



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



In the matter of:)
)
) ISCR Case No. 11-00125
)
Applicant for Security Clearance)

Appearances

For Government: Paul M. DeLaney, Esquire, Department Counsel
For Applicant: *Pro se*

October 31, 2011

Decision

ANTHONY, Joan Caton, Administrative Judge:

After a thorough review of the record in this case, I conclude that Applicant failed to rebut or mitigate the Government’s security concerns under Guideline F, Financial Considerations. His eligibility for a security clearance is denied.

History of the Case

On September 10, 2010, Applicant completed and certified an Electronic Questionnaire for Investigations Processing (e-QIP). On April 8, 2011, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing the 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 adjudicative guidelines (AG) effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant provided a notarized answer to the SOR, dated April 30, 2011, declined a hearing, and requested that his case be determined on the written record. The Government compiled its File of Relevant Material (FORM) on June 10, 2011. The

FORM contained documents identified as Items 1 through 9. By letter dated June 17, 2011, DOHA forwarded a copy of the FORM to Applicant, with instructions to submit any additional information and/or objections within 30 days of receipt. Applicant received the file on July 7, 2011. His response was due on August 6, 2011. Applicant filed additional information within the required time period. On September 27, 2011, the case was assigned to me for a decision. I marked Applicant's response to the FORM as Item A and admitted it to the record without objection.

Findings of Fact

The SOR contains eight allegations of disqualifying conduct under Guideline F, Financial Considerations (SOR ¶¶ 1.a. through 1.h.), and an unspecified assertion of disqualifying conduct under Guideline E, Personal Conduct. In the FORM, the Government stated that it would not present evidence or argument related to Guideline E. Accordingly, I dismiss the unspecified Guideline E allegation in the SOR. In his Answer to the SOR, Applicant admitted all Guideline F allegations. Applicant's admissions are admitted as findings of fact. (Item 1; Item 4.)

The facts in this case are established by the record provided by the Government and by information provided by Applicant in response to the FORM. The record evidence includes Applicant's September 10, 2010 e-QIP; official investigation and agency records; Applicant's responses to DOHA interrogatories;¹ Applicant's credit reports of February 23, 2011, and September 25, 2010; and Applicant's response to the FORM. (See Items 5 through 9; Item A.)

Applicant is 47 years old, married, and the father of five children. He is employed by a federal contractor as a shop supervisor. He has worked for his present employer since June 2010. From January 2008 to June 2010, he worked as a shop supervisor for another employer. He was previously employed as a mechanic for several years. His employment history shows steady employment since about 1999. He seeks a security clearance for the first time. (Item 5.)

The SOR alleges that Applicant owes eight delinquent debts totaling approximately \$141,911, five of which are in charged-off status. The delinquent accounts in charged-off status are for \$10,509, \$9,358, \$752, \$65,600, and \$13,634 (SOR ¶¶ 1.a., 1.b., 1.f., 1.g., and 1.h.). Applicant's credit reports show that three of the charged-off debts date to 2008 and two date to 2009. Additionally, Applicant is responsible for three delinquent debts in collection status. These debts are for \$11,463, \$15,287, and \$15,309 (SOR ¶¶ 1.c., 1.d., and 1.e.). The debt alleged at SOR ¶1.c. was

¹ Applicant was interviewed by an authorized investigator from the U.S. Office of Personnel Management (OPM) on October 8, 2010. In the interview, Applicant acknowledged the delinquent debts identified at SOR ¶¶ 1.a., 1.c., 1.e., 1.f., 1.g., and 1.h. On February 16, 2011, after correcting the interview to reflect that he had been married only once, Applicant signed a statement that the investigator's report accurately reflected his October 8, 2010 interview. (Item 1; Item 6.)

placed for collection in April 2008. The debts alleged at SOR ¶¶ 1.d. and 1.e. were placed for collection in about April 2009. (Item 1; Item 8; Item 9.)

In his October 8, 2010 interview with an OPM investigator, Applicant stated that he was aware of the debts alleged at SOR ¶¶ 1.a., 1.d., 1.g., and 1.h., and he intended to pay them. He stated that he was not aware of the debts alleged at SOR ¶¶ 1.c., 1.e., and 1.f., but would follow up and seek further information. Applicant stated that he intended to deploy overseas as a civilian contractor to earn money to pay his delinquent debts. He told the investigator that he had not had financial credit counseling. He also stated his belief that he was able to satisfy all of his current debts. (Item 6.)

In his February 16, 2011 response to DOHA interrogatories, Applicant stated that he was attempting to negotiate payment plans for the debts alleged at SOR ¶¶ 1.a., 1.b., 1.c., 1.d., 1.e., and 1.h. He had not acquired further information on the debt alleged at SOR ¶1.f., and he provided evidence that he had a 12-month temporary payment plan for a charged-off second mortgage of \$65,600 alleged at SOR ¶ 1.g. (Item 7.)

Applicant did not provide a personal financial statement. The record is silent regarding his income, his wife's income, their monthly expenses, their savings, and other resources available for satisfying his delinquent debt.

In his response to the FORM, Applicant stated that he had been unable to obtain full-time work while waiting for his security clearance to be adjudicated. Consequently, he was unable to pay his debts, and he filed for Chapter 7 bankruptcy in June 2011. (Item A.)

Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security, and it has emphasized that “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information.” *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant Applicant's eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended.

When evaluating an applicant's suitability for a security clearance, an administrative judge must consider the revised adjudicative guidelines (AG). 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, the administrative judge applies these 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.

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 applicant or proven by Department Counsel. . . ." The applicant has the ultimate burden of persuasion in seeking 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 protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to 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 relating to the guideline 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 in this case. Under AG ¶ 19(a), an "inability or unwillingness to satisfy debts" is potentially disqualifying. Similarly under AG ¶ 19(c), "a history of not meeting financial obligations" may raise security concerns.

Applicant owes approximately \$141,911 in delinquent debts. The record reflects that he has been steadily employed since about 1999, but he has failed to demonstrate that he has paid his debts. This evidence is sufficient to raise security concerns under AG ¶¶ 19(a) and 19(c).

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Several Guideline F mitigating conditions could apply to the security concerns raised by Applicant's financial delinquencies. Unresolved financial delinquency might be mitigated if it "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." (AG ¶ 20(a)). Additionally, unresolved financial delinquency might be mitigated if "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." (AG ¶ 20(b)). Still other mitigating circumstances that might be applicable include evidence that "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" (AG ¶ 20(c)) or "the individual initiated a good faith effort to repay overdue creditors or otherwise resolve debts" (AG ¶ 20 (d)). Finally, security concerns related to financial delinquencies might be mitigated if "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." (AG ¶ 20 (e)).

Applicant has a history of financial delinquencies. While he negotiated a temporary 12-month payment plan with the creditor holding his delinquent second mortgage, he failed to demonstrate that he had made payments according to the agreement or that he had made arrangements to pay or satisfy his other financial delinquencies. After receiving the SOR in April 2011, he sought protection from his creditors in June 2011 by declaring Chapter 7 bankruptcy. While Applicant asserted that the debts alleged in the SOR were resolved in his Chapter 7 bankruptcy, he failed to provide evidence of the filing and to identify the debts discharged in the bankruptcy. While bankruptcy is a legitimate legal tool in the resolution of debt, it does not erase concerns about an individual's good-faith efforts to satisfy his creditors and his current and future financial stability.

DOHA's 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 [the "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 [the "good-faith" mitigating condition.]

(ISCR Case No. 02-30304 at 3 (App. Bd. April 20, 2004) (quoting ISCR Case No. 99-9020 at 5-6 (App. Bd. June 4, 2001))).

Applicant has been steadily employed since August 2009. He failed to demonstrate that he had made good-faith efforts to satisfy his delinquent debts.

The record in this case is sparse. Applicant did not provide a financial statement, and there is no information in the record about Applicant's income, his wife's income, their monthly expenses, their savings, and other resources available for satisfying his delinquent debt. Moreover, Applicant has not had financial counseling, and there is no evidence that his financial situation is under control. I conclude that AG ¶¶ 20(a), 20(b), 20(c), and 20(d) do not apply in mitigation in Applicant's case.²

Whole-Person Concept

Under the whole-person concept, an administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of an 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.

² AG ¶ 20(e) does not apply to the facts of Applicant's case.

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. Applicant is a mature adult. He accumulated substantial debt. In his interview with an OPM investigator and in response to DOHA interrogatories, Applicant asserted that he was negotiating payment plans with the majority of his creditors. He told the investigator that he had sufficient resources to pay his debts. He also asserted that he sought employment as a civilian contractor overseas in order to earn money to pay his creditors. After receiving the SOR, Applicant sought protection in Chapter 7 bankruptcy. This action, albeit legitimate, does not resolve security concerns about Applicant's financial stability and his willingness to satisfy his financial obligations.

Overall, the record evidence leaves me with doubts about Applicant's eligibility and suitability for a security clearance. I conclude that Applicant failed to mitigate the security concerns arising from his financial delinquencies.

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.h.:	Against Applicant
Paragraph 2, Guideline E:	DISMISSED

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.

Joan Caton Anthony
Administrative Judge