



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



In the matter of:)	
)	
)	ISCR Case No. 10-10677
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Richard Stevens, Esq., Department Counsel
For Applicant: *Pro se*

05/09/2012

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the Government’s security concerns under Guideline F, Financial Considerations. Applicant’s eligibility for a security clearance is denied.

Statement of the Case

On January 26, 2012, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F. The actions were 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) effective within the Department of Defense on September 1, 2006.

Applicant answered the SOR on February 7, 2012, and requested a hearing before an administrative judge. The case was assigned to me on March 14, 2012. DOHA issued a Notice of Hearing on March 22, 2012. I convened the hearing as

scheduled on April 24, 2012. The Government offered Exhibits (GE) 1 through 5, and they were admitted into evidence without objection. Applicant offered Exhibits (AE) A through G, and they were admitted into evidence without objection. The record was held open until May 1, 2012, to allow Applicant to submit additional documents, which he did. They were marked as AE H and I.¹ Department Counsel indicated he had no objection. His memorandum is marked as Hearing Exhibit II. The exhibits were admitted into evidence and the record closed. DOHA received the hearing transcript (Tr.) on May 2, 2012.

Procedural Issue

Department Counsel withdrew SOR ¶¶ 1.k and 1.l. Department Counsel submitted Hearing Exhibit I at the hearing to show he had forwarded GE 1 through 5 to Applicant. Applicant remembered receiving some exhibits, but could not specifically remember if he received GE 4 and 5. He did not object to Department Counsel offering them into evidence.²

Findings of Fact

Applicant admitted all SOR allegations except ¶¶ 1.d, 1.f, 1.g and 1.m. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is 44 years old. He has an associate's degree. He served in the Navy from 1986 to 2009, and retired honorably in the pay grade E-7.³ He has six biological children ranging in age from 27 to 6. He married in 1995, separated in 1997, and divorced in 2002. He has two children from the marriage, ages 20 and 11. He remarried in 2003. His wife has two children. The oldest is 19 years old and in the military. The other is 16 years old and lives with Applicant and his wife. Applicant has twin sons from his current marriage who are six years old. He also has a son who is 18 years old from a previous relationship and a daughter who is 27 years old from a previous relationship. He has held a Top Secret security clearance for 24 years.⁴

Applicant receives approximately \$2,340 a month in military retirement pay. He earns approximately \$3,500 a month from his job. His wife did not work for several years when their twins were younger, but went back to work about two to three years ago. She earns about \$2,200 a month.⁵

¹ AE H consists of 14 pages. AE I consists of one page.

² Tr. 10-14, 22-25, 100.

³ AE I.

⁴ Tr. 8, 46-49.

⁵ Tr. 32; 43, 73, 77; Answer to SOR; GE 3; AE E.

Applicant's wages are being garnished for child support from State A in the amount of \$735 for his children with his first wife. State B is garnishing his wages in the amount of \$563 for his son from a previous relationship. He has a third child support garnishment for \$111, but thinks this is a reserve fund in the event his account goes in arrears. He indicated he is investigating this garnishment. Applicant stated the only time he failed to meet the garnishment amounts was when he retired from the Navy and his pay was in transition. Applicant provided documentation to show he is in good standing with his child support payments with States A and B (SOR ¶ 1.d (\$709)). He plans to continue to pay child support until his children have completed college.⁶

Applicant attributes his financial problems to his child support payments and his difficulty in selling his condominium (condo) when he received orders to transfer with the Navy. In 2003, Applicant purchased a condo. Part of the purchase agreement was the requirement that he pay homeowner association dues. He deployed at different times after he purchased the condo. In 2006, he received orders to transfer. He could not sell the condo. His nephew lived in the condo in 2007 for about eight or nine months and paid rent. Applicant was still responsible for paying the homeowner association dues. He failed to pay them from approximately 2006 on. His nephew moved out of the condo and failed to pay the final electric bill alleged in SOR ¶ 1.e (\$256). Applicant stated his nephew is going to pay the bill soon, but it has not yet been resolved. Applicant owes approximately \$29,000 (SOR ¶ 1.c) on a defaulted second mortgage loan on the condo. In 2006, after he transferred, he purchased another house. Applicant stated he intends to pay these debts in the future, but is unable to do so presently. He also owes a judgment for the homeowner association dues (SOR ¶ 1.j (\$7,053)). That debt is not paid.⁷

The judgment in SOR ¶ 1.a (\$17,056) is being paid through a garnishment that withdraws 25% of Applicant's pay each paycheck. He believes the garnishment started in September 2011. He pays approximately \$360 twice a month. This judgment is for two credit card debts that were consolidated. Included in the judgment are attorney's fees incurred by the creditor. Applicant made inconsistent payments toward the debts prior to leaving the military. After the judgment was entered, Applicant stated that he missed a couple of payments, and the court ordered the garnishment. The balance of the judgment has been reduced through the garnishment payments.⁸

The debt in SOR ¶ 1.b (\$2,113) is for a loan on a car Applicant's wife purchased and he cosigned in 2004 or 2005. She drove the car to another state, and it broke down. He sent her money to have it fixed and to pay the note on the car. She did not pay the note. Applicant stated his wife said she would pay it. The debt is not resolved.⁹

⁶ Tr. 29-30, 49-52, 64-65; AE B, C, H.

⁷ Tr. 28, 30-31, 33-34, 62, 65-66, 70.

⁸ Tr. 52-60; Answer to SOR; AE G.

⁹ Tr. 28, 60-62.

The debt in SOR ¶ 1.f (\$466) is a tax lien. Applicant believes it is for property tax on the condo. He stated he paid the tax through his mortgage. No supporting documents were provided. The debt is unresolved.¹⁰

The debt in SOR ¶ 1.g (\$725) is for a telephone account. Applicant did not recognize the account and stated it could be that a family member opened the account. He thought he had sent the creditor a letter when he purchased his house in 2006. The debt is unresolved.¹¹

The debt in SOR ¶ 1.h (\$166) is for a mail order compact disk subscription. Applicant stated he never received the disks, but acknowledged they could have been received while he was deployed. He stated he is willing to resolve this debt, but has not done so.¹²

The debt in SOR ¶ 1.i (\$5,700) is a federal tax debt for tax year 2010. Applicant failed to pay his federal taxes. The amount owed was deducted from his 2011 tax refund. Applicant explained that he refinanced his current home so he could pay this debt. The debt is resolved.¹³

Applicant disputes the telephone debt in SOR ¶ 1.m (\$1,205). He thinks his daughter used his name to open an account with the creditor. He reported to the creditor that the account was not his. He believes the account is ten years old and he has told his daughter to pay it, but she has not. He did not provide supporting documents. The debt is unresolved.¹⁴

Applicant stated he does not qualify to file for bankruptcy because he earns too much money. He took a loan against his 401k pension account in the amount of approximately \$2,200. He believes he has about \$1,800 left to repay. He contacted a law firm that addresses debts. He had the law firm dispute two debts. One debt was the electric bill that his nephew failed to pay, and the other was a credit card debt. The latter was one of the allegations withdrawn by the Government. Applicant stated he has not received financial counseling. He and his wife keep their money separate and have separate budgets. Applicant is current on his monthly bills. He owes approximately \$3,500 to \$4,500 on a credit card and makes monthly payments of \$140. He also has another credit card with a balance of approximately \$1,700 that he pays \$100 monthly.

¹⁰ Tr. 31, 66-69.

¹¹ Tr. 31, 69-70.

¹² Tr. 31, 71.

¹³ Tr. 32; 71-73; GE 3; AE F.

¹⁴ Tr. 40-43.

He has approximately \$20 in savings and about \$3,000 to \$4,000 in his 401k pension account.¹⁵

Applicant intends to pay his debts but does not have the money. He intends to pay the small bills first. He stated he has a budget that he abides by. He indicated that his twin sons are now in school so their day care expenses have decreased, although they will have to spend extra money for care during the summer vacation months. He stated once his children graduate from college, he will have more money to pay his debts.¹⁶

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 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, 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an "applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel and 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

¹⁵ Tr. 74-76, 80-88, 91-92.

¹⁶ Tr. 45, 74, 85.

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 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 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. I have considered all of the disqualifying conditions under AG ¶ 19 and the following three are potentially applicable:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant has eight debts totaling approximately \$40,984 that are delinquent and unresolved. He has a judgment that is being paid through garnishment. I find there is sufficient evidence to raise the above disqualifying conditions.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. The following 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;

(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 action to resolve the issue.

Applicant is paying a judgment through garnishment. His income tax refund was diverted to pay for a past year's owed taxes. He has not paid or resolved the remaining debts. His behavior is recent and the facts do not support that the circumstances are unlikely to recur. I find AG ¶ 20(a) does not apply because his conduct was frequent and casts doubt on his reliability, trustworthiness, and good judgment.

Applicant attributes his financial problems to a time when he was in the Navy and received orders to transfer. He could not sell his condo. This was a circumstance beyond his control. He also attributes his financial problems to his child support obligations. His obligations to support his children are within his control. Applicant transferred in 2006. He purchased another house. It has been six years since he moved. He has not provided evidence to show he has acted responsibly in resolving this debt or his other delinquent debts. I find AG ¶ 20(b) only partially applies.

Applicant has not received financial counseling. He is paying a judgment through garnishment. His income tax refund was diverted to pay for a past delinquent tax debt. These actions are not good-faith efforts to pay his debts. He has not made arrangements to pay or otherwise resolve his other delinquent debts. There are no clear indications his financial problems are being resolved. He is hoping he will be able to resolve his financial issues when his children graduate from college. I find AG ¶¶ 20(c) and 20(d) do not apply.

Applicant disputes he owes certain debts. He stated different family members owe accounts that were opened in his name. Through the law firm he hired, he disputed the electric bill. However, he admitted that the debt belonged to him, and he is waiting for his nephew to pay it. He did not provide evidence to substantiate his dispute. I find AG ¶ 20(e) does not apply.

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. 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. Applicant is retired from the Navy. He served honorably for 23 years. In 2006, his military duties required he transfer duty stations. He was unable to sell his condo at the time and this caused financial problems. However, he was able to purchase a new home at his new duty station. Applicant is now retired from the military and receiving retired pay. He has a civilian job. His wife is now working. He has a second mortgage loan that he has not paid. He failed to pay other obligations associated with the condo and has failed to pay other bills that are delinquent. His wages are being garnished for child support obligations and a judgment. He did not pay his income taxes in 2010 and his 2011 refund was diverted and applied to the debt. Applicant has shown minimal initiative in addressing his delinquent debts. He stated he intends to pay his delinquent debts in the future. He anticipated having more expendable income after his children graduate from college. The only debt being paid is the judgment through garnishment. He indicated he does not have the money to pay the other delinquent debts at this time.

I am not convinced that Applicant is proactively addressing his financial problems. It has been six years since he moved. He may have limited resources to pay all of his delinquent debts at this time. He is not required to resolve each and every debt alleged in the SOR. However, he must establish that he has a realistic plan to resolve his financial problems and has taken significant actions to implement the plan. I am not convinced Applicant has such a plan. I find he has failed to meet his burden of persuasion, thereby raising questions about his judgment and reliability. Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and

suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the security concerns arising under the Financial Considerations guideline.

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.c:	Against Applicant
Subparagraph 1.d:	For Applicant
Subparagraphs 1.e-1.h:	Against Applicant
Subparagraph 1.i:	For Applicant
Subparagraphs 1.j:	Against Applicant
Subparagraphs 1.k-1.l:	Withdrawn
Subparagraph 1.m:	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 a security clearance. Eligibility for access to classified information is denied.

Carol G. Ricciardello
Administrative Judge