



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



In the matter of:)
)
) ISCR Case No. 10-10612
)
Applicant for Security Clearance)

Appearances

For Government: Candace Le'i Garcia, Esq., Department Counsel
For Applicant: Alan V. Edmunds, Esq.

04/26/2012

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 June 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 answered the SOR in writing on July 7, 2011, and elected to have the case decided on the written record in lieu of a hearing. He later changed his request to a hearing before an administrative judge. The case was assigned to me on February 9, 2012. DOHA issued a notice of hearing on March 14, 2012, scheduling the hearing for

March 27, 2012. The hearing was convened as scheduled. DOHA received the hearing transcript (Tr.) on April 4, 2012.

Procedural and Evidentiary Rulings

Notice

Applicant affirmatively waived his right under ¶ E3.1.8 of the Directive to 15 days notice before the hearing.

Evidence

Government Exhibits (GE) 1 through 4 were admitted in evidence without objection. Applicant testified, called a witness, and submitted Applicant's Exhibits (AE) A through C, which were admitted without objection. The record was held open for Applicant to submit additional information. Applicant timely submitted documents that were marked AE D through Q and admitted without objection. Department Counsel's e-mail forwarding AE D through Q is marked Hearing Exhibit (HE) I.

Findings of Fact

Applicant is a 47-year-old employee of a defense contractor. He has worked for his current employer since August 2010. He is applying for a security clearance for the first time. He is a graduate of a technical institute. He married in 1992 and divorced in 1999. He married again in 2001 and divorced in 2010. He has four children, ages 19, 17, 12, and 8.¹

Applicant has had financial problems for a number of years. He filed Chapter 7 bankruptcy in 2000, and his debts were discharged in 2001. Applicant continued to have financial difficulties after his bankruptcy. Applicant and his second wife both had two children when they married, and they had an additional two children together. Applicant was supporting a family of eight on a limited income. He has had serious medical problems with his legs requiring nine surgeries since he was a teenager, most recently in 2009. He had extensive periods of unemployment, underemployment, and time away from work because of his leg problems. He received workers' compensation and unemployment benefits, but it was less than his normal income. Applicant received a settlement of about \$22,000 for his injury on the job, and he received about \$75,000 from an inheritance. He used those funds for living expenses when he was out of work. He was unable to pay all his bills, and debts became delinquent.²

Applicant filed Chapter 7 bankruptcy in February 2011. The bankruptcy petition did not list any debts under Schedule D – Creditors Holding Secured Claims, or Schedule E – Creditors Holding Unsecured Priority Claims. Under Schedule F – Creditors Holding Unsecured Nonpriority Claims, the petition listed claims totaling

¹ Tr. at 30-32, 92; GE 1; AE G.

² Tr. at 28-30, 41-42, 46-64; Applicant's response to SOR; GE 1, 2; AE D, L, P.

\$58,342. Claims included \$22,069 owed in child support arrearages and \$24,132 in student loans. Schedule I – Current Income of Individual Debtor(s), listed Applicant's net monthly take home pay as \$2,355. That figure was after \$718 was deducted from his pay for child support for his two youngest children. Under Schedule J – Current Expenditures of Individual Debtor(s), the petition listed Applicant's average monthly expenses as \$3,143. That figure includes \$788 in child support for Applicant's two youngest children. When Applicant's average monthly expenses are subtracted from his average monthly income, the remainder is negative \$788. That figure is inaccurate, as Applicant's child support payments were counted twice. Applicant testified that he is paid every two weeks, and the \$718 figure is the garnishment taken out of two pay checks, which equates to \$788 a month. If \$788 is used as the monthly deduction for child support and not counted twice, the net, after subtracting expenses from income, would be negative \$70.³ Applicant's dischargeable debts were discharged in June 2011.⁴

Applicant and his second wife separated in 2007. She has custody of their two children. The child support order requires him to pay \$622 per month plus \$378 per month for past-due child support. Court records from November 2011 indicate that Applicant owed \$21,743 in arrearages as of December 2010. He paid \$1,075 in December 2010 and June 2011; \$817 in September 2011; and \$717 in January, February, March, April, May, July, August, and October 2011. Payments were made by garnishment. He owed \$21,515 in November 2011. The total owed in arrearages did not significantly decrease because the arrearages were accruing interest and the \$717 payments were not sufficient to cover the current child support plus the monthly interest owed for the past-due child support.⁵

The U.S. Department of Education certified in March 2012 that Applicant's student loans are in forbearance. The forbearance is effective from November 2011 through February 2013. He was notified that he is responsible for the interest that continues to accrue on his principal balance of \$43,570. Since his November 2011 statement, additional interest of \$1,436 has accrued.⁶

Applicant owed a \$747 delinquent debt to a collection company on behalf of a telephone services company, as alleged in SOR ¶ 1.c. Applicant settled this debt on June 24, 2011. SOR ¶ 1.d alleges a \$585 delinquent debt for an overpayment of Applicant's unemployment compensation. Applicant paid the debt with a \$1,013 payment on June 24, 2011.⁷

³ The correction of the mathematics does not assume the accuracy of the underlying figures upon which the mathematical computations are based.

⁴ Tr. at 93-95; Applicant's response to SOR; GE 2; AE A.

⁵ Tr. at 30-38, 65-68; GE 2; AE E, G.

⁶ Tr. at 69-75; AE I.

⁷ Tr. at 38, 58; Applicant's response to SOR; AE B, C.

Applicant received financial counseling as a requirement of his bankruptcy. He also sought additional financial counseling. He testified that his job provides sufficient income to pay his debts, and that he is living within his means. His two oldest children live with him. A nephew, who is in college, also lives with him. Shortly after his debts were discharged in bankruptcy in June 2011, Applicant bought a used 2008 car for about \$22,000. His payments are \$530 a month for six years. As of the hearing, he was a month late on his car loan payment, which he attributed to a family emergency. He has three credit cards, and he testified that he was 30 days late on one card.⁸

Applicant's February 2011 bankruptcy petition included his average monthly income, expenses, and net income. He submitted a personal financial statement (PFS) in response to DOHA interrogatories in March 2011. He included a copy of his budget in his post-hearing submission. The budget shows actual monthly income of \$2,962, plus \$600 in child support received, for a total monthly income of \$3,562. Applicant testified that the mother of his two oldest children was not paying child support, so the \$600 figure is unexplained. The budget shows total expenses of \$2,687, leaving a monthly remainder of \$875. The bankruptcy petition, PFS, and budget show different and sometimes contradictory information. They provide little clarity into Applicant's current financial situation.⁹

A witness testified and Applicant submitted a number of documents and letters attesting to his excellent job performance, integrity, dependability, professionalism, work ethic, reliability, trustworthiness, and honesty.¹⁰

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 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.

⁸ Tr. at 27-28, 38-40, 77-91, 95-96; AE E, J.

⁹ Tr. at 93; GE 2; AE K.

¹⁰ Tr. at 17-26; AE E, F, J, M, Q.

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 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. His debts were discharged in bankruptcy in 2000 and 2011. 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; and
- (d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant had extensive periods of unemployment, underemployment, and time off work because of his long-term medical problems, which required nine surgeries. He is raising his two oldest children without the benefit of child support from their mother. He and his second wife divorced in 2010. These events constitute conditions that were beyond his control. To be fully applicable, AG ¶ 20(b) also requires that the individual act responsibly under the circumstances.

Applicant paid two debts and had other debts discharged in bankruptcy. His student loans of more than \$43,000 and child support arrearages of more than \$20,000 were not discharged. His student loans are in forbearance until February 2013. Applicant's child support is being paid by garnishment. Since December 2010, he has consistently paid more than the \$622 per month owed for current child support, but the total owed in arrearages has not significantly decreased because the arrearages were accruing interest and the usual amount paid was not sufficient to cover the current child support plus the monthly interest owed for the past-due child support. Applicant received financial counseling. He testified that his job provides him sufficient income to pay his debts and that he is living within his means. However, shortly after his debts were discharged in bankruptcy, he bought a used 2008 car for about \$22,000. As of the hearing, he was a month late on his \$530 car loan payment, which he attributed to a family emergency, and he was 30 days late on one of his three credit cards.

Applicant's financial counseling established the first section of AG ¶ 20(c). His bankruptcy discharged many of his debts, but it had no impact on his two largest debts: child support arrearages and student loans. I am unable to find that Applicant acted completely responsibly under the circumstances or that he made a good-faith effort to pay his debts.¹¹ His finances are not yet under control. His financial issues are recent and ongoing. I am unable to determine that they are unlikely to recur. They continue to cast doubt on his current reliability, trustworthiness, and good judgment. AG ¶ 20(a) is not applicable. AG ¶ 20(b) is partially applicable. The second section of AG ¶ 20(c) is not applicable. AG ¶ 20(d) is only applicable to the debts alleged in SOR ¶¶ 1.c and 1.d. I find that financial concerns remain despite the presence of some mitigation.

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

¹¹ The Appeal Board has explained what constitutes a "good-faith" effort to repay overdue creditors or otherwise resolve debts:

In order to qualify for application of [good-faith mitigating condition], an applicant must present evidence showing either a good-faith effort to repay overdue creditors or some other good-faith action aimed at resolving the applicant's debts. The Directive does not define the term 'good-faith.' However, the Board has indicated that the concept of good-faith 'requires a showing that a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation.' Accordingly, an applicant must do more than merely show that he or she relied on a legally available option (such as bankruptcy) in order to claim the benefit of [good-faith mitigating condition].

(internal citation and footnote omitted) ISCR Case No. 02-30304 at 3 (App. Bd. Apr. 20, 2004) (quoting ISCR Case No. 99-9020 at 5-6 (App. Bd. Jun. 4, 2001)).

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.

I considered Applicant's favorable character evidence. Applicant's debts were discharged twice in bankruptcy, most recently in June 2011. He is already behind on a credit card and the loan on the car he bought shortly after his debts were discharged. He still has more than \$20,000 owed in child support arrearages and more than \$43,000 in student loans that are scheduled to come out of forbearance in February 2013. His bankruptcy petition, PFS, and recent budget are muddled. Instead of clarifying Applicant's current financial situation, they make it more confusing. Applicant has not convinced me that his finances are sufficiently in order to warrant a security clearance.

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
Subparagraphs 1.a-1.b:	Against Applicant
Subparagraphs 1.c-1.d:	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