



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



In the matter of:)
)
) ISCR Case No. 11-00189
)
)
Applicant for Security Clearance)

Appearances

For Government: Rashid Williams, Esquire, Department Counsel
For Applicant: *Pro se*

May 31, 2011

Decision

HOGAN, Erin C., Administrative Judge:

On February 25, 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 adjudicative guidelines (AG) effective within the Department of Defense after September 1, 2006.

On March 8, 2011, Applicant answered the SOR and requested a hearing before an administrative judge. Department Counsel was ready to proceed on March 17, 2011. The case was assigned to another administrative judge on March 24, 2011. On April 1, 2011, a Notice of Hearing was issued, scheduling the hearing for April 18, 2011. The case was transferred to me on April 11, 2011. The hearing was held as scheduled on April 18, 2011. During the hearing, the Government offered five exhibits which were admitted as Government Exhibits (Gov) 1 – 5. Applicant testified and offered five exhibits which were admitted as Applicant Exhibits (AE) A - E. The record was held open until May 3, 2011, to allow Applicant to submit additional documents. Applicant

timely submitted a document which was admitted as AE F. Department Counsel's response to the submission of AE F is marked as Hearing Exhibit (HE) 1. No additional documents were submitted. The transcript (Tr.) was received on April 22, 2011. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

Findings of Fact

In his answer to the SOR, Applicant admits SOR ¶¶ 1.a and 1.c. He denies SOR ¶¶ 1.b and 1.d.

Applicant is a 49-year-old male employed by a Department of Defense contractor seeking a security clearance. He has worked for his current employer since June 2007. He is married, but pending divorce proceedings. He and his wife have three children, ages 14, 20, and 21. (Tr. 6-11, 29-30; Gov 1)

Applicant's security clearance background investigation revealed that he has several delinquent debts. The SOR alleged four delinquent accounts. They include a \$25,555 line of credit taken out in June 2007 that was placed for collection (Gov 4 at 6; Gov 5 at 2); a \$2,889 credit card account opened in April 2008, and placed for collection in February 2009 (Gov 4 at 9; Gov 5 at 2); a \$63,906 second mortgage on a house that was foreclosed in December 2007 that was placed for collection in June 2009 (Gov 4 at 9; Gov 5 at 2); and a \$138 electric utility account placed for collection in July 2010 (Gov 4 at 10, 12; Gov 5 at 2).

Although not alleged in the SOR, during the hearing, Applicant indicated that he and his wife owe the Internal Revenue Service (IRS) \$32,000. While Applicant provided several explanations for the tax debt, he did not provide written documentation which provided the full basis for the debt. Part of the basis may have come from capital gains from the sale of a family home in 2005. Part of the basis may have come from income taxes Applicant and his wife owed for tax years 2004 and 2007. Applicant testified that his wife claimed too many exemptions and they did not have the money to pay the IRS when they filed their taxes. Since March 2008, Applicant makes monthly payments of \$525 towards the tax debt. The IRS also applies Applicant's tax refunds to the tax debt each year. Applicant claims his wife should pay half of the tax debt, but she refuses to do so. They are pending divorce and entered into a property settlement agreement on August 9, 2010. Under the terms of the agreement, his wife is responsible for half of the federal tax debt. She is also required to reimburse Applicant for half the payments of all marital debt that Applicant has paid. She has not done so. Applicant is also filing a Request for Innocent Spouse Relief for tax years 2004 and 2007. If he is successful, the tax debt will be split in half. (Tr. 18, 20, 58-63; AE A; AE C; AE E)

Applicant and his wife purchased a home when they relocated to another state in February 2005. Both he and his wife had well paying jobs. The mortgage payment was \$1,800 a month. The first mortgage was in his wife's name because she had better credit. Both of their names were on the second mortgage. Applicant was laid off in

February 2007. He was unemployed until June 2007, when he moved to his current state of residence to accept the position with his current employer. His wife initially stayed behind. She then moved to the area where he currently resides a few months later. They lived together for a few months until Applicant moved out of the apartment they shared in March 2008. (Tr. 18-21, 31, 34, 50-51)

After Applicant was laid off in February 2007, he and his wife took out a \$25,000 line of credit with a credit card company (SOR ¶ 1.a) to pay off some bills and to purchase a \$5,000 used car for one of their daughters. Applicant claims that at some point he agreed to pay the creditor \$400 a month for a year. After a year, the payments were then lowered to \$250 a month. The divorce property settlement agreement requires both Applicant and his wife to pay half of the payment to the company. The agreement states that the monthly payment is \$212. Applicant did not provide documentation verifying his assertions. (Tr. 47-49; AE A at 11) In his post-hearing submission, Applicant submitted a copy of a proposed settlement agreement for the debt alleged in SOR ¶ 1.a. The terms of the agreement required Applicant to make several payments which would total \$8,900 until the debt is settled on September 30, 2011. There is no indication that Applicant agreed to this settlement offer. The balance on the account as of April 25, 2011, was \$25,222. (AE F)

When Applicant moved to his current state of residence, he assumed that his wife was going to make the mortgage payments. He claims that she had a good job earning over six figures and could afford to make the mortgage payments. She did not make the mortgage payments and the home went into foreclosure in November or December 2007, after an attempted short sale. They also attempted to apply for a hardship program. The application was denied because his wife earned too much income to qualify for the program. (Tr. 17-18, 42; Gov 2 at 3-4) The \$63,906 debt alleged in SOR ¶ 1.c is the second mortgage on the house. Applicant claims the debt is written off. He testified that the mortgage company offered a \$10,000 settlement, but he cannot afford the settlement amount. (Tr. 47-48)

Applicant indicated that he resolved the \$2,889 debt alleged in SOR ¶ 1.b. In response to interrogatories dated February 7, 2011, Applicant provided a copy of an agreement with the current company collecting on the debt. He agreed to have \$1,015 deducted from his bank account on January 28, 2011 and a \$1,013 payment taken out on February 28, 2011. He states that on that date, the account was paid off. Department conceded that this debt was paid. (Tr. 49-50, 81; Gov 3 at 3, 7) He also paid the \$138 debt alleged in SOR ¶ 1.d. This was a utility account for the apartment that Applicant's wife and children continued to live in after he moved out. Appellant testified that this was her debt, but he paid it anyway. (Tr. 52-53; Gov 3 at 8)

When they separated, Applicant and his wife had an oral agreement regarding child support. As long as he paid the IRS bill, she would not pursue child support. Applicant also sent about \$350 a month to his children for clothes and necessities. In April 2010, his wife filed a formal petition for child support. The court found Applicant had a \$5,136 child support arrearage. Applicant has been making monthly child support

payments. Part of the payment each month goes towards the arrearage. The arrearage is currently down to \$2,800. (Tr. 53-57; Gov 3 at 6; AE B)

Applicant claims that his financial problems were caused when he was laid off from his previous job in February 2007 and his pending divorce proceedings. He was recently promoted and received an annual pay raise of \$7,000. (Tr. 21-22, 38, 67) His net monthly income is \$2,833.06. Approximately \$296.72 is deducted from his paycheck each pay period for his child support obligation. (Tr. 67; AE F at 3) His monthly expenses include: rent \$1,100; groceries \$200; utilities \$120; car insurance/repairs \$627; car payment \$300; gas \$600. His oldest daughter is a college student. He sends her \$150 each month. He has one open credit card account that has a \$500 limit. The balance on the account is currently \$350. He pays \$30 a month towards this account. (Tr. 69-72) His total monthly expenses are \$3,127. If the figures provided during the hearing are accurate, Applicant's monthly income is not sufficient to meet his monthly expenses by \$294 each month. These figures do not include Applicant's monthly payments to the IRS and his remaining delinquent debts.

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which must be considered when determining 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.

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 as to obtaining 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 several disqualifying conditions that could raise security concerns. I find AG ¶ 19(a) (an inability or unwillingness to satisfy debts); and AG ¶ 19(c) (a history of not meeting financial obligations) apply to Applicant’s case. Applicant has encountered difficulties meeting his financial obligations. He incurred a \$25,000 line of credit in June 2007 that was charged off a few months later. He and his wife purchased a home in 2005. The home eventually went to foreclosure in late 2007. Applicant’s name was on the second mortgage which was over \$63,000. He also incurred several minor debts that became delinquent.

An individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in their obligations to protect classified information. Behaving irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life. A person’s relationship with his creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to pay debts under agreed terms. Absent evidence of strong extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a situation of risk

inconsistent with the holding of a security clearance. An applicant is not required to be debt free, but is required to manage his finances in such a way as to meet his financial obligations.

The Government's substantial evidence and Applicant's own admissions raise security concerns under Guideline F. The burden shifted to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the security concerns. (Directive ¶E3.1.15) An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. (See ISCR Case No. 02-31154 at 5 (App. Bd. September 22, 2005))

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. The following mitigating conditions potentially apply:

AG ¶ 20(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) is not applicable. Applicant has had recurring financial problems. While not all of his delinquent debts were alleged in the SOR, apparently because he paid off several of them during the security clearance background investigation, he incurred some significant delinquent debts before 2007, including a \$32,000 federal tax debt. While he resolved the two smaller debts alleged in SOR ¶¶ 1.b and 1.d, his two largest debts remain unresolved. While he is taking steps towards resolving his delinquent accounts, a concern remains based on the unresolved debts. It is too soon to conclude that all of the debts will be resolved based on Applicant's past financial history and his current income.

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) partially applies. Applicant was unemployed from February to June 2007. However, he testified that his wife's income was substantial. It is unclear whether the family could have met their expenses based on her income alone. Applicant and his wife are in the process of divorcing, which is an added burden. If his wife continues to earn over six figures, she should be responsible for half of the delinquent debt. However, even before Applicant and his wife separated they made some irresponsible financial decisions. They are indebted to the IRS for approximately \$32,000. While the tax debt is not alleged in the SOR, it is reasonable to consider this debt when considering Applicant's overall financial circumstances regarding mitigation. When they purchased a house in February 2005, the first mortgage on the home was only in his wife's name because of Applicant's poor credit history. When Applicant was laid off, he and his wife took out a \$25,000 loan which they were unable to pay back. The loan became delinquent after he started his new job. Applicant has not made the most responsible financial decisions in the past.

AG ¶ 20(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) does not apply. Applicant has not attended financial counseling. His two largest debts in the amounts of over \$25,000 and \$63,000 remain unresolved. Considering that his monthly expenses are more than his monthly income, it is too soon to conclude that his delinquent accounts will be resolved in the near future or under control.

AG ¶ 20(d) (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts) partially applies. Applicant resolved the debts alleged in SOR ¶¶ 1.b and 1.d. He resolved other delinquent debts before the SOR was issued. He is making payments towards the IRS debt. He is meeting his child support obligations. Neither the tax debt nor Applicant's child support payments were alleged in the SOR. Applicant is given some credit because he is making payments towards these debts. However, Applicant did not provide sufficient proof to show that the debts alleged in SOR ¶¶ 1.a and 1.c are being resolved.

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 considered Applicant has been paying several large debts that were not alleged in the SOR, to include a \$32,000 debt owed to the IRS and his child support obligations. He resolved his two smaller debts. However, his two largest debts remain unresolved. Applicant did not provide sufficient evidence indicating that he was making payments towards the debt alleged in SOR ¶ 1.a. With regard to the \$63,000 debt alleged in SOR ¶ 1.c, he indicates that he was offered to settle the account for \$10,000 but he could not afford to do so. Applicant's monthly expenses are more than his monthly income, which indicates that he is unable to resolve his remaining delinquent debts. I considered Applicant's periods of

unemployment, his marital separation, and his pending divorce proceedings. While Applicant made payments towards two of his delinquent accounts and is making payments towards his child support and a debt owed to the IRS, his two largest debts totaling over \$88,000 remain unresolved. Applicant did not demonstrate a good-faith effort to resolve his delinquent accounts. He did not mitigate the concerns raised under financial considerations.

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:	Against Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	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.

ERIN C. HOGAN
Administrative Judge