



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



In the matter of:)
)
) ISCR Case No. 10-09748
)
Applicant for Security Clearance)

Appearances

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

December 30, 2011

Decision

LOUGHRAN, Edward W., Administrative Judge:

Applicant has not mitigated financial considerations security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On August 9, 2011, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, financial considerations. The action was taken 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 by the Department of Defense on September 1, 2006.

Applicant provided an undated answer to the SOR, and he elected to have the case decided on the written record in lieu of a hearing. Department Counsel submitted the Government's written case on November 7, 2011. A complete copy of the file of relevant material (FORM) was provided to Applicant, who was afforded an opportunity

to file objections and submit material to refute, extenuate, or mitigate the security concerns. Applicant received the FORM on November 27, 2011. Applicant timely submitted documents that were marked Applicant Exhibits (AE) A through C and admitted without objection. The case was assigned to me on December 12, 2011. The Government exhibits included in the FORM are also admitted.

Findings of Fact

Applicant is a 51-year-old employee of a defense contractor. He is applying for a security clearance for the first time. He served in the U.S. military from 1981 until honorably discharged in 1987. He is a high school graduate. He is married with an adult child and two adult stepchildren.¹

The SOR alleges ten delinquent debts. The debts are listed on various credit reports. Applicant admitted owing seven delinquent debts totaling about \$3,900. He denied owing three debts totaling about \$17,800.²

Applicant's Questionnaire for National Security Positions (SF 86) shows that he worked for a company from 1988 until March 2010. He started work for a defense contractor in April 2010. He attributed some of his financial problems to when his wife stopped working to care for her mother who was dying of cancer.³

SOR ¶ 1.a alleges a \$940 unpaid judgment to a bank that was awarded in July 2010. SOR ¶ 1.g alleges a \$7,209 delinquent debt owed to the same bank. Applicant admitted owing the judgment and denied owing the delinquent debt. The delinquent debt is the deficiency owed to the bank for a car loan after Applicant's car was voluntarily repossessed. He stated it was the car that his wife drove. They voluntarily returned the car after his wife's mother passed away. Applicant stated that the judgment is also for the deficiency on the same car loan. Applicant gave various dates for when the car was repossessed. In his SF 86, submitted in May 2010, he listed the delinquent car loan and stated that he and his wife "are giving the car back to the bank to clear the loan." He later stated that the car was returned in January 2010, and he also stated that it was returned in July 2010. A June 2010 credit report lists the loan as \$18,809 past due, with a balance of \$18,809. A May 2011 credit report lists the loan as \$7,209 past due, with a balance of \$7,209, and a high credit of \$18,809. The credit reports list another car loan to the same bank. Credit reports from June 2010, October 2010, and May 2011, all list the second loan as \$507 past due, with a balance of \$6,518. The date of last action is listed as July 2008. Court records show that the bank filed suit against

¹ Item 5.

² Items 4-9.

³ Items 5, 6.

Applicant in April 2010, seeking a monetary judgment and replevin.⁴ The bank was awarded replevin and \$940 in monetary damages in July 2010.⁵

On April 11, 2011, Applicant sent an e-mail to an address that he stated belonged to the plaintiff's attorney in the law suit, stating as follows:

My name is [Applicant], please reply as to why I have a Judgment, case number 2010[- - -], in the amount of 940.50 dollars. We gave the [car] back to [bank] in July 2010. If the 940.50 will clear the judgment and give me proof of that, then please let me know. Thanks for your time.⁶

Applicant received a letter from the bank dated April 12, 2011. The letter stated that the bank sold the repossessed car at a private sale on April 6, 2011. The bank noted that the balance on the loan, with interest, late fees, and charges, was \$19,664. The bank received \$11,600 for the car. The bank added costs of repossession, storage, preparation, sale, and attorney's fees. The bank computed the deficiency balance as \$9,487. The bank agreed to settle the deficiency balance for \$6,166.⁷

Applicant has not paid the judgment or the deficiency owed on the car loan. He stated that he attempted to pay the judgment, but the bank wanted more than \$9,400. The law suit was filed before the car was repossessed. It is unclear from the evidence that the judgment and the deficiency balance represent identical debts.⁸

Applicant admitted owing the delinquent medical debts alleged in SOR ¶¶ 1.b, 1.c, 1.d, 1.e, 1.f, and 1.h. The total owed is approximately \$3,000 and range from a \$12 debt to a \$1,438 judgment. It is difficult to determine the creditors for the medical debts alleged in SOR ¶¶ 1.b, 1.c, 1.d, 1.e, and 1.f, because the credit reports do not identify a creditor; the debts are simply listed as medical accounts. The judgment was awarded to a hearing center in July 2008. Applicant purchased hearing aids from the center. He stated he had a 90-day trial period for the hearing aids that was verbally extended by the center when he attempted to return them before the 90 days had expired. He stated that he later returned the hearing aids within the extended time limit, but the judge still ordered him to pay the hearing center. In April 2011, he wrote that he wanted to put off paying the judgment as long as he could because he does not have the hearing aids. He has not paid the judgment or any of the other medical debts.⁹

⁴ An action whereby the owner or person entitled to repossession of goods or chattels may recover those goods or chattels from one who has wrongfully distrained or taken or who wrongfully detains such goods or chattel. See Black's Law Dictionary.

⁵ Items 4-9.

⁶ Item 6.

⁷ *Id.*

⁸ Items 4-9.

⁹ *Id.*

Applicant denied owing the \$6,812 delinquent debt to a bank, as alleged in SOR ¶ 1.i. He stated that this debt related to his hearing aid purchase through the medical center. Apparently part of the purchase price of the hearing aids was financed through a bank's credit card. This debt is listed on the credit reports as transferred or sold, with a zero balance. A collection company filed suit against Applicant in April 2010. The debt was apparently transferred to this collection company. The judge in the lawsuit noted in a December 2010 letter that during a telephone conference "[i]t was agreed that because plaintiff was assigned this debt additional information needs to be obtained from the party that sold the hearing aids to the defendant." The judge gave the parties until March 1, 2011, to settle the matter. Applicant stated that the case was closed because the plaintiff was unable to obtain documents from the hearing center. Court records show the case as closed.¹⁰

Applicant denied owing the \$3,836 judgment to a medical center that was awarded against him in June 2007. He stated that his wife had a computerized axial tomography (CAT) scan in 2007. He stated that she was left in the CAT scan tube too long, which caused her pain and discomfort. He stated that she complained to the head of the hospital, who told her that she did not have to pay for the procedure. They received a bill, and they did not pay it. The hospital obtained a judgment against Applicant and his wife. Applicant satisfied the judgment in April 2011.¹¹

Applicant stated that he does not have financial problems. He provided a personal financial statement that shows a net monthly remainder of \$1,561 after he pays his mortgage and other monthly expenses. He listed his assets at \$569,563, and his liabilities at \$272,800, which included \$270,000 for his mortgage. He had \$115,961 in his 401(k) retirement account at the end of 2010. He has a cabin and land that he received from his father. He has a 2008 motorcycle, a 2003 pickup truck, a 2002 motor boat and trailer, a 2000 car, a 1999 all terrain vehicle (ATV), and a 1998 motor boat and trailer.¹²

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, which 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

¹⁰ Items 4-9; AE A, C.

¹¹ Items 4-9; AE A, B.

¹² Item 6.

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 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 of 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 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. 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 a number of delinquent debts and was unable or unwilling to pay his financial obligations. The evidence is sufficient to raise the above disqualifying conditions.

Conditions that could mitigate financial considerations security concerns are provided under AG ¶ 20. The following 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;
- (d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and
- (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.

Applicant stated that he returned the car his wife drove after she stopped working to care for her mother who was dying of cancer. His mother-in-law's illness and death were outside Applicant's control. To be fully applicable, AG ¶ 20(b) also requires that the individual act responsibly under the circumstances. Applicant has had steady employment for many years. His assets far outweigh his liabilities. He has a positive cash flow each month. In April 2011, Applicant satisfied the \$3,836 judgment to a medical center. There is no evidence that he has paid any other debts. The medical debts do not name a creditor. I find it reasonable that those debts were not paid. He does not believe he should have to pay the judgment awarded to the hearing center. However, that judgment was legally ordered by a court. He has a legal obligation to pay it, even if he does not believe that he should have to pay it. The same is true of the

\$940 unpaid judgment to a bank. I am not convinced the judgment and the deficiency balance owed on Applicant's car loan represent the same debt. The law suit was filed before the car was repossessed, and the credit reports show another car loan with the same bank.

I find that AG ¶ 20(d) is applicable to the paid judgment alleged in SOR ¶ 1.j. There is insufficient evidence for a determination that Applicant acted responsibly and made a good-faith effort to repay or otherwise resolve his other delinquent debts. His financial issues are recent and ongoing. I am unable to determine that they are unlikely to recur. They continue to cast doubt on Applicant's current reliability, trustworthiness, and good judgment. AG ¶¶ 20(a), 20(b), 20(c), 20(d), and 20(e) are not applicable to his other unpaid debts.

There is insufficient evidence for a finding that Applicant owes the debt alleged in SOR ¶ 1.i. That allegation is concluded for 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 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. I have incorporated my comments under Guideline F in my whole-person analysis.

I considered Applicant's honorable military service and his stable work history. Applicant appears capable of paying his financial obligations. He does not believe he should have to pay a judgment to a hearing center. However, that debt has been reduced to a judgment, and he is legally obligated to pay it. He is also legally obligated to pay the judgment awarded to a bank. The evidence indicates that, in addition to the \$940 judgment to a bank, Applicant owes for the deficiency balance on a car loan owed to the same bank.

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. I conclude Applicant has not mitigated financial considerations security concerns.

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.f:	For Applicant
Subparagraphs 1.g-1.h:	Against Applicant
Subparagraphs 1.i-1.j:	For 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.

Edward W. Loughran
Administrative Judge