



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



In the matter of:)	
)	
)	ISCR Case No. 10-10858
)	
Applicant for Security Clearance)	

Appearances

For Government: Eric Borgstrom, Esquire, Department Counsel
For Applicant: *Pro se*

December 2, 2011

Decision

CURRY, Marc E., Administrative Judge:

Applicant failed to mitigate the financial considerations security concerns generated by his delinquent debt. Clearance is denied.

Statement of the Case

On June 6, 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 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 revised adjudicative guidelines (AG) implemented by the Department of Defense on December 1, 2006.

Applicant answered the SOR on July 6, 2011, admitting all of the allegations, and requesting a hearing. The case was assigned to me on August 31, 2011. A notice of hearing was issued on October 19, 2011, scheduling the case for November 9, 2011. I

held the hearing as scheduled, receiving eight Government exhibits, marked as Government Exhibits (GE) 1-8, and considering Applicant's testimony. I also received a chart from Department Counsel linking Applicant's debts with the corresponding record evidence. I marked this as Hearing Exhibit I. DOHA received the transcript (Tr.) on November 17, 2011.

Findings of Fact

Applicant is a 40-year-old married man with two children, ages 12 and 3. He has been married for a year, and was married once previously. The two children are from prior relationships.

Applicant is a veteran of the U.S. Navy, where he served from 2001 through his honorable discharge in 2007. He earned a bachelor's degree in the field of secondary education in 1996, and a master's degree in information systems in 2010. (Tr. 15) He is employed with a defense contractor as a computer hardware support technician. (Tr. 17)

Applicant has approximately \$45,000 of delinquent debt, including approximately \$6,000 in delinquent child support as listed in subparagraph 1.a, and multiple credit card accounts. Applicant contends his ex-girlfriend with whom he lived for four years between 2004 and 2008, accrued the majority of these delinquencies, and that he was unaware of her profligate spending because he spent much of his time during this period deployed. (Tr. 21) He has not contacted any of the creditors in writing disputing any of the delinquencies. (Tr. 34)

Applicant also contends his financial condition was aggravated when he quit his job to relocate to another state in March 2008 and was unable to find employment. He was subsequently unemployed for ten months. (Tr. 18)

Applicant owes the child support delinquency to his ex-girlfriend, the mother of his youngest child. He has paid approximately \$4,000 of this debt through an intercept of his tax returns. (Tr. 19) He continues to make monthly payments through a wage garnishment. (Tr. 19)

Applicant has not begun satisfying any of the other delinquencies. He knows that he has monthly after-expense income to apply to these delinquencies, but "doesn't know which way to attack it." (Tr. 23)

Applicant attended credit counseling a few years ago, shortly after leaving the Navy. (Tr. 34) He has not attended any credit counseling since relocating in mid-2008.

Policies

The adjudicative guidelines list potentially disqualifying conditions and mitigating conditions. These guidelines are not inflexible rules of law. Instead, recognizing the

complexities of human behavior, they are applied together with the factors listed in the adjudicative process. 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.”

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.

Analysis

Guideline F, Financial Considerations

Under this guideline, “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 (AG ¶ 18). Applicant’s financial struggles trigger the application of AG ¶¶ 19(a), “inability or unwillingness to satisfy debts,” and 19(c), “a history of not meeting financial obligations.”

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

Upon considering these mitigating conditions, I conclude none apply. Although the accrual of these debts may have partially been outside of Applicant's control, he has neither organized a payment plan, nor begun making payments on any of them, except a child support delinquency. Because he is satisfying the child support delinquency through a combination of tax return intercepts and a wage garnishment, it has minimal probative value with respect to his security clearance worthiness. Also, Applicant contends his ex-girlfriend accrued several of these delinquencies without his knowledge, but has not formally disputed any of them.

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.

Applicant has made no effort to rectify the financial considerations security concern. This is particularly troubling considering that Applicant acknowledged that he has approximately \$200 to \$300 of after-expense monthly income which he could apply to his delinquent debts. Upon considering this case in the context of the whole-person concept, I conclude Applicant has failed to mitigate the financial considerations security concern.

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.s:	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.

MARC E. CURRY
Administrative Judge