



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



In the matter of:)
)
) ISCR Case No. 11-00156
)
)
Applicant for Security Clearance)

Appearances

For Government: Gina L. Marine, Esq., Department Counsel
For Applicant: *Pro se*

07/23/2012

Decision

COACHER, Robert E., Administrative Judge:

Applicant has not mitigated the Financial Considerations security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On October 27, 2011, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, Financial Considerations. DOHA acted 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) effective within the Department of Defense on September 1, 2006.

Applicant answered the SOR on January 24, 2012, and February 9, 2012, and requested a hearing before an administrative judge. The case was assigned to me on May 17, 2012. DOHA issued a notice of hearing on May 31, 2012, and the hearing was

convened as scheduled on June 20, 2012. The Government offered exhibits (GE) 1 through 6, which were admitted into evidence without objection. Department Counsel's exhibit index was marked as Hearing Exhibit (HE) I. Applicant testified and submitted exhibits (AE) A and B, which were admitted into evidence without objection. The record was held open for Applicant to submit additional information. Applicant submitted AE C, which was admitted into evidence without objection. Department Counsel's forwarding memorandum was marked as HE II. DOHA received the hearing transcript (Tr.) on July 3, 2012.

Findings of Fact

Applicant admitted the following SOR allegations: ¶¶ 1.a - 1.e, and 1.i – 1.n. He denied ¶¶ 1.f - 1.h. The admissions are incorporated as findings of fact. After a review of the pleadings and evidence, I make the following additional findings of fact.

Applicant is a 46-year-old employee of a defense contractor. He has worked for his current employer since July 2011. He is a program manager. He has a bachelor's degree. He is married and has one child who has a learning disability requiring specialized instruction. His wife is a registered nurse (RN) who is not currently working. He is seeking a security clearance for the first time.¹

The SOR alleged 14 delinquent debts totaling about \$45,703. The debts were listed on credit reports obtained on August 16, 2011, and June 8, 2010.²

Applicant's financial problems resulted from an employment situation he was in from 2007 to 2009. He moved to a different state, leaving his family behind, to start a business venture. He and his mentor (boss) worked on an infrastructure project in an effort to grow the company. During this time, Applicant was receiving very little compensation. The company was paying his living expenses including his rent. However, before the project was completed, his boss was diagnosed with cancer. The business essentially ceased to operate at that point. Applicant was responsible for the remainder of a year lease, but he was no longer receiving financial support from his company. He broke the lease and moved back to where his family was located so he would not have to continue supporting two households.³

After returning to his home state, Applicant was unemployed for about 10 months. He was unable to collect unemployment insurance because he was working as a subcontractor in his last job. His wife was working as an RN at a local hospital and they relied on her income to pay their expenses.⁴

¹ Tr. at 6, 49; GE 1.

² GE 5-6.

³ Tr. at 25-27.

⁴ Tr. at 27.

The debt alleged in SOR ¶ 1.a (\$1,800) is a judgment entered by a collection company. This debt originated from the unexpired lease that Applicant broke when he left his subcontractor position. He also believes that this is the same debt that is alleged in SOR ¶ 1.f (\$14,030), but he could not explain the different amounts owed, and he had no documentation showing the debts were the same. Both debts are listed separately on the most recent credit report. These debts are unresolved.⁵

The debt alleged in SOR ¶ 1.b is a delinquent utility debt in the amount of \$334. Applicant admitted this debt, which was incurred while he was working as a subcontractor. During his security clearance interview in June 2010, he told the investigator this bill would be paid in six months. This debt is unresolved.⁶

The debt alleged in SOR ¶ 1.c is a delinquent cable debt in the amount of \$740. Applicant admitted this debt, which was incurred while he was working as a subcontractor. During his security clearance interview in June 2010, he told the investigator this bill would be paid in six months. This debt is unresolved.⁷

The debt alleged in SOR ¶ 1.d is a delinquent utility debt in the amount of \$149. Applicant admitted this debt, which was incurred while he was working as a subcontractor. During his security clearance interview in June 2010, he told the investigator this bill would be paid in six months. This debt is unresolved.⁸

The debt alleged in SOR ¶ 1.e is delinquent rent owed for an apartment in the city where he was a subcontractor. His company failed to pay the last month's rent in the amount of \$2,210. Applicant admitted this debt. During his security clearance interview in June 2010, he told the investigator this bill would be paid in six months. This debt is unresolved.⁹

The debts alleged in SOR ¶¶ 1.g and 1.h are delinquent medical debts in the amounts of \$105 and \$225 respectively. Applicant admitted both debts, and he supplied documentary proof that ¶ 1.g was paid. SOR ¶ 1.h is unresolved.¹⁰

The debt alleged in SOR ¶ 1.i is a delinquent telephone debt in the amount of \$663. Applicant admitted this debt, which was incurred while he was working as a

⁵ Tr. at 33-35; GE 2, 6.

⁶ Tr. at 35; GE 2.

⁷ Tr. at 35; GE 2.

⁸ Tr. at 35; GE 2.

⁹ Tr. at 35; GE 2.

¹⁰ Tr. at 35; GE 2; AE 3.

subcontractor. During a subsequent security clearance interview in September 2010, he told the investigator this bill would be paid in six months. This debt is unresolved.¹¹

The debts alleged in SOR ¶¶ 1.j and 1.k are delinquent credit card debts in the amounts of \$1,110 and \$620 respectively. Applicant admitted these debts during his testimony. He previously stated that he owed only one credit card debt. He did not offer any documentation disputing either debt. These debts are unresolved.¹²

The debts alleged in SOR ¶¶ 1.l and 1.m are delinquent library debts in the amounts of \$75 and \$58 respectively. Applicant admitted these debts during his testimony. During his security clearance interviews in June 2010 and September 2010, he told the investigator these debts would be paid in six months. These debts are unresolved.¹³

The debt alleged in SOR ¶ 1.n, is a delinquent tax debt in the amount of about \$23,584. Applicant owed for tax years 2007-2009 because as a subcontractor no federal income taxes were withheld from his paychecks during that time and he did not know how to make the required payments to the Internal Revenue Service (IRS). Applicant reached an offer and compromise settlement with the IRS in the amount of \$15,000. The final \$9,000 payment was made in January 2012. This debt is resolved.¹⁴

Another major expense that Applicant described was the yearly tuition he pays for private schooling for his daughter. The tuition is approximately \$18,000 yearly. He receives about \$7,000 in financial aid, but must pay the remaining amount himself. He may get some help from his in-laws to pay the tuition. While his wife remains unemployed, they are currently meeting their monthly expenses with very little income left over. His plan to resolve the remaining debts is to pay them when his wife begins working again. He received some financial counseling in 2004 when he consolidated and paid off some credit card debts.¹⁵

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 that are to be used in evaluating an applicant's eligibility for access to classified information.

¹¹ GE 3.

¹² Tr. 35; GE 3.

¹³ Tr. 35; GE 3.

¹⁴ Tr. 28-29; GE 2; AE A.

¹⁵ Tr. 30, 32, 43, 89, 91.

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.

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 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 that the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about 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* Executive Order 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 as follows:

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 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 has multiple debts that are delinquent. He was unable or unwilling to satisfy his obligations. The evidence is sufficient to raise the above disqualifying conditions.

Several financial considerations 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 actions to resolve the issue.

Applicant's debts are recent and multiple. The debts are also ongoing and he has not made payments toward those debts, except for the tax debt and one medical debt. His poor financial record and his failure to pay most of the debts cast doubt on his reliability, trustworthiness, and good judgment. AG ¶ 20(a) is not applicable.

Applicant was impacted by his company's business downturn, periods of unemployment, his daughter's tuition, and some medical issues. These were conditions beyond his control. However, for AG ¶ 20(b) to fully apply, Applicant must also have

acted responsibly under the circumstances. While he did act responsibly to resolve his tax liability debt and one medical debt, he has done nothing to resolve the remaining debts. AG ¶ 20(b) is partially applicable.

Applicant did receive financial counseling a number of years ago unrelated to these debts. However, his finances are not currently under control or being resolved. He has debts that he indicated to an investigator would be paid by now but are not. AG ¶ 20(c) partially applies. AG ¶ 20(d) applies to the tax debt and one medical debt, but does not apply to the remaining debts since no good-faith effort was made toward paying those debts. Since he did not dispute any of the unpaid debts, ¶ 20(e) does not apply. At this point, Applicant's finances remain a concern 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 relevant 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.

I considered Applicant's current service to his employer, his unemployment, and his daughter's medical and education issues. I also considered that beyond resolving his tax liability, he has done very little to resolve his debts. His past financial track record reflects a troublesome financial history that causes me to question his ability to resolve his debts.

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 has not mitigated the 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.f:	Against Applicant
Subparagraph 1.g	For Applicant
Subparagraphs 1.h - 1.m	Against Applicant
Subparagraph 1.n	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.

Robert E. Coacher
Administrative Judge