



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



In the matter of:)	
)	
)	ISCR Case No. 11-00423
)	
Applicant for Security Clearance)	

Appearances

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

September 14, 2011

Decision

ANTHONY, Joan Caton, Administrative Judge:

After a thorough review of the case file, pleadings, and exhibits, 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.

Statement of Case

On October 4, 2010, Applicant completed and certified an Electronic Questionnaire for Investigations Processing (e-QIP). On March 16, 2011, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) 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 for SORs issued after September 1, 2006.

Applicant provided a notarized answer to the SOR, dated March 30, 2011, and requested that his case be determined on the written record. The Government compiled

its File of Relevant Material (FORM) on May 17, 2011. The FORM contained documents identified as Items 1 through 9. By letter dated May 25, 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 June 6, 2011. His response was due on July 6, 2011. Applicant did not submit additional information within the required time period. On August 17, 2011, the case was assigned to me for a decision.

Findings of Fact

The SOR contains one allegation of disqualifying conduct under AG F, Financial Considerations (SOR ¶ 1.a.). In his Answer to the SOR, Applicant admitted the allegation but denied it was of security significance. Applicant's admission is accepted as a finding 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 his Answer to the SOR. The record evidence includes Applicant's October 4, 2010 e-QIP; official investigation and agency records; Applicant's responses to DOHA interrogatories;¹ and Applicant's credit reports of March 8, 2011, and October 9, 2010. (See Items 4 through 9.)

Applicant is 48 years old, has a high school education, and has been married twice. He lists no children on his e-QIP. Applicant married for the first time in 1986. He divorced his wife in 1999, after 13 years of marriage, because he and his wife differed on financial matters and how they should spend money. Applicant believed his wife's tastes were too expensive for their income. Applicant married for the second time in 2002. The record does not reflect whether Applicant's second wife is employed or whether she has an income. (Item 5; Item 6.)

Applicant is employed in information technology by a federal contractor. He has worked for his employer for 15 years. He was first awarded a security clearance in 1999. (Item 5.)

In 2007, Applicant purchased a recreational vehicle, on credit, for approximately \$347,000. Applicant told the OPM investigator that in about January 2009, the account became past due, and it went into collection status in March 2009. Applicant returned the vehicle to the creditor in a voluntary repossession. After the vehicle was sold by the creditor, Applicant owed a deficiency of approximately \$197,000. Applicant's credit report of March 8, 2011, shows the debt has grown to \$203,000 and is in charged-off

¹ Applicant was interviewed by an authorized investigator from the U.S. Office of Personnel Management (OPM) on October 21, 2010. On February 18, 2011, in response to DOHA interrogatories, Applicant reviewed the investigator's report, corrected the record to show that he had three and not two sisters as reported in the interview, and then signed a statement that the corrected investigator's report accurately reflected his October 21, 2010, interview. (Item 6.)

status. The debt, which remains unresolved, is alleged at SOR ¶ 1.a. (Item 1; Item 5; Item 6; Item 8.)

Applicant told the investigator that in 2004, he purchased a home as an investment property. In 2008, the account became past due. Applicant owed \$315,000 on his first mortgage and \$250,000 on his second mortgage. The property was eventually sold in a short sale, and the creditor bank charged off the second mortgage. Applicant told the investigator he has no plans to repay the debts. (Item 6.)

Applicant's credit reports reflect that in March 2008, he took out a vehicle loan for \$58,000. The credit reports also show that January 2011, he took out a vehicle loan for \$43,000. (Item 8; Item 9.)

In his Answer to the SOR, Applicant acknowledged that the debt alleged at SOR ¶ 1.a. remains unresolved. He stated that he was in financial trouble "starting in 2008 when I was faced with extenuating circumstances such as a[n] unassisted job relocation, the housing crises, and living in a higher cost of living state to name a few." He stated that he had resolved "a significant portion" of his credit card debt in the past two years. Applicant asserted that he had been in contact with the creditor of the debt alleged at SOR ¶ 1.a., and he intends to settle the debt at an unspecified time in the future. (Item 4 at 1.)

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 he has available for satisfying his delinquent debt. Applicant stated that he has had financial credit counseling. He told the investigator that he was living within his means. (Item 6.)

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 several 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 a delinquent debt of approximately \$203,000. He has been steadily employed with his employer since 1996, but he has failed to demonstrate that he has paid his debt or negotiated a payment plan with his creditor. 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. The debt alleged in the SOR remains unresolved. He has made no arrangements to pay or otherwise satisfy this financial delinquency, which is ongoing. Applicant intends to resolve this large financial delinquency at some unspecified future time. In determining an individual's security worthiness, the Government cannot rely on the possibility that an applicant might resolve his or her outstanding debts at some future date. ISCR Case No. 98-0614 at 5 (App. Bd. Jul. 12, 1999).

Applicant claimed that his delinquent debt was the consequence of several conditions beyond his control: a job relocation that was unreimbursed by his employer,

the housing crisis and economic downturn, and residence in a state with a high cost of living. However, he failed to provide documentation to corroborate his claims. While Applicant has apparently had financial credit counseling, he failed to show that he had a plan in place to settle or pay his delinquent debt of \$203,000. While he may have been unable to control the economic downturn that affected his investment property, he failed to show that he acted reasonably under the circumstances.

Applicant has been steadily employed with his current employer since 1996. He provided no information on his family income, regular expenses, and resources available to satisfy debts. His \$203,000 debt remains unresolved. Applicant failed to demonstrate that he made a good-faith effort to satisfy this delinquent debt. 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.

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 made an investment in real property, and his investment was affected by an economic downturn. He purchased a recreational vehicle, and when he could not make the required payments, he returned it to the creditor. The debt alleged at SOR ¶ 1.a. is the deficiency he owes on the repossessed recreational vehicle. He has had a steady job since 1996. He says he will pay his \$203,000 debt in the future, but he provides no specific plan for doing so.

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

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
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Subparagraph 1.a.:	Against Applicant
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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