On his personal financial statement, Applicant also reported \$1,205 in monthly living expenses and \$5,048 in monthly debt payments.¹ His monthly net remainder was \$534. (Ex. 3.)

¹ Applicant reported a monthly first mortgage payment of \$3,692 and a monthly second mortgage payment of \$464. He also reported a monthly automobile payment of \$562, a planned payment of \$150 each month to the creditor identified at SOR ¶1.a., and a payment of \$180 each month on a credit union loan. (Ex. 3.)

At his hearing, Applicant stated that his financial situation had changed. He was no longer employed. He reported that his monthly income consisted of a \$900 stipend from the church where he served as a part-time pastor and an estimated \$1,600 in military retirement pay. He stated that his wife's salary was \$2,000 a month.² (Tr. 51-53.)

Applicant reported the following monthly living expenses: first mortgage payment, \$3,200; second mortgage payment, \$464;³ electricity, \$174; car payment, \$562;⁴ automobile insurance, \$110; and food, \$150. Applicant stated that he had financial credit counseling when he was serving in the military. (Ex. 3; Tr. 52-58.)

Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security, and it has emphasized that "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information." *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant Applicant's eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.

When evaluating an applicant's suitability for a security clearance, an administrative judge must consider and apply the revised adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are 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, the administrative judge applies these 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.

² It is not clear from the record whether the \$2,000 figure for Applicant's wife's salary represents her gross or her net monthly income.

³ Applicant stated that he lacked sufficient income to pay his second mortgage in December 2011. (Tr. 60.)

⁴ Applicant stated that he had only one car payment remaining until his automobile debt was paid in full. (Tr. 55.)

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 in seeking 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 the applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about 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 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 accumulated substantial delinquent debt and was unable or unwilling to pay his creditors. This 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. Several Guideline F mitigating conditions could apply to the security concerns raised by Applicant's financial delinquencies. Unresolved financial delinquency might be mitigated if it "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." (AG ¶ 20(a)) Additionally, unresolved financial delinquency might be mitigated if "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." (AG ¶ 20(b)) Still other mitigating circumstances that might be applicable include evidence that "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" (AG ¶ 20(c)) or "the individual has initiated a good-faith effort to repay overdue creditors or otherwise resolve debts." (AG ¶ 20(d)) Finally, if "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 options to resolve the issue," then AG ¶ 20(e) might apply.

Applicant merits credit for resolving two of the delinquent debts in the SOR. While he admitted his financial delinquencies, it was not clear that he understood his financial problems or how to resolve them. He attributed some of his financial difficulties to the failure of his daughter's beauty salon business in 2008 and to what he considered to be bad advice from a financial counseling service he retained. However, Applicant failed to demonstrate that he acted responsibly in the face of the financial setbacks he described. He stated that he plans to resolve his two large financial delinquencies at some unspecified future date. In determining an individual's security worthiness, the Government cannot rely on the possibility that an applicant might resolve his or her outstanding debts at some future date. ISCR Case No. 98-0614 at 5 (App. Bd. Jul. 12, 1999).

Applicant admitted a history of financial difficulties which began in at least 1986, when he declared bankruptcy. The two unresolved delinquent debts in the SOR total approximately \$64,655. Both delinquencies date to at least 2008. He currently lacks sufficient income to pay his monthly living expenses. His financial problems are ongoing and recent. He has no plan in place to respond to future financial contingencies. I conclude that, while AG ¶ 20(d) applies in part to Applicant's case, none of the remaining Financial Consideration mitigating conditions is applicable to the facts of Applicant's case.

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. Applicant is a well-educated and mature person of 57 years. His current financial problems began at least four years ago, before his recent unemployment. To his credit, he resolved two of the four debts alleged in the SOR. However, he remains financially overextended and appears to lack sufficient funds to meet his monthly expenses and pay his debts. Applicant's current unstable financial situation raises concerns about his judgment and potential financial vulnerability.

Overall, the record evidence leaves me with questions and doubts about Applicant's judgment and his eligibility and suitability for a security clearance. For these reasons, I conclude Applicant failed to mitigate the security concerns arising from his financial delinquencies.

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.: Against Applicant

 Subparagraphs 1.b. - 1.c.: For Applicant

 Subparagraph 1.d.: Against 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.

Joan Caton Anthony
Administrative Judge