



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



In the matter of:)	
)	
)	ISCR Case No. 10-10096
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: William T. O’Neil, Esquire, Department Counsel
For Applicant: *Pro se*

August 11, 2011

Decision

HOGAN, Erin C., Administrative Judge:

Applicant submitted a security clearance questionnaire on June 8, 2010. On April 11, 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) promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

On May 10, 2011, 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 June 20, 2011. The FORM was forwarded to Applicant on June 22, 2011. Applicant received the FORM on July 18, 2011. He had 30 days to submit a response to the FORM. He timely submitted a 4-page response to the FORM which was admitted as Item 9. On August 2, 2011, Department Counsel submitted a reply to Applicant’s response to the FORM indicating that they had no objection which is admitted as Item

10. On August 3, 2011, the FORM was forwarded to the hearing office and was assigned to me on that same date.

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

Findings of Fact

In his answer to the SOR, Applicant admits to SOR allegations ¶¶ 1.a -1.f, 1.h, 1.j, and 1.l – 1.p. He denies SOR allegations ¶¶ 1.g, 1.i, 1.k, 1.q, and 1.r. (Item 4)

Applicant is a 45-year-old employee of a Department of Defense contractor seeking a security clearance. He has been employed with the company since May 2010. He is a high school graduate. From December 1985 to January 1990, he served on active duty in the United States Marine Corps. From July 2008 to September 2009, he worked for a federal contractor in Iraq. He is divorced and has a 16-year-old daughter who lives with her mother. (Item 5)

Applicant's security clearance background investigation revealed 18 delinquent accounts, an approximate total balance of \$65,791. (Items 7 and 8) Six of the debts are medical accounts, accounting for \$2,250 of the delinquent debt. The delinquent accounts include: a \$36 delinquent medical account (SOR ¶ 1.a: Item 7 at 1); a \$726 delinquent medical account (SOR ¶ 1.b: Item 7 at 1); a \$630 delinquent medical account (SOR ¶ 1.c: Item 7 at 1; Item 8 at 11); a \$553 delinquent medical account (SOR ¶ 1.d: Item 7 at 1); a \$68 account placed for collection in June 2006 (SOR ¶ 1.e: Item 7 at 1; Item 8 at 7); a \$684 account placed for collection in January 2010 (SOR ¶ 1.f: Item 7 at 1); a \$1,231 storage company account placed for collection in November 2007 (SOR ¶ 1.g: Item 7 at 1; Item 8 at 5); and a \$280 medical account placed for collection in September 2007 (SOR ¶ 1.h: Item 7 at 2; Item 8 at 4).

Additional delinquent accounts include: a \$15,059 credit card account that was charged off in June 2006 (SOR ¶ 1.i: Item 7 at 2; Item 8 at 5); a \$1,623 big box computer electronics store account that was placed for collection in May 2010 (SOR ¶ 1.j: Item 7 at 3; Item 8 at 3); a \$4,944 department store credit card account that was placed for collection in April 2006 (SOR ¶ 1.k: Item 7 at 3; Item 8 at 16); a \$14,299 credit card account that was placed for collection in June 2006 (SOR ¶ 1.l: Item 7 at 3; Item 8 at 7); a \$20,614 account that was charged off in March 2008 (SOR ¶ 1.m: Item 7 at 3; Item 8 at 7); a \$174 account owed to a county clerk's office that was placed for collection in March 2009 (SOR ¶ 1.n: Item 8 at 3); a \$3,681 account that was placed for collection in May 2006 (SOR ¶ 1.o: Item 8 at 4); a \$1,050 equipment lease account that was placed for collection in November 2006 (SOR ¶ 1.p: Item 8 at 10); a \$25 delinquent medical account (SOR ¶ 1.q: Item 8 at 11); and a \$104 bank account that was placed for collection in December 2009. (SOR ¶ 1.r: Item 8 at 11).

In his answer to the SOR, Appellant states that he is an honest and hard working American who is proud to serve his country and is ever vigilant in its security. The oath

that he took when he enlisted in the United States Marine Corps will stay with him forever. Most of his financial problems resulted from the failure of his towing business in early 2007. He would like to go to Afghanistan to earn better than average money so he can support his daughter, who has cerebral palsy. (Item 4)

Applicant admits that the medical debts alleged in SOR ¶¶ 1.a, 1.b, 1.c, 1.d, and 1.h are his. He strained a muscle in his back while operating a vehicle on the job. He was told by the owner of the company to seek medical treatment and the company would pay for the medical treatment. He was never reimbursed for the medical expenses and does not have the time to sue the company to seek reimbursement for the medical expenses. He intends to pay the debts, but had not paid them at the close of the record. He denies the medical debt alleged at SOR ¶ 1.q because he does not recognize the debt. (Item 4)

Applicant admits to the debts alleged in SOR ¶¶ 1.e, 1.f, and 1.j. These debts became delinquent because he was unable to afford his apartment rent, cable and personal bills after he was laid off in May 2010 from a company he worked for after he returned from Iraq in September 2009. He intends to pay these debts, but they were not resolved at the close of the record. (Item 4)

The debts alleged in ¶¶ 1.l, 1.m, 1.n, 1.o, and 1.p were debts incurred for his now defunct business. He intends to settle these debts when his financial situation strengthens. None of the debts were resolved at the close of the record. (Item 4)

Applicant denies the credit card debts alleged in SOR ¶¶ 1.i and 1.k because he claims that his ex-wife used his social security number and personal information to obtain the credit cards and used them for her personal use without his consent or approval. He contacted both companies, but it is not clear whether he disputed the debts. He refuses to pay the debts alleged in SOR ¶¶ 1.i and 1.k. (Item 4)

Applicant denies the bank debt alleged in SOR ¶ 1.r. He states that he closed out two business accounts with the bank and was later charged fees after his account was closed. He also denies the debt alleged in SOR ¶ 1.g which is a debt for a storage container. He claims that the storage container was returned to the company. The company claims that it was not returned. Finally, he claims the debt alleged in SOR ¶ 1.n is the responsibility of the new owner of his failed business. (Item 4)

In his response to the FORM, dated July 11, 2011, Applicant takes issue with the Government calling his character into question. To paraphrase, he states he is a proud and productive citizen who did not receive a bail-out check when his business went bad. He is working in Afghanistan so that he can support his daughter and his ex-wife. He has always strived to do the right thing. He did not provide proof that any payments were made towards any of his delinquent debts. He did not provide proof that he formally disputed any of the debts that he denies. (Item 9)

In response to DOHA Interrogatories dated February 14, 2011, Applicant completed a Personal Financial Statement. He listed his net monthly salary as \$7,200. He pays \$5,000 a month in alimony and child support. It is not clear whether the alimony/child support is court-ordered or voluntary. His other monthly expenses include: rent \$800; groceries \$200; clothing \$50; utilities \$250; and car expenses \$400. His monthly expenses total \$7,000. It does not include payments towards any of his delinquent debts. (Item 6 at 9) Applicant did not provide any reference letters or performance evaluations for consideration under the whole-person factors.

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider 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 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 incurred numerous delinquent debts that he has been able to pay over the past four years.

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. Applicant has not resolved any of his delinquent accounts even the few accounts that were less than \$200 even though he has been continuously employed since the loss of his business. His extensive unresolved debt indicates irresponsible behavior and continues to cast doubt on Applicant’s reliability, trustworthiness, and 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. Applicant’s financial problems were caused by the loss of his business in 2007. It is not clear what impact his daughter’s chronic illness has on his finances, but it is likely that paying for her medical

expenses has had some impact. However, after his business was sold, Applicant deployed as a contractor to Iraq. It is likely that he earned good money while deployed to Iraq from July 2008 to September 2009, yet he did not attempt to enter into payment agreements or pay off any of his delinquent accounts. This mitigating condition is given less weight because I cannot conclude that Applicant 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 did not indicate that he attended financial counseling. It would be helpful for him to do so in order to learn how to create a budget and manage his finances more effectively. All of the delinquent debts remained unresolved at the close of the record. Applicant's financial situation is 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. While he intends to pay off the debts that he believes are his valid debts, he has not taken action towards paying any of his delinquent accounts. He also did not formally dispute any of the debts that he denies.

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) potentially applies pertaining to the debts that Applicant disputes. However, he did not take steps to formally dispute the debts with the credit reporting agencies and/or pursue a formal dispute with the respective creditors. For this reason, I cannot apply AG ¶ 20(e) to any of Applicant's disputed 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. There were circumstances beyond his control which contributed to Applicant's financial problems to include a failed business and a daughter with a chronic health condition, However, Applicant has taken no action to resolve his delinquent accounts. While he should be commended for being truthful about his financial situation on his security clearance application, it is premature to conclude that he is security-worthy based on the extent of the unresolved delinquent accounts.

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.r:	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