



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



In the matter of:)
)
) ISCR Case No. 10-09970
)
Applicant for Security Clearance)

Appearances

For Government: Caroline H. Jeffreys, Esq., Department Counsel
For Applicant: *Pro se*

03/23/2012

Decision

DUFFY, James F., Administrative Judge:

Applicant has not mitigated the security concerns under Guideline F, Financial Considerations. Eligibility for access to classified information is denied.

Statement of the Case

On August 18, 2011, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F. DOHA acted 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 on September 1, 2006.

On September 20, 2011, Applicant answered the SOR and requested a hearing. The case was assigned to me on January 10, 2012. DOHA issued a notice of hearing on January 26, 2012, and the hearing was convened as scheduled on February 15, 2012. The Government offered exhibits (GE) 1 through 4 that were entered into the record without objection. Applicant testified and submitted exhibits (AE) A and B that

were entered into the record without objection. The record was left open until February 22, 2012, for Applicant to submit additional matters. He timely submitted ten documents that were marked as AE C through L and entered into the record without objection. Department Counsel forwarding memorandum was marked as hearing exhibit (HE) 1. DOHA received the hearing transcript (Tr.) on March 6, 2012.

Findings of Fact

Applicant is a 58-year-old computer customer service representative. Since January 2010, a defense contractor has sponsored him for a security clearance. He obtained a bachelor's degree from a major university in 1975 and has some credits towards a master's degree. He is married and has two children, ages 26 and 29, and four step-children ranging in ages from 41 to 44. This is his second marriage. He married his first wife in 1977, and they divorced in 1989. He married his current wife in 2001. In the past, he held a security clearance without incident.¹

The SOR alleged that Applicant had a property foreclosed in 2010 and that he had 11 delinquent debts totaling about \$389,554. In his Answer to the SOR, Applicant admitted each of the allegations (SOR ¶¶ 1.a through 1.l) with comments. His admissions are incorporated as findings of fact.²

Applicant attributes his financial difficulties to two failed businesses. In 2003, he was working as a computer technician for a company in State A. He left that job and moved to State B with the intention of opening an ice cream and soda shop in a beach community. The shop opened in July 2004. It operated during the spring, summer, and fall months. Applicant stated initially that this business did "very well" from 2004 to 2006, but later indicated that it basically broke even. In 2004, he and his wife built a new house on waterfront property. The house was initially appraised at \$319,000. In 2007, he decided to open another ice cream and soda shop in a beach community in State C. He thought that, by opening this second shop, his business would get more visibility and generate franchising opportunities. To open this second business, he needed cash and had the house appraised again. At that point, it was appraised at \$465,000. In early 2007, he took out a \$227,000 equity loan on the house for use in opening the second shop. The second shop opened in April 2007 and was a year-round operation.³

Due to a downturn in the economy, the amount of business traffic at the first shop declined soon after he opened the second shop. From 2008 to 2010, the gross income in the first shop was about half of what was earned in the earlier years. Additionally, the business he expected at the second shop never materialized. He used personal funds and retirement saving to keep the businesses open. In the fall of 2009, he indicated that his financial situation fell apart. The interest rates on the credit cards used to finance the

¹ Tr. at 4-6; GE 1; AE C.

² Applicant's Answer to the SOR; GE 2-4.

³ Tr. at 18-30, 32-39, 54-56; GE 1; Applicant's Answer to the SOR.

businesses jumped from about 9.9% to 24.9% or higher. At that point, he could not make the payments on the credit cards. Both businesses eventually failed. The second shop closed in September 2009, while the first closed in November 2010. In November 2011, he sold the building in which first shop was located for \$125,000 and, with the proceeds from that sale, paid the state tax lien (SOR ¶ 1.c) and a bank loan of about \$78,000 that was not alleged on the SOR.⁴

The original mortgage on the house was \$204,000. It was a fixed mortgage with an interest rate of about 8% and a monthly payment of \$1,200. While Applicant and his wife owned the house, they paid the mortgage down to about \$178,000. As their financial situation worsened, they tried to refinance the home, but were unsuccessful. Between August and October 2009, they stopped making the mortgage payments and vacated the property. In July 2010, the house was foreclosed (SOR ¶ 1.a) and sold for \$174,000. Applicant stated the foreclosure sale satisfied the original mortgage. Since the foreclosure sale, he has not received any delinquency notices from the creditor holding the original mortgage. His credit report dated February 3, 2012, indicated the original mortgage had a zero balance. The original mortgage is resolved.⁵

Applicant's wife is a nurse. She had a job at which she earned about \$100,000 per year and her income helped support the businesses. In August 2010, she lost her job due to a downturn in the economy. Since then, she has worked sporadically as a consultant for health insurance carriers performing medical reviews. At present, her income fluctuates. Some months she might earn \$4,000, while other months she earns little.⁶

Applicant's medical condition also negatively impacted his financial situation. In December 2010, he was diagnosed with Stage IV Colon Cancer that spread to other organs. He is currently undergoing treatments. In October 2011, he was able to obtain healthcare insurance. His monthly healthcare insurance payments are \$388 with a \$5,000 deductible. None of the alleged debts are medical bills.⁷

The tax lien in SOR ¶ 1.b for \$49,853 was filed in May 2011. Applicant indicated that this lien was for tax years 2005 through 2008. He stated he was "not the world's best record keeper" and fell behind on his taxes. He also indicated that he was late in filing his federal and state tax returns for 2006 through 2008. He filed those returns about two years after they were due. He also indicated that his wife did not pay her self-employment tax. They incorrectly thought losses from the businesses would offset the self-employment taxes. In 2005 or 2006, they made monthly payments of about \$300 towards those delinquent taxes. The Internal Revenue Service (IRS) informed them that they had to increase the amount of their payments, but they were unable to do so. Since

⁴ Tr. at 18-30, 32-34, 55-57; AE A, B, J, L; Applicant's Answer to the SOR.

⁵ Tr. at 20, 25-26, 32-36, 41-45; GE 1, 2; AE A; Applicant's Answer to the SOR.

⁶ Tr. at 26, 39-41; AE A. L.

⁷ Tr. at 23-24, 26-27, 63-67; AE A; Applicant's Answer to the SOR.

2006, Applicant indicated they have made minimal payments towards this debt. At present, they are current in the filing of their tax returns. In August 2011, they hired a law firm to assist in resolving this tax issue and subsequently switched to another law firm. They are seeking to submit an offer in compromise for the delinquent federal taxes. This lien is unresolved.⁸

The state tax lien in SOR ¶ 1.c for \$8,976 was filed in February 2010. As noted above, this tax lien was paid when the first shop in State B was sold. In his post-hearing submission, Applicant provided a document from State B indicating the tax lien was released in November 2011. This debt is resolved.⁹

The charged-off home equity line of credit in SOR ¶ 1.h for \$227,000 was the loan that Applicant obtained to open the second shop in State C. The date of last activity on this debt was September 2009. Applicant provided no proof of payments towards this debt. This debt is unresolved.¹⁰

The charged-off debt in SOR ¶ 1.i was a credit card account. The date of last activity on this debt was November 2009. Applicant testified that he has been making monthly payments of \$250 for over a year to a law firm for this debt. In his post-hearing submission, he provided a letter from the law firm indicating they agreed to a payment arrangement. However, he provided no proof that he has been making payments under that arrangement. This debt is unresolved.¹¹

The remaining seven delinquent debts in SOR ¶¶ 1.d, 1.e, 1.f, 1.g, 1.j, 1.k, and 1.l totaling \$78,892 are credit card accounts that were used for the businesses. The dates of last activity on these debts range from March 2009 to September 2010. Applicant provided no proof of payments towards these debts. They remain unresolved.¹²

At the hearing, Applicant was open and honest about his financial problems. He has been working with an accountant and lawyer on his delinquent debts. In January 2012, Applicant contacted a credit repair company to assist in settling his delinquent debts. He stated that he is current on his monthly bills. In his post-hearing submission, he submitted a list of monthly bills and expenses that shows he lives modestly. He did not provide a document that reflected his and his wife's monthly income. He currently has two cars. He bought one car for \$16,000 in 2009. The other car is a 2006. His total monthly car payments are \$648. The list of monthly bills and expenses reflect that he is

⁸ Tr. at 45-49, 70-71; GE 1, 2; AE B, H, I; Applicant's Answer to the SOR. From AE I, it is not clear whether the firm representing Applicant is a law firm.

⁹ Tr. at 49-50, 55-56; GE 2; AE B, E.

¹⁰ Tr. at 28-29, 54-58; GE 3

¹¹ Tr. at 58-60; GE 2, AE B, F; Applicant's Answer to the SOR.

¹² Tr. at 50-51; GE 2; Applicant's Answer to the SOR.

making monthly payments towards one of the alleged debts (SOR ¶ 1.i) in the amount of \$200 per month.¹³

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 that 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 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 about 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

¹³ Tr. at 27-28, 65-72; AE B, H-L.

applicant concerned.” See also Executive Order 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 as follows:

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 delinquent debts that he was unable or unwilling to satisfy for a number of years. This evidence is sufficient to raise the above disqualifying conditions.

Several Financial Considerations mitigating conditions under AG ¶ 20 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; and

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant's debts are recent, ongoing, and significant. Based on the evidence presented, I cannot find they are unlikely to recur or that they do not cast doubt on his current reliability, trustworthiness, and good judgment. AG ¶ 20(a) is not applicable.

An economic downturn negatively impacted Applicant's businesses. His delinquent federal taxes, however, predated that economic downtown. Applicant's medical problems and his wife's loss of employment negatively impact their current financial situation, but those conditions predated most of the delinquent debts. At present, he has not implemented a realistic plan for resolving his financial problems. AG ¶ 20(b) partially applies.

Applicant has consulted with an accountant, a law firm, and a debt repair company. He paid the state tax lien in SOR ¶ 1.c. He indicated that he is making payments towards the debt in SOR. ¶ 1.i, but provided no proof of those payments. The remaining debts are unresolved. He has failed to show that these remaining debts are being resolved or are under control. AG ¶ 20(c) is partially applicable. AG ¶ 20(d) applies to SOR ¶ 1.b. Despite some mitigation, Applicant's financial problems remain a security concern.

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 relevant 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. Specifically, I considered Applicant's employment record and his efforts to resolve his

financial problems. He was open and honest about his financial problems. His medical problems and his wife's loss of employment have negatively impacted their ability to resolve their financial problems. Nevertheless, I conclude that Applicant has not mitigated the Financial Considerations security concerns. Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance.

Formal Findings

Formal findings 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
Subparagraph 1.b:	For Applicant
Subparagraphs 1.c – 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 the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

James F. Duffy
Administrative Judge