



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



In the matter of:)	
)	
-----)	ISCR Case No. 11-03247
)	
Applicant for Security Clearance)	

Appearances

For Government: Fahryn Hoffman, Esquire, Department Counsel
For Applicant: Cecile M. Scoon, Esq.

12/12/2012

Decision

MARSHALL, Jr., Arthur E., Administrative Judge:

On June 5, 2012, the Defense Office of Hearings and Appeals (DOHA) issued to the above-referenced Applicant a Statement of Reasons (SOR). The SOR enumerated security concerns arising under Guideline F (Financial Considerations). DOHA took action 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 by the DOD on September 1, 2006.

In a response dated August 3, 2012, Applicant admitted all allegations and requested a hearing before a DOHA administrative judge. DOHA assigned the case to me on October 12, 2012. The parties agreed to an in-person hearing date of November 8, 2012, and a notice setting the hearing for that date was issued on October 19, 2012. On November 1, 2012, a notice of appearance was received on behalf of counsel for Applicant, along with a motion for a continuance. Due to time constraints, I reserved November 19, 2012, as a video tele-conference date, but Applicant’s counsel was not available to discuss the issue until later in the week. When the parties were convened, I explained that the hearing, if postponed this close to the previously scheduled in-person hearing, would have to be conducted by video tele-conference and may be subject to certain constraints. Applicant understood the time and logistical considerations, and

waived the 15-day notice requirement. Against the objection of the Government, I offered to hold the hearing by video tele-conference on November 28, 2012, conditioned on certification that Applicant could gain access to the proposed hearing site and on Applicant's ability to submit all materials before the hearing date. Applicant accepted this date and these conditions. A notice setting the video tele-conference for that date was issued November 9, 2012.

The hearing was convened as scheduled. Applicant's nine offered documents were accepted into the record without objection as exhibits (Exs.) A-I. Applicant proceeded to give testimony and introduced one witness. The Government offered six documents, which were accepted into the record without objection as Exs. 1-6. On November 29, 2012, Applicant forwarded four additional documents for consideration. They were accepted into the record without objection as Exs. J-M. The transcript (Tr.) was received on December 6, 2012, and the record was closed. Based on a review of the testimony, submissions, and exhibits, I find Applicant failed to meet his burden of mitigating security concerns related to financial considerations. Clearance is denied.

Findings of Fact

Applicant is a 65-year-old engineering technician who has worked for the same defense contractor since 2009. He is a well-regarded employee with excellent ratings. He previously spent about 13 years as a commercial interior designer in a competitive market. He is two credit hours short of a bachelor of fine arts in interior design.

Applicant is in a domestic partnership and has no children. He helps support his domestic partner financially.¹ He is active with local civic groups and his church. He is a leader in local artistic and political organizations. Applicant is currently living within his means, retaining about \$325 savings a month after household expenses. No new debts of significance have been acquired since the ones at issue in the SOR.

In 2006, Applicant began thinking about his future and the prospect of retirement. He focused on a quiet resort area that presented a contrast to the metropolitan urban area in which he was living. He sold his home, applied his profit and a \$99,000 mortgage toward a house purchased in the resort area, and rented an apartment back home so he could continue with his career. In the interim, he found a renter for one of the bedrooms to help defray expenses.

In 2007 and 2008, Applicant continued working for his former employer in the metropolitan region. Business in commercial interior design was doing well, especially in one business sector in which his area is renowned.² In January 2008, he gave formal

¹ Tr. 25.

² Tr. 52.

notice that he intended to quit his position and relocate.³ He also expressed his intent to stay on for a few months to finish some projects and be available to the firm. By spring, his office's incoming projects began to slow down. Meanwhile, Applicant did not want to relocate with any existent debt.⁴ In April 2008, he refinanced his newer home in order to satisfy some mounting debts created by balancing payments on both his mortgage and his urban apartment rental, and to create a larger pool of financial reserves for his relocation. In May 2008, he moved, taking with him about two months in savings to support him as he settled down and looked for work. Having previously only performed cursory checks of the local employment market in his field while living in his former city, he threw himself into a job search.⁵ As he continued to look for work through the remainder of 2008, his former employer filed for bankruptcy by late 2008.

Once settled in May 2008, Applicant was surprised to discover that the area's once booming estate development market had not offered any significant architectural work for "the last four years."⁶ By June 2008, he discovered that he had depleted his two months of financial reserves in only one month.⁷ Having maintained good credit in the past, he tapped into a line of credit and utilized some credit cards to help pay his bills. He lived off those accounts by paying each card's minimum balance with a minimal withdrawal from another of the cards. In this manner, all of his bank and charge cards were kept in good standing, but no progress was being made on settling the mounting debts.⁸ Using this method, he also continued making timely payments on his mortgage, which he considered to be a top priority. He continued in this manner until he attended a job fair in February 2009, where he found a lead for his present position.

In March 2009, Applicant began working for his current employer, where he began earning about \$60,000 a year. At the time, he was informed that he would be required to pursue a security clearance.⁹ This timing was good because although he was technically still timely on his debts, he was beginning to contemplate bankruptcy.¹⁰ While stable employment helped, he continued to find it difficult to make all his minimum card payments and mortgage payment. Applicant noted, "I really didn't become officially behind until October 2009, and that's when after several incidents and

³ Tr. 81-82. In submitting his resignation, Applicant expressed his willingness and availability to remain for a few months to complete his pending projects.

⁴ Tr. 85.

⁵ Tr. 91. Applicant apparently monitored the job situation to some degree long-distance, and had surmised that the job market was still strong. Tr. 109.

⁶ Tr. 54.

⁷ Tr. 54.

⁸ Tr. 54-55.

⁹ Tr. 58.

¹⁰ Tr. 57-58.

struggling to try and keep gas in the car and getting delinquent on my mortgage, because I would pay one and then the other one, I basically finally said, 'I've got to do something about this.'"¹¹ His net monthly remainder was just under \$325, and that sum was seldom saved for contingencies.¹² There is no evidence that he sought to deal with his financial situation by seeking a second job or seasonal retail position, find another boarder, or contemplate some other attempt to economize.¹³ Instead, in October 2009, Applicant decided to seek out the advice of a bankruptcy attorney.

Applicant told the attorney that he was barely able to make interest-only payments on his credit and bank card obligations, and that he was feeling overwhelmed. Applicant testified that the attorney surmised that Applicant made too much income to declare bankruptcy.¹⁴ He advised: "Based on my experience, you should just stop paying [on the cards], and if -- they may or may not go to judgement, but if they do, they do, but you have to deal with that, but . . . 'That is the only way I can see out of it.' And at that point, I followed his advice, and around October or November of 2009, I stopped paying those debts."¹⁵ It is unknown if Applicant discussed any potential repercussions with the attorney, his security officer, or his employer as to whether disregarding a significant amount of consumer debt might adversely impact his ability to be granted a security clearance.

Applicant soon began to rationalize his decision not to pay certain debts:

I've never defaulted on any credit in my life, until that point, and then I began to realize that the banks . . . that I owed this money to, were the same banks that basically caused this whole crisis in the country, that made it impossible for me to find a job.

It brought the company down that I was working for in [the urban metropolitan area], and basically, you know, forced me into nine months of, you know, of unemployment, and actually, we're still in not

¹¹ Tr. 58. Also in October and November 2009, Applicant's home needed repairs (e.g., a \$2,000 water pump). Tr. 76-77.

¹² The monthly net remainder was not specifically set aside as savings or for future contingencies, often it was devoted to "a movie or something. I mean, that's not a lot of money." Tr. 123. In contrast, Applicant's tenant's rent of \$400 a month significantly helped defray the Applicant's mortgage payments on the house. Tr. 119.

¹³ Monthly expenses include cable service, entertainment, and a family plan cellular telephone service. Tr. 122-124.

¹⁴ Applicant could not identify the chapter of bankruptcy contemplated or better detail why he was ineligible to file for any form of bankruptcy, other than to imply that his salary of approximately \$60,000 precluded him from declaring bankruptcy on a debt balance slight more than that sum.

¹⁵ Tr. 60. The referenced debts are those debts noted in the SOR at 1.a-1.g.

in a place where I could probably go out and get an architectural job here.

There is just a glimmer of hope now, but we're still in a condition where the field that I'm in is almost impossible to get any work in, and so, you know, I'm thinking, well, these banks have been bailed out with billions and trillions of dollars, and they've created this whole thing and basically haven't had any penalties leveled against them, and then they're going to, you know, take, you know, what I owe them and take it in, and still get away.

That was -- that began to be my thinking around October or November, when I decided that, you know, I should just cut these off, because it was becoming very evident that they were the cause of this whole situation.¹⁶

Elsewhere, his position was expressed thusly:

these entities have caused severe harm, we contend, to the whole nation, and many citizens, by their bad behavior and greed, and they were bailed out by all of our tax dollars. It seems inappropriate for them to receive the benefit of the debt that [Applicant] has been placed under, due to -- in large part, to their basically, destabilizing the whole financial scheme, such that employers and businesses went down, including [Applicant].¹⁷

In short, Applicant blames certain institutions for the downward turn in the national economy, in his area of architectural practice, in his ability to find his sort of work in his new community, and his financial distress. Consequently, he disputes the legitimacy of the debts owed, specifically, but not necessarily to the exclusion of other institutions, the bank noted in SOR allegations 1.a, 1.c, and 1.d.¹⁸ Furthermore, he does not feel that his non-payment on these debts represents security concerns or should adversely affect an assessment of his security worthiness. He stated:

Basically, my premise is, I'm not going to try and pay off the debt. It has no threat on me, because I'm not going to negotiate with them to somehow make it go away, and so, because of that, it doesn't present a threat security-wise. . . . [A]fter I finally came to the conclusion that it was their fault that this happened, I stopped

¹⁶ Tr. 62.

¹⁷ Tr. 48. See *also* Ex. H (Business-related blogs and notes) and Tr. 70-71, 74.

¹⁸ Tr. 62. Applicant also stated that he "would not have gone through any of" what he had experienced "if [the financial institutions] hadn't been irresponsible in doing what they did, and essentially, crashing the economy. . . ."

responding to people that were calling me, and I don't take their phone calls, I don't read their mail, I don't do anything about it, simply because it isn't an issue. . . . [I]t isn't an issue to me.¹⁹

Applicant hotly disputes the legitimacy of the debts at issue and has a strong conviction that he is a “conscientious objector” with regard to such debts. However, he continued to work with the creditor noted in SOR allegations 1.a, 1.c, and 1.d after his decision not to honor the related debts. Ultimately, however, he rejected an offer to settle the \$38,000 owed to that bank for \$8,000 because he found the three- or four-month repayment plan unmanageable.²⁰ In addition, he has remained in timely payment on his mortgage, which is held by one of the large financial institutions referenced in his materials alleging that such entities ruined the national economy and whose collection efforts he considers to be illegitimate.²¹

To date, Applicant admits that all but one of the accounts referenced in the SOR are unpaid. He stated that the \$150 medical debt noted at SOR allegation 1.h was previously paid. He was given additional time to provide evidence of payment, but none was forthcoming. The remainder of the debts cited were charged off or put into collection at various points in 2010 and 2011, with dates of last activity reflected as being on various dates between September 2009 and June 2011.²²

The debts at issue under Allegation 1 are as follows.²³ No progress has been made on any of these accounts:

- a. – \$8,905 – account with a lender/bank charged-off as a bad debt in August 2010.
- b. – \$7,878 – account placed for collection by major merchant credit card in June 2011.
- c. – \$27,414 – account with the same major lender/bank noted in a., above, that was also charged-off as a bad debt in August 2010.

¹⁹ Tr. 72-74.

²⁰ Tr. 69, 107-108.

²¹ Tr. 107-108; Ex. H.

²² Compare SOR and Ex. 4 (Credit Report, dated Feb. 29, 2012). Applicant noted that his conversation with his attorney was in October or November 2009. This would have been shortly after the September 2009 dates of last activity shown in Ex. 4 for the \$8905 and “\$27K” debts which appears to be reflected at SOR 1.a for \$8,905 and 1.c for \$2,414 owed to the same bank.

²³ Tr. 120-127.

- d. – \$3,656 – account with the same major lender/bank noted in a. and c., above, that was charged off as a bad debt in July 2010.
- e. – \$1,504 – this credit/bank card collection balance is now held by an entity attempting to recover the charged-off amount.
- f. – \$5,015 – this balance was placed in collection by a merchant credit card and is now held by an entity attempting to recover the unpaid balance.
- g. – \$9,168 – account was with a major credit card and its balance was charged-off as a bad debt in October 2010.
- h. – \$150 – collection bureau balance for a delinquent medical account.²⁴

Policies

When evaluating an applicant's suitability for a security clearance, an administrative judge must consider the AG. In addition to brief introductory explanations for each guideline, the AG list potentially disqualifying conditions and mitigating conditions. 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. Under AG ¶ 2(c), this process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all 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.

The 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. . . ." ²⁵ The burden of proof is

²⁴ After the hearing, Applicant provided a bank statement showing a payment of \$150 to a collection bureau on August 8, 2012. However, no nexus was provided between the bureau or account identification to link the medical debt to this payment, nor was there an offer of a receipt or letter indicating this debt was paid. See Ex. J (Applicant's Post Exhibit J).

²⁵ See also ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

something less than a preponderance of evidence. The ultimate burden of persuasion is on the applicant.²⁶

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 those 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 about 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). “The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”²⁷ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.²⁸

Based upon consideration of the evidence, Guideline F (Financial Considerations) is the most pertinent to this case. Conditions pertaining to this AG that could raise a security concern and may be disqualifying, as well as those which would mitigate such concerns, are set forth and discussed below.

Analysis

Guideline F - Financial Considerations

Under Guideline F, 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.²⁹ It also states that an individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.³⁰ In his answer to the SOR, Applicant admitted all eight allegations concerning unpaid delinquent debts, amounting to over \$62,000. This is sufficient to raise

²⁶ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

²⁷ *Id.*

²⁸ *Id.*

²⁹ AG ¶ 18.

³⁰ *Id.*

Financial Considerations Disqualifying Condition AG ¶ 19(a) (*inability or unwillingness to satisfy debts*) and AG ¶ 19(c) (*a history of not meeting financial obligations*). With such conditions raised, it is left to Applicant to overcome the case against him and mitigate security concerns.

In cases such as this, the most likely mitigating conditions are those found at 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*), 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*), AG ¶ 20(d) (*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*), and 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*).

In 2008, Applicant felt he was wasting money by making mortgage payments on a house in one state in anticipation of pre-retirement elsewhere and renting an apartment in a costly metropolitan area until he relocated. In January 2008, when business was still good, he tendered his resignation and expressed his intent to relocate when his current projects were done. Through long distance connections, he apparently felt comfortable that the job market in the smaller city was active enough to permit him to readily find work. Armed with what he thought were sufficient funds to support himself for about two months, he relocated in May 2008. Jobs, however, were not plentiful, and he depleted his savings in about a month. He built up hefty balances on his credit cards, then kept them current by making minimum payments on one card through transactions from another. He found his current work in the Defense industry in March 2009. But the income was not sufficient to end his acquisition of credit and bank card debt. He sought the advice of a bankruptcy attorney, who advised against filing for bankruptcy. Rather, the attorney, advised he entirely stop making payments on his credit cards and then wait to see what happened. Within months of receiving this advice, he ceased such payments. As time went by, he justified his methodology by taking the mantle of a conscientious objector, a victim of the big banks and lenders who led to a national financial downturn. Seeing himself as a victim of this perceived scheme, he views his former debts now as illegal collection actions.

Applicant's portrayal of the facts glosses over several relevant facts. First, in 2006, Applicant voluntarily contributed his *entire* profit from the sale of his former home toward the purchase of his current house – in full knowledge that he would still need a place to live as he continued at his high profile firm in the metropolitan area. Second, he tendered his resignation from his urban city job in January 2008, before he had another position lined up and at a point when, by his own account, business was still doing well. Third, he apparently failed to make more than cursory inquiries about job prospects in his new region before

moving, and only fortified himself with what he assumed would cover his expenses for a mere two months when he did move. As his job hunt became protracted, there is no evidence he explored other options to raise money or defray expenses, such as taking a minor, interim position in another field (e.g., holiday sales) or seeking additional boarders. After he found steady employment in early 2009, he did not seek out secondary employment. Rather, he waited until autumn to meet with a bankruptcy attorney, who recommended that he simply cease honoring his credit and bank cards. He then did so, in a staggered fashion over several months, without ever seeking advice from his employer as to whether delinquent debts in excess of \$62,000 might pose a security concern, or whether using “conscientious objector” status to disavow oneself of one’s legally acquired debts was an acceptable practice in the DOD clearance process.

Applicant repeatedly asserted that it was the downturn in national economics, as precipitated by the acts of certain banks and lenders, that led him to his precarious position. This raises the mitigating condition of circumstances beyond his control. However, he did not act responsibly under the circumstances, as required under AG ¶ 20(b). As previously noted, Applicant voluntarily left his job on his own timetable and on his own volition while good economic times still prevailed, albeit only for a short time thereafter. He did so in order to strike out on his own in a new region, underfinanced and with no viable job leads. Later, he walked away from an offer to settle \$38,000 in debt for a payment of \$8,000 drawn out over three or four months as unacceptable. In explaining this offer, Applicant failed to describe any efforts he may have made to either counteroffer for additional time or to employ economizing measures that could help him meet that time frame.

Next, in late 2009, Applicant chose to walk away from his creditors. After the fact, he chose to justify the abandonment of his debts arguing that he is a conscientious objector, citing to the fact that his creditors were previously bailed out by the Government. Conscientious objector status, however, is not a valid basis to dispute legitimately acquired and admitted debts. Given these considerations, and in light of the fact none of the debts at issue have been satisfied or put into a reasonable plan for timely and effective repayment, none of the financial considerations mitigating conditions apply.

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 the circumstances. An administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2 (a). Under AG ¶ 2(c), the ultimate determination of whether to grant a security clearance must be an overall commonsense judgment based on careful consideration of the guidelines and the whole-person concept. In addition, what constitutes

reasonable behavior in such cases, as contemplated by FC MC ¶ 20(b), depends on the specific facts in a given case.

I considered the specific facts and circumstances in this case. Applicant feels that the banking and lending industry caused severe harm to the whole nation, including Applicant, by their “bad behavior and greed.” Because they were already “bailed out by all of our tax dollars,” Applicant feels it is inappropriate for that industry now “to receive the benefit of the debt that [he] has been placed under, due to their . . . destabilizing the whole financial scheme, such that employers and businesses went down, including [Applicant],” himself. In short, since the Government already bailed out the industry, debts caused by the industry’s actions, such as those Applicant maintains were incurred by himself personally, should be forgiven and be deemed illegitimate. While a vast economic downtrend can create widespread havoc, Applicant failed to act responsibly. His own actions have contributed to his excessive amount of delinquent debt.

Applicant sold his home and incurred a mortgage in 2006 to buy a future retirement residence, thus requiring him to rent an interim flat to replace his former homestead until he relocated. Applicant voluntarily took on the added financial responsibility of simultaneously paying a mortgage and rent each month. This added financial burden contributed to his need to tap into his credit resources in 2008. According to his own testimony, Applicant voluntarily resigned from his job in January 2008, while business in his industry was still doing well. When he did relocate in May 2008, it appears he did so with little planning. When he moved, he believed the town was undergoing boom times, unaware that such heady days for his professional field had begun to wane some four years earlier. Although he arrived at a seasoned age with considerable experience, he moved to a new location without any firm job offers, interviews, or employment leads. In addition, he arrived prepared for only a brief period of unemployment – two months – and those funds were expended in half that time. For 10 months, he lived off of credit cards, rotating minimum payments amongst his cards while making no progress on the underlying principle. There is no evidence that during that time he tried to economize, find part-time work, or otherwise sought out ways to improve his household’s financial position. Finally, in full knowledge that his position may require a security clearance, he chose to simply stop making payments on over \$62,000 in documented and undisputed commercial debt.

When this notable balance of over \$62,000 in delinquent debt was discovered by investigators, Applicant first articulated his conscientious objector position with regard to making payments to an industry that had already been bailed out. Moreover, despite his strong objection to rewarding the banking and lending industry by giving it his money when it has already been bailed out by the

