



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



In the matter of:)	
)	
)	ISCR Case No. 11-00691
)	
)	
Applicant for Security Clearance)	

Appearances

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

January 18, 2012

Decision

HOGAN, Erin C., Administrative Judge:

Applicant submitted a security clearance questionnaire on June 14, 2010. On August 26, 2011, the Defense Office of Hearings and Appeals (DOHA) issued 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.

On September 15, 2011, Applicant answered the SOR and requested that his case be decided on the written record. Department Counsel prepared a File of Relevant Material (FORM) on October 26, 2011. The FORM was forwarded to Applicant on October 31, 2011. Applicant received the FORM on November 10, 2011. He had 30 days to submit a response to the FORM. He did not submit additional information. On January 6, 2012, the FORM was forwarded to the hearing office and was assigned to me on January 9, 2012.

Based upon a review of the case file, pleadings, and exhibits, eligibility for access to classified information is denied.

Findings of Fact

In his answer to the SOR, Applicant admits to SOR allegations ¶¶ 1.b - 1.f. He denies SOR allegation ¶ 1.a because the debt is paid. (Item 4)

Applicant is a 59-year-old engineer employed by a Department of Defense contractor seeking to maintain a security clearance. He has been employed with the company since July 1987. He has a bachelor's degree in electrical engineering and a bachelor's degree in biology. He has held a security clearance since January 2000. He is married but is in the process of filing for divorce. (Item 5)

When Applicant completed his security clearance questionnaire, he fully disclosed his financial problems in response to questions in Section 26: Financial Record. (Item 5) A subsequent background investigation revealed six delinquent accounts, an approximate total balance of \$162,482. (Items 8 and 9) The delinquent accounts include: an \$8,483 judgment entered against Applicant in October 2009 on behalf of a flooring company (SOR ¶ 1.a: Item 8 at 1; Item 9 at 3); a \$311 satellite television account placed for collection in July 2009 (SOR ¶ 1.b: Item 8 at 1; Item 9 at 11); a \$12,909 delinquent line of credit that was charged off in September 2006 (SOR ¶ 1.c: Item 8 at 2; Item 9 at 3); a \$56,117 delinquent line of credit placed for collection in June 2009 (SOR ¶ 1.d: Item 8 at 2; Item 9 at 6); a \$74,267 delinquent mortgage account placed for foreclosure in 2010 (SOR ¶ 1.e: Item 8 at 3; Item 9 at 5); and a \$10,396 line of credit placed for collection in July 2009 (SOR ¶ 1.f: Item 9 at 9-10).

On September 22, 2010, Applicant was interviewed by an investigator in conjunction with his background investigation. He states that he incurred delinquent accounts after he began to build a new house in 2007. He encountered several disputes with contractors and unanticipated costs. Around 2008, his wife became ill and was unable to work. Applicant attempted to pay his creditors with lines of credit and credit cards. In November 2008, he began to fall behind on debts related to building the new house. The debt alleged in SOR ¶ 1.a was for flooring in his new house. He was unable to pay the bill because he ran out of money. The contractor obtained a judgment against him. He paid the debt off in June 2010 through wage garnishment. Applicant provided proof of payment as an attachment to his response to the SOR. (Item 6; Item 4, attachment 1)

The debt alleged in SOR ¶ 1.e is a mortgage on the home Applicant lived in when he decided to build the new home. Applicant became delinquent on the mortgage in November 2008. During his background interview on September 22, 2010, Applicant mentioned the creditor was taking foreclosure action on this house. He also mentioned that he has not made any payments on the loan for the new house, which was \$830,000. The creditor is taking action to foreclose on this house as well. Applicant states that the loan was opened in April 2007 and became delinquent in November

2008. The original lender went bankrupt and another creditor took it over. Applicant was awaiting judgment on both foreclosed properties. Applicant intends to pay the remaining accounts alleged in the SOR after resolution of the foreclosed homes. (Item 6)

Applicant's net monthly income as of September 22, 2010, was \$7,800. He and his wife separated and are filing for divorce. His expenses include: \$700 groceries, \$600 utilities, \$700 car expenses, \$350 medical expenses, and \$5,000 towards credit card payments and lines of credit that are not delinquent. His total monthly expenses are \$7,350. He has \$450 left over each month after expenses. He has not been making mortgage payments pending the foreclosure actions. If he were paying his two mortgages, the mortgage on his first residence would be \$2,750 and the mortgage on the new home would be between \$3,000 and \$4,000. He has \$21,000 in a 401(k) account. (Item 6 at 5)

In his response to DOHA Interrogatories on June 3, 2011, Applicant indicated that he responded to the mortgage foreclosure by alleging violations of the Truth in Lending Act and mortgage fraud. Unbeknownst to him, his attorney withdrew from the case on March 25, 2011. He was not aware of this until mid-April 2011. The case was dismissed on motion of the opposing party. (Item 6 at 8) In his response to financial interrogatories, dated June 3, 2011, Applicant stated once again that he intended to resolve the mortgage foreclosure issues first and then will begin to resolve his remaining delinquent accounts. (Item 7) Aside from the debt alleged in SOR ¶ 1.a, he did not mention the status of his debts in his response to the SOR. (Item 4)

Policies

When evaluating an applicant's suitability for a security clearance, the 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 must be considered when 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, 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 for 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 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 over-extended 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 Financial Considerations Disqualifying Condition 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 incurred numerous delinquent debts that he has been unable to pay over the past several years.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Several mitigating conditions potentially apply to Applicant’s case.

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) does not apply. While Applicant resolved the judgment in SOR ¶ 1.a, the remaining debts are unresolved. Applicant's extensive unresolved debt indicates irresponsible behavior and continues to cast doubt on Applicant's reliability, trustworthiness, and good judgment.

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. His wife's inability to work in 2008 because of medical issues caused some of the financial burden. It is not clear what added burden their pending divorce has on Applicant's current financial situation. These are circumstances beyond Applicant's control. However, Applicant's decision to build a new home caused the majority of his financial problems. It was within his control to research the costs of the new home. He clearly admits that his financial problems are mostly caused by his decision to build a new home. Overall, I cannot conclude that he acted responsibly under the circumstances.

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 did not attend financial counseling. Most of the delinquent debts remained unresolved at the close of the record. Applicant's financial situation is unlikely to be resolved in the near future.

AG ¶ 20(d) (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts) applies with respect to the debt alleged in SOR ¶ 1.a. However, the majority of his delinquent debts remain unresolved.

AG ¶ 20(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) potentially applies to Applicant's allegation of violations of the Truth In Lending Act and mortgage fraud pertaining to his mortgage foreclosure. Applicant did not provide specific details regarding this allegation or any information as to whether he filed new legal proceedings after his suit was dismissed in April 2011.

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's 24 years of service as a defense contractor. I considered that there were circumstances beyond his control which contributed to Applicant's financial problems to include his wife's illness, her inability to work, and their subsequent separation. Regardless of these factors, Applicant over-extended himself and decided to build a house that he could not afford. The decision to build this house was within his control. He is given credit for paying one debt, but the remaining debts are unresolved. While he should be commended for being truthful about his financial situation on his security clearance application, it is premature to conclude that he is security-worthy based on the extent of the unresolved delinquent accounts.

The concern under financial considerations is not only about individuals who are prone to engage in illegal acts to generate funds. Another concern is that failure 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 which raises questions about an individual's reliability, trustworthiness, and ability to protect classified information. In other words, if an individual has trouble managing their finances, this can raise doubts about an individual's ability to handle and protect classified information. Applicant's history of financial problems raises doubts about his ability to handle and protect classified information. Mindful of my duty to resolve cases where there is doubt in favor of national security, I find Applicant failed to 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
Subparagraphs 1.a :	For Applicant
Subparagraphs 1.b – 1.f :	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

ERIN C. HOGAN
Administrative Judge