



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



In the matter of:)	
)	
)	ISCR Case No. 11-02566
)	
Applicant for Security Clearance)	

Appearances

For Government: Marc G. Laverdiere, Esquire, Department Counsel
For Applicant: *Pro se*

03/27/2012

Decision

ANTHONY, Joan Caton, Administrative Judge:

After a thorough review of the pleadings, testimony, 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 the Case

Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) on August 2, 2010. On November 17, 2011, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, Financial Considerations. DOHA acted 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 December 15, 2011, DOHA received Applicant’s written answer to the SOR. Applicant elected to have a hearing before an administrative judge. The case was assigned to me on January 23, 2012. I convened a hearing on February 13, 2012, to

consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. The Government called no witnesses and introduced seven exhibits, which were marked Ex. 1 through 7 and entered in the record without objection. Applicant testified and called one witness. He introduced three exhibits, which were identified and marked as Applicant's Ex. A through C and entered in the record without objection. DOHA received the hearing transcript (Tr.) on February 22, 2012.

Procedural Matters

The Government requested correction of a spelling error in SOR allegation ¶1.a. There was no objection to the Government's request, which was granted. As corrected, SOR allegation ¶1.a. reads: "You failed to file your 2010 tax return for the state of [deleted]."

Pursuant to ¶ E3.1.8. of Enclosure 3 of the Directive, Applicant confirmed that he was notified at least 15 days in advance of his hearing, and he believed he had adequate time to prepare his case. (Tr. 12-14.)

Findings of Fact

The SOR contains 14 allegations of financial conduct that raise security concerns under Guideline F, Financial Considerations (SOR ¶¶ 1.a. through 1.n.) In his Answer to the SOR, Applicant admitted 13 allegations. He denied the SOR allegation at ¶ 1.g. Applicant's admissions are entered as findings of fact.

Applicant is 37 years old and employed as a pricing manager by a government contractor. In 1998, he earned a bachelor's degree. He seeks a security clearance for the first time. (Ex. 1; Tr. 43-44.)

Applicant has experience as a professional financial analyst. From June 2006 until June 2008, Applicant worked as a senior financial systems analyst. He left that position after being offered a higher-paying job with another company. However, the company withdrew the job offer after it reviewed Applicant's credit situation. Applicant has worked for his current employer since September 2008. (Ex. 1; Tr. 61.)

Applicant married for the first time in June 1999. Applicant has two children from his first marriage. He and his wife divorced in May 2005. Applicant remarried in December 2011. (Ex. 1; Tr. 42.)

The SOR alleges 14 delinquent debts totaling approximately \$67,000. The Government conceded that the \$269 debts alleged at SOR ¶¶ 1.d. and 1.e. were one and the same. Additionally, in response to DOHA interrogatories, Applicant provided documentation corroborating that the \$2,384 judgment alleged at SOR ¶ 1.g. had been vacated. (Ex. 4; Tr. 55-57, 115.)

Six of the alleged debts are in collection status: SOR ¶ 1.b. (\$289); SOR ¶ 1.c. (\$59,320);¹ SOR ¶ 1.d. (\$269); SOR ¶ 1.f. (\$753); SOR ¶ 1.i. (\$651); and SOR ¶ 1.j. (\$100). The \$2,384 debt alleged at SOR ¶ 1.h. is 120 days past due. (SOR)

The SOR also alleged that Applicant failed to file his 2010 tax return in his state of residence (SOR ¶ 1.a.). At his hearing, Applicant acknowledged that he filed his 2010 tax return in October 2011. When asked why he waited so long to file the return, Applicant stated: "Well, quite frankly, I just had other things going on and just procrastinating with the filing of it." He added: "And, also since I didn't owe anything, I just felt that there wasn't - - well. I've always known that there wasn't a penalty as long as you don't owe as long as you file within three years of the tax return." (Tr. 47-48.)

Applicant also failed to timely file his 2008 state and federal income tax returns. (SOR ¶¶ 1.k. and 1.l.) Applicant explained that he didn't pay his income taxes because he had lost a job and concentrated his energies on trying to find another job. He also acknowledged that he was planning to take a vacation and did not want to use his money to pay an accountant to prepare his tax returns. (Tr. 64-65, 67-69.)

Applicant reported that his 2008 state and federal income taxes had been satisfied. However, he failed to provide documentation to corroborate his assertion. (Tr. 75.)

The SOR also alleged that Applicant failed to pay his 1999 state income taxes in 2000 (SOR ¶ 1.m.). He stated that the 1999 state income tax debt had been satisfied, but he failed to provide documentation to corroborate his statement. (Tr. 75-76.)

Finally, the SOR alleged that Applicant was evicted from his residence for failure to pay rent in about March 2002 (SOR ¶ 1.n.) Applicant explained that he had been laid off from a job in 2002 and didn't have money to pay his rent. (Tr. 76.)

Applicant has not resolved the financial delinquencies alleged on the SOR. He provided an exhibit entitled "2012 Budgeted Projections" in which he detailed his plans for satisfying his debts during 2012. He has remitted payment or partial payment on only one account alleged on the SOR: he stated that in January 2012, he made his first payment of \$452 on his \$60,224 delinquent student loan account.² However, the documentation he provided did not corroborate payment. (Ex. A; Ex. C; Tr. 52.)

Applicant's current annual salary is \$81,700. His monthly net income is \$3,400, after \$600 in child support for his two children is deducted. Applicant's wife has an annual salary of \$48,000. Applicant has not had financial credit counseling. (Tr. 88-90, 113.)

¹ This debt arose because Applicant has not repaid student loans he took out during his undergraduate studies. (Tr. 91-92.)

² Applicant's student loan debt dates to 1998, when he graduated from college. (Tr. 91-92.)

A coworker who has worked with Applicant for three years testified as a character witness. He stated that Applicant has a reputation at work for honesty. He further stated that he believed Applicant to be trustworthy and professional. (Tr. 96-108.)

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 and modified.

When evaluating an applicant’s suitability for a security clearance, an administrative judge must consider and apply 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. 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 accumulated substantial delinquent debt and was unable or unwilling to pay his creditors. This evidence is sufficient to raise these disqualifying conditions.

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 has initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.” (AG ¶ 20(d)) Finally, 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 options to resolve the issue,” then AG ¶ 20(e) might apply.

Applicant admitted a history of financial difficulties and inattention to his financial responsibilities. Applicant and his wife have a combined annual income of approximately \$129,000. Three of the debts alleged on the SOR are for less than \$300. One of those debts is for \$100.

Applicant’s unresolved delinquent debts total approximately \$67,000. Over \$60,000 of Applicant’s indebtedness arises from his student loan debt, which dates to 1998. He failed to provide documentation showing that his debts were resolved or otherwise satisfied. The record reflects that the 12 of the delinquencies alleged on the SOR remain unpaid and have occurred under circumstances that are likely to recur. Applicant has not had financial counseling, and he lacks a clear and timely strategy for resolving his delinquent debts.

At his hearing, Applicant proposed a plan for paying his delinquent debts at some time in the future. 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). Accordingly, I conclude that none of the Guideline F mitigating conditions fully applies to the facts of Applicant’s case.

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.

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 person of 37 years. His professional training is in finance and financial analysis. His financial problems began several years ago and are ongoing. Despite these financial problems, he has failed to take an interest in and carry out his financial obligations. He has not taken affirmative action to live within his means and to pay or resolve his delinquent debts. His lack of attention to his financial delinquencies continues to raise security concerns. Despite a steady income for several years, he has failed to budget his income to satisfy his many debts, some of which are small, and he has not sought credit counseling.

Overall, the record evidence leaves me with questions and doubts about Applicant's judgment as well as his eligibility and suitability for a security clearance. For these reasons, I conclude 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
Subparagraphs 1.a. - 1.d.:	Against Applicant
Subparagraph 1.e.:	For Applicant
Subparagraph 1.f.:	Against Applicant
Subparagraph 1.g.:	For Applicant
Subparagraphs 1.h. - 1.n.:	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.

Joan Caton Anthony
Administrative Judge