



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



In the matter of:)	
)	
)	ISCR Case No. 11-01271
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: David Hayes, Esq., Department Counsel
For Applicant: *Pro se*

October 31, 2011

Decision

LYNCH, Noreen A, Administrative Judge:

On May 26, 2011, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) listing security concerns arising 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 (DoD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG), implemented in September 2006.

Applicant timely answered the SOR and requested a hearing. DOHA assigned the case to me on July 25, 2011. A notice of hearing was issued on August 12, 2011, and the case was heard on September 13, 2011. Department Counsel offered four exhibits (GE) 1-4, which were admitted without objection. Applicant testified on his own behalf and presented one witness. He submitted three exhibits (AE) A-C at the hearing, which were admitted without objection. DOHA received the hearing transcript on September 20, 2011. Based on a review of the pleadings, submissions, and exhibits, I find Applicant has not met his burden of proof on mitigation regarding the security concerns raised. Security clearance is denied.

Findings of Fact

In his answer to the SOR, Applicant admitted the delinquent debts in the SOR with the exception of two accounts. Applicant is 46 years old. He is divorced and has one daughter who is 15 years of age. He received his associates degree in 1986. He expects to complete his undergraduate work soon. He has worked in the information technology field for almost 20 years. He believes he held a security clearance in 1990 but has not held one recently. (Tr. 90) Applicant has been employed with his current employer as a senior level computer support analyst since July 2010. (AE A)

Applicant married in 1996, but he and his souse separated in 2001. The divorce was final in 2005. As a result of the divorce, Applicant pays monthly child support in the amount of \$500. Applicant acknowledged that the many delinquent debts he incurred arose from the marriage. A Chapter 13 bankruptcy was filed in February 2003 but was dismissed in June 2003. A second Chapter 13 bankruptcy was filed in September 2003, but the bankruptcy was dismissed in October 2008 for failure to make payments. Applicant paid the monthly \$550 for five years but stopped in 2008. He was unemployed for about one month due to a reduction in staff in 2008. However, he has been employed full time since that time.

The SOR lists 30 delinquent accounts totaling approximately \$84,000. The credit reports in the record confirm the debts. (GE 2) Applicant acknowledges that he also has approximately \$45,000 in deferred student debt. (Tr. 35) Applicant satisfied several judgments, and his credit report reflects his assertions.

In March 2011, Applicant obtained the services of a credit restoration company. They helped him to dispute some debts. He has paid \$89 a month for the past six months. Since August 2011, he has worked with a debt consolidation program who has assigned him a lawyer. Applicant is paying \$174 a month so that they may settle his debts. (AE B) The projected time frame is five years. (Tr. 65) However, Applicant could not explain how the monthly payment is applied to his debts. He believes the smaller debts are being addressed first. (Tr. 53)

Applicant's net monthly income is approximately \$2,918. He pays child support in the amount of \$500 a month. He has a car payment for a new car in the amount of \$550. He has little in savings or checking. Applicant has not received financial counseling. He is amassing new debts.

At the hearing, Applicant noted that he is in the process of resolving his delinquent debts. He works hard and has tried to improve his opportunities by continuing his college courses. He continues to take courses at work to receive certifications in different areas. His marriage created many debts. He took responsibility at the time of the divorce. He is supporting his daughter.

Applicant has received awards and recognition for professional work. He has certifications. His facility security officer testified that he hired Applicant and that the customers are pleased with Applicant's work. He knew that Applicant's finances were the issue at the hearing, but he was not familiar with any specific facts. (Tr. 94)

Policies

When evaluating an applicant's suitability for a security clearance, an 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. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, they are applied in conjunction with the factors listed in the adjudicative process. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. Under AG ¶ 2(c), this process is a conscientious scrutiny of a number of variables known as the "whole-person concept." An 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

The U.S. Government must present evidence to establish controverted facts alleged in the SOR. An applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." ¹ The burden of proof is something less than a preponderance of evidence. ² The ultimate burden of persuasion is on the applicant. ³

A person seeking access to classified information enters into a fiduciary relationship with the Government based on 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 classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

¹ See also ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

² *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

³ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

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.”⁴ “The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”⁵ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such information.⁶ The decision to deny an individual a security clearance does not necessarily reflect badly on an applicant’s character. It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense established for issuing a clearance.

Analysis

Guideline F, Financial Considerations

The security concern for Financial Considerations is set out in AG ¶ 18:

Failure or an 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.” It also states that “an individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

Applicant has acknowledged delinquent debts. His credit report confirms them. He filed a Chapter 13 bankruptcy in 2003 but was unable to maintain the payments in 2008. The bankruptcy was dismissed. Applicant admitted that he has approximately \$80,000 in delinquent debt. Consequently, Financial Considerations Disqualifying Condition (FC DC) AG ¶ 19(a) (inability or unwillingness to satisfy debts), and FC DC AG ¶ 19(c) (a history of not meeting financial obligations) apply. With such conditions raised, it is left to Applicant to overcome the case against her and mitigate security concerns.

Applicant had financial difficulties due to separation and divorce. He acknowledges his debts. He was unemployed in 2008 for about one month. He has been gainfully employed since then but has been unable to resolve his debts. He stopped payments on his bankruptcy in 2008. Consequently, Financial Considerations Mitigating Condition (FCMC) 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

⁴ See also EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information), and EO 10865 § 7.

⁵ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

⁶ *Id.*

not cast doubt on the individual's current reliability, trustworthiness, or good judgment) does not apply.

Financial Considerations Mitigating Condition (FC MC) AG ¶ 20(b) (the conditions that resulted in the behavior 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) is potentially applicable. As noted, Applicant was unemployed in 2008 for one month. He also suffered separation and divorce. He admitted that he incurred credit card debts prior to the divorce. He attempted to resolve his delinquent debts through bankruptcy but after a few years, he could not maintain the payments. He recently obtained the services of a consolidation company. None of the delinquent accounts have been paid. He recently purchased a new car and has a \$550 monthly car payment. He has not acted reasonably under the circumstances. This mitigating condition does not apply.

FC MC AG ¶ 20(d) (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts) applies. Applicant receives partial credit since he did attempt bankruptcy. However, he has not had counseling and is not sure how his money is being applied to his accounts. FC MC AG ¶ 20(c) (the person has received or is receiving counseling for the problem and there are clear indications that the problem is being resolved or is under control) does not apply.

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 an 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. As noted above, the ultimate burden of persuasion is on the applicant seeking a security clearance.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case as well as the whole-person factors. Applicant is 46 years old. Applicant has worked in the IT field for almost 20 years. He

has studied and is soon to receive his undergraduate degree. He was divorced in 2005. He is supporting his daughter. He seems sincere and forthright.

Although he had financial difficulties due in great part to the separation and divorce, Applicant still has approximately \$80,000 in delinquent debts. He has student loans in the amount of \$45,000 which are in deferment. He recently obtained the services of a consolidation firm but there is no record of settlements for the delinquent accounts. Applicant was vague as to the exact process and procedure for the settlement plans.

Applicant has not submitted sufficient information to mitigate the security concerns raised in his case. He has not received financial counseling. When his bankruptcy was dismissed in 2008, he was not active in trying to resolve his debts. He is on the right track. However, he has not produced evidence to clearly show that his debts are being reduced. Applicant has not mitigated the security concerns under the financial considerations guideline. Clearance is denied.

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.ff:	Against 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 a security clearance. Clearance is denied.

NOREEN A. LYNCH.
Administrative Judge