



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



In the matter of:)
)
) ISCR Case No. 11-01355
)
)
Applicant for Security Clearance)

Appearances

For Government: Alison O’Connell, Esquire, Department Counsel
For Applicant: *Pro se*

January 19, 2012

Decision

WHITE, David M., Administrative Judge:

Applicant incurred substantial delinquent debts, including a second mortgage that remains outstanding after foreclosure on his home, a loan for a repossessed car, and several smaller collection accounts. For several years he has been financially dependent on his brother and without a source of steady income. He failed to mitigate resulting security concerns. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

Applicant submitted a security clearance application (SF 86) on July 13, 2010. On April 8, 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 for Determining Eligibility for Access to Classified Information* effective within the Department of Defense on September 1, 2006.

Applicant answered the SOR in writing (AR) on April 25, 2011, and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on July 22, 2011, and the case was assigned to me on August 1, 2011. DOHA issued a Notice of Hearing on August 3, 2011, and I convened the hearing as scheduled on September 13, 2011. The Government offered exhibits (GE) 1 through 4, which were admitted without objection. Applicant offered exhibits (AE) A and B, which were admitted without objection, and testified on his own behalf. Three witnesses also testified for him. I granted Applicant's request to leave the record open until October 7, 2011, for submission of additional evidence. DOHA received the transcript of the hearing (Tr.) on September 26, 2011. Applicant timely submitted additional evidence, which I marked AE C and admitted without objection. The record closed as scheduled.

Findings of Fact

Applicant is a 33-year-old former part-time employee of a defense contractor, where he worked for two weeks with an interim clearance during mid-2010. The contractor would like to hire him again if he obtains a security clearance. He worked as a union carpenter from July 2002 through July 2009, and has essentially been unemployed since then. He is a high school graduate who has no military service, and this is his first application for a security clearance. He is recently divorced, after separating from his wife in February 2008. His two stepsons, ages 17 and 15, live with Applicant while the two sons he fathered, ages 8 and 7, live with his former wife.¹ In his response to the SOR, Applicant denied the allegations in SOR ¶¶ 1.b through 1.e, and admitted those in SOR ¶¶ 1.a and 1.f through 1.g.² Applicant's admissions, including his responses to DOHA interrogatories,³ are incorporated in the following findings.

In 2006 Applicant married his girlfriend of six years, with whom he had two children. Concerning her, Applicant's brother testified that:

She didn't make a paycheck, if you will, during her job. She got under-the-table money because she was an exotic dancer, so she didn't have a pay stub or a W-2 or anything like that. She really didn't make a lot of pay - - didn't make payments on the house or the Denali or the Dell or anything else. So when she left, she abandoned my brother to make this exorbitant mortgage payment, which [another witness] explained how high it was. . . . So she did very little as far as - - she did nothing, in my opinion, to help with the financial situation, even though she made good enough money to get her own apartment and feed herself and the two younger children.⁴

¹GE 1; Tr. 72-80, 85.

²AR.

³GE 2.

⁴Tr. 63-64.

During February 2006, Applicant and his wife purchased a home with a first mortgage loan of \$174,000 and a second mortgage loan of \$43,500. These are the debts alleged in SOR ¶¶ 1.c and 1.d. The first mortgage had a prepayment penalty of around \$21,000 to \$23,000 if they sold the home before February 2008. During October 2007, Applicant contacted a real estate agent to inquire about selling the home, but they did not list it for sale until April 2008 due to the penalty clause. They listed the home for \$240,000 but soon dropped the asking price to \$230,000 because of deteriorating market conditions. In March 2009 they accepted an offer for a short-sale at a price of \$170,000 but the bank holding the first mortgage had already started foreclosure proceedings and did not accept the short sale proposal. After foreclosure, the bank sold the home for \$163,000. Applicant testified that neither mortgage holder has attempted to collect the remaining deficiency balances. When he can afford to do so, he intends to contact the second mortgage holder to arrange resolution of that debt.⁵

Applicant's wife abruptly left him and her two older sons in early February 2008. Prior to that time, he had been working up to 70 hours per week and earning enough money to pay his bills. His older stepson was having some behavior problems, so he could not continue to work such long hours and leave him alone after school. At the same time, the economic downturn caused greatly reduced demand for his carpenter services. Coincidentally in February 2008, the adjustable rate on their mortgages caused the monthly payments to increase from around \$1,400 to \$2,300 per month. Applicant could not afford to make these payments, fell behind, and eventually stopped making mortgage payments altogether. As far as he understands, the foreclosure action resolved him of any further debt on the first mortgage.⁶ I take administrative notice of the applicable state law which precludes a lender who pursues a non-judicial foreclosure process, as in this case, from suing to recover any potential deficiency judgment.

Applicant's next-largest delinquent debt involves the \$12,089 collection account alleged in SOR ¶ 1.e. That figure was reported by the collection agency in July 2010, after Applicant made two payments of \$200 each in May and June 2010 toward an original amount due of \$12,489. This debt arose when Applicant purchased the Denali, mentioned above by his brother, for his wife with a loan in his own name. When they separated, his wife took the car with the understanding that she would make the loan payments. She did not do so and, after damaging the car in a minor accident, abandoned it on the side of the road rather than pay for repairs. The lender contacted Applicant, who told them where to locate and repossess the car. After the two initial payments noted above, Applicant made \$200 payments in July and August 2010, then made \$100 payments in October and December 2010, and each month from January to May 2011. He testified that he continues to pay the creditor \$100 per month, but missed a couple monthly payments. He still owes at least \$10,500 as of the record's closing.⁷

⁵GE 2; AE C; Tr. 43-46, 86-87, 100-101.

⁶GE 2; Tr. 80-87.

⁷GE 2; GE 4; AE B; Tr. 27, 87-91, 98-100.

When Applicant's wife left him, she also took a Dell computer that he had purchased on credit. This is the \$1,509 debt alleged in SOR ¶ 1.b. During May 2011 Applicant reached an agreement with the collection agency to settle this debt for a series of monthly payments totaling \$987. He made the final such payment on September 6, 2011, and the creditor acknowledged settlement in full.⁸

Applicant admitted owing the remaining four smaller SOR-listed debts. These include the \$293 medical debt for services received by his son (¶ 1.a), the \$17 and \$128 collection accounts for traffic fines (¶¶ 1.f and 1.g), and the \$81 garbage collection bill that was placed for collection in March 2007 (¶ 1.h). He had not addressed any of these debts as of the close of the record; instead choosing to address and resolve the larger car and computer debts before paying the smaller ones. He has also undertaken to pay about \$3,000 in debt incurred by his eldest stepson to his County Court and Juvenile Delinquent Services agency at a rate of \$25 per month.⁹

In February 2008, Applicant and his two stepsons moved out of their home to live in his brother's home to save money. His brother supported them financially while Applicant was out of work, providing about \$1,500 per month. He and his brother worked with a third friend to start a business during that time, but never made any money doing so. Finally, during the month before his hearing, Applicant resumed performing some irregular carpenter work and became licensed to work as a bail bond recovery agent. He hoped to begin earning about \$3,000 per month from these two jobs.¹⁰

Applicant's real estate agent, and his attempted business partner, both of whom also consider him a good friend, and his brother, all provided testimony praising his responsibility, good work performance, reliability, and general good character.¹¹ His demeanor during the hearing was pleasant, open, sincere, and straightforward.

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 (DCs) and mitigating conditions (MCs), which are to be 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, these guidelines are applied in conjunction with the

⁸AE A; AE C; Tr. 27, 91-92.

⁹AR; GE 3; GE 4; Tr. 93-95, 102-104.

¹⁰Tr. 67-69, 78-80, 114-115.

¹¹Tr. 30-71, 114-115.

factors listed in AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶¶ 2(a) and 2(c), the entire process is a conscientious scrutiny of applicable guidelines in the context 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 the 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.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, "[t]he 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, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision." Section 7 of Executive Order 10865 provides: "[a]ny determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned."

A person applying for access to classified information seeks to enter 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.

Analysis

Guideline F, Financial Considerations

The security concerns relating to the guideline for financial considerations are 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 evidence raised security concerns under two Guideline F DCs, as set forth in AG ¶ 19(a) “inability or unwillingness to satisfy debts”; and ¶ 19(c) “a history of not meeting financial obligations.” There is no evidence of frivolous or irresponsible spending, deceptive or illegal financial practices, or financial issues caused by any misconduct on Applicant’s part. His SOR-alleged financial problems began with a minor unpaid garbage bill in March 2007, but essentially date from February 2008 when his adjustable mortgage payments increased while his income substantially decreased due to reduced working hours caused by the deteriorating economy and his wife leaving him with responsibility for her troubled teenage son. He became financially dependent on his brother, who helped him make payments to resolve one delinquent debt and reduce another one by \$1,500. He recently attempted to resume working, but did not demonstrate any earnings or employment prospects that might restore his ability to satisfy his debts or end his history of not meeting financial obligations. The evidence establishes each of the allegations set forth in the SOR, thereby shifting the burden to Applicant to prove mitigation.

The guideline includes five conditions in AG ¶ 20 that could mitigate the security concerns arising from Applicant’s financial problems:

- (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 incurred substantial mortgage and automobile debt in 2006 and 2007 that exceeded his ability to repay starting in early 2008. These were voluntary decisions reflecting poor judgment and little foresight. His current lack of income precludes a finding that such circumstances are unlikely to recur or that his judgment has improved. The ongoing nature of more than \$53,800 in delinquent debt, and the failure to address

debts as small as \$17, \$81, and \$128 over the past four years prevent finding significant mitigation under AG ¶ 20(a).

Little, if any, mitigation under AG ¶ 20(b) was established either. Applicant's financial problems were not caused by his wife leaving him since she apparently contributed little toward their family finances prior to that time. Her departure merely relieved him of support obligations toward her and their two younger children. He chose to undertake financial and parental responsibility for his wife's two older children and to reduce his work hours and income to do so. This was a generous and morally laudable decision, but one that was entirely within his control and financially unwise and irresponsible.

Applicant has not undergone personal financial counseling. He resolved one \$1,509 delinquent debt and paid \$1,500 toward another with his brother's assistance, but demonstrated no source of steady income or other ability to resolve more than \$53,000 in remaining delinquent debt. Thus, mitigation was not established under AG ¶¶ 20(c) and (d). Applicant did not dispute that he formerly owed any of the debts alleged in the SOR, so AG ¶ 20(e) has no relevance in this case.

As the Appeal Board has ruled concerning the successful mitigation of security concerns arising from financial considerations, "[a]n applicant is not required to show that [he] has completely paid off [his] indebtedness, only that [he] has established a reasonable plan to resolve [his] debts and has 'taken significant actions to implement that plan.'"¹² This applicant could not yet demonstrate a reasonable plan to continue resolving his debts, and does not have the means to implement such a plan in the foreseeable future.

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.

¹²ISCR Case No. 06-12930 at 2 (App. Bd. Mar. 17, 2008) (quoting ISCR Case No. 04-09684 at 2-3 (App. Bd. Jul. 6, 2006)).

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 pertinent facts and circumstances surrounding this case. Applicant is a genuine and kind individual who is highly regarded by, and dedicated to, his family and friends. However, he does not have sufficient income to continue resolution of his substantial remaining delinquent debts without the risk of incurring additional debt.

Applicant is a mature and experienced individual, who is fully accountable for his situation. The potential for pressure, coercion, exploitation, or duress from his financial situation is undiminished, and he has not yet demonstrated a sufficient pattern of financial responsibility to show that the financial concerns are unlikely to continue or recur.

Overall, the record evidence creates substantial doubt as to Applicant's present eligibility and suitability for a security clearance. He failed to meet his burden to mitigate the security concerns arising from his financial considerations.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ 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
Subparagraphs 1.c through 1.h:	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 eligibility for a security clearance. Eligibility for access to classified information is denied.

DAVID M. WHITE
Administrative Judge