



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



In the matter of:)	
)	
)	ISCR Case No. 11-00058
)	
Applicant for Security Clearance)	

Appearances

For Government: Raashid S. Williams, Esq. Department Counsel
For Applicant: *Pro se*

October 26, 2011

Decision

CURRY, Marc E., Administrative Judge:

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

Statement of the Case

On May 26, 2011, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines F, financial considerations, and E, personal conduct. 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) effective as of September 1, 2006.

Applicant answered the SOR on June 16, 2011, admitting all of the allegations except subparagraphs 1.i and 1.q, and requesting a hearing. On August 4, 2011, the case was assigned to me. On August 19, 2011, DOHA issued a notice of hearing scheduling the case for September 16, 2011.

The hearing was conducted as scheduled. I received four Government exhibits marked as GE 1-4 and seven Applicant exhibits marked as AE A-G. Also, I received Applicant's testimony. At Applicant's request, I left the record open at the end of the hearing for him to submit additional exhibits. Within the time allotted, Applicant submitted nine additional exhibits. (AE H-P) Department counsel had no objections and I admitted them. The transcript was received on September 21, 2011.

Findings of Fact

Applicant is a 35-year-old married man with two children ages seven and eight. He has been married for eight years. A previous marriage ended in divorce in 2000. Applicant earned an associate's degree in aircraft maintenance in 1999. (Tr. 16) He has been working in this field since graduating. Applicant's wife is a homemaker.

Currently, Applicant works for a government contractor that manufactures airborne video surveillance technology. (Tr. 17) According to a representative of the company's client, Applicant "is an integral part of the program." (AE P) According to the unit chief of the program Applicant's company supports, Applicant is "meticulous, reliable, diligent, dedicated, hard-working, assiduous, and punctilious." (AE O) Applicant's direct supervisor characterizes him as an invaluable employee. (AE N)

Applicant worked for his previous employer for five years before being laid off in March 2010. (Tr. 32) He was subsequently unemployed for the next five months. Applicant and his family struggled financially. Unbeknownst to Applicant, he had already accrued some delinquencies before he lost his job. His wife, the manager of the family finances, repeatedly reassured him that their bills were current, when she had actually stopped paying several bills months before he was laid off. (Answer at 4-5; Tr. 20)

By the time Applicant gained his current job, he had accrued approximately \$60,000 of delinquent debt, including a mortgage past due for approximately \$27,662 (subparagraph 1.p) and a delinquency owed to a motorcycle dealer for approximately \$10,000. (subparagraph 1.q)

In the summer of 2010, when Applicant completed his security clearance application, his wife sat down with him and helped him identify their delinquent creditors. Three of the six creditors identified are listed in the SOR (subparagraphs 1.a, 1.i, and 1.q) The status of the debts owed to the unlisted creditors is unknown from the record. Subparagraph 1.a is a credit card account totalling \$869. (AE M) Applicant negotiated a settlement in July 2010 for \$830. Under the terms of the agreement, he has been making \$83 monthly payments since then. (*Id.*)

Applicant owes the debt listed in subparagraph 1.i to a furniture company. In July 2010, he negotiated a settlement for \$726 and satisfied it in one lump-sum payment. (GE 4 at 15)

The debts listed in subparagraphs 1.b through 1.h, 1.k through 1.o, and 1.r, are currently held by collection agents. (Tr. 24) Applicant is attempting to identify the original creditors.

Subparagraph 1.j, in the amount of \$1,212, is owed to a stereo company. Applicant initially denied this debt, but acknowledged it at the hearing. He has not arranged a payment plan because he cannot currently afford to pay it. (Tr. 27)

Applicant has contacted the mortgage company to develop a payment plan for his delinquent mortgage. (Tr. 27) He is in the process of applying for a loan modification. He did not provide any details of the status of the loan modification application.

Subparagraph 1.q is the debt owed to the dealer where Applicant purchased his motorcycle. Applicant voluntarily returned it to the dealer with the understanding that the account would be settled upon return. (Tr. 28) He does not know whether the dealer resold the motorcycle.

Applicant has not undergone credit counseling, but is more involved in managing the family finances. (Tr. 30) He aims to satisfy his delinquent debts in the "next couple years." (Tr. 47)

Applicant maintains a budget. He has approximately \$83 of monthly after-expense income. (GE 4 at 13) Applicant contends that his monthly mortgage payments have been suspended while the loan modification process is pending. His budget does not account for any future monthly expenditures for mortgage payments once the bank approves the mortgage modification and he has to resume monthly mortgage payments.

Applicant completed a security clearance application in July 2010. He answered "no" to the following questions:

- 26f. Have you defaulted on any type of loan?
- 26h. Have you had any account or credit card suspended, charged off, or cancelled for failing to pay as agreed?
- 26m. Are you currently over 90 days delinquent on any debt(s)?
- 26n. Have you ever been over 180 days delinquent on any debt(s)? [and]
- 26p. Are you currently delinquent on any Federal debt?

Applicant contends these omissions were unintentional. Elsewhere on the security clearance application, he disclosed that he has had bills submitted to collection agencies, and listed multiple delinquencies, including the delinquent debt owed to the motorcycle dealer. (GE 1 at 49-55) Applicant has no delinquent federal debts.

Policies

The adjudicative guidelines are applied together with the factors listed in the adjudicative process to evaluate an applicant's eligibility for access to classified information. 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, the "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 history of financial problems triggers the application of AG ¶ 19(a), "inability or unwillingness to satisfy debts," and AG ¶ 19(c), "a history of not meeting financial obligations."

Applicant's financial difficulties were caused primarily by a five-month period of unemployment between March and August of 2010. For the past year, he has been contacting creditors and making payment arrangements. He satisfied subparagraph 1.e in its entirety and has been steadily satisfying subparagraph 1.a. 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," and AG ¶ 20(d), "the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts," apply.

Applicant has neither identified nor contacted the majority of the creditors listed in the SOR. He is not working with a credit counselor, and he failed to prove that he is no longer responsible for the delinquency owed to the motorcycle dealer. Also, he failed to submit a concrete, long-term payment plan. Although Applicant has satisfied

approximately \$1,500 of delinquent debt, he continues to owe more than \$50,000. Moreover, Applicant's budget, which does not account for his monthly mortgage payments, reflects only \$83 in monthly after-expense income. Under these circumstances, AG ¶ 20(c), "the person 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.

Personal Conduct

Under this guideline, "conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness, and ability to protect classified information." (AG ¶ 15) Also, "of special interest is any failure to provide truthful and candid answers during the security clearance process. . . ." (*Id.*)

Applicant's failure to disclose all of his derogatory financial information on his 2010 security clearance raises the issue of whether AG ¶ 16(a), "deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities," applies. Applicant was thoroughly responsive to other questions regarding his financial debts elsewhere on the security clearance application. In light of the significant, material financial information disclosed, I conclude Applicant's explanation that the omission of his delinquencies was unintentional is credible.

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 is a sterling employee. His financial problems were triggered by his lengthy unemployment in 2010. When he gained a new job and his financial situation improved, he began satisfying his delinquencies. Progress, however, has been minimal, and the majority of delinquencies, including his mortgage, remain delinquent. Also, it

remains unclear when Applicant will satisfy his debts. Applicant has failed to mitigate the 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
Subparagraph 1.a:	For Applicant
Subparagraphs 1.b-1.h:	Against Applicant
Subparagraph 1.i:	For Applicant
Subparagraph 1.j-1.r:	Against Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraph 2.a:	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.

MARC E. CURRY
Administrative Judge