



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



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| In the matter of: |) | |
| |) | |
| ----- |) | ISCR Case No. 11-03827 |
| |) | |
| Applicant for Security Clearance |) | |

Appearances

For Government: Eric H. Borgstrom, Esquire, Department Counsel
For Applicant: *Pro se*

02/24/2012

Decision

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

On July 1, 2011, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) enumerating 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).

In an August 6, 2011, response, Applicant admitted the 28 allegations raised under Guideline F and requested a hearing before a DOHA administrative judge. DOHA assigned the case to another administrative judge on October 13, 2011, but it was transferred to me on December 14, 2011, for caseload considerations. The parties proposed a hearing date of January 31, 2012. A notice setting that date for the hearing was issued on January 6, 2011. I convened the hearing as scheduled.

Applicant gave testimony and offered three documents, which were accepted without objection as exhibits (Exs.) A-C. The Government introduced eight documents, which were accepted into the record without objection as Exs. 1-8. The transcript (Tr.) of the proceeding was received on February 8, 2012. The record was then 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 36-year-old mechanical installer who has worked for the same defense contractor since January 2011. He is a high school graduate. Applicant has extensive technical training and multiple certifications in the field of construction, as well as certification as a casino games dealer. He is currently planning on remarrying his ex-wife. The couple has two minor children.

In 1997, Applicant met his now ex-wife.¹ At the time, Applicant had perfect credit.² They had their first child at the end of the following year. When his then-fiancee lost her job, the couple moved in with her parents to save money. She stayed at home to raise their eldest child and return to school instead of starting a new job. Applicant's wife wanted to move from her parents' home and encouraged Applicant into buying them a house. After that, Applicant's then-fiancee decorated and improved their home, usually without Applicant's participation in the acquisition of additions. She regularly used credit cards in Applicant's name and managed the household accounts. The couple married in January 2002.³

By the time the couple married, Applicant had acquired sufficient debt that he refinanced their home in order to pay off some of their debts. When that effort proved to be insufficient, he filed for Chapter 7 bankruptcy protection. The petition included approximately \$71,080 in debt and was discharged in December 2002.

Applicant's ex-wife is a "shopaholic."⁴ Her unbridled spending would eventually lead to much of the debt at issue. Applicant, who did not manage the family accounts, was unaware of much of this new debt.⁵ When Applicant would see his wife's new purchases, "he complained and he got mad about it, but [she] did it anyway. Stuff that [she felt that they] needed at the time."⁶

¹ Hereinafter, Applicant's wife, ex-wife, and fiancee refer to the same woman at different points in their relationship.

² Tr. 30.

³ Ex. 1 (Application) at 23 of 48.

⁴ Tr. 19, 21-22, 27. See also Tr. 37, 44 (Applicant's ex-wife attributes the debts at issue to her shopping and vacations).

⁵ Tr. 21-24.

⁶ Tr. 34.

The couple bought two used vehicles in 2005. One vehicle was purchased in Applicant's former wife's name, but the associated debt was eventually attributed to him.⁷ Applicant's former wife continued to make purchases on numerous credit cards. She returned to work, but had lost her job by the time they divorced in 2007. Applicant took custody of their child. In mid-2008, their second child was born.

In July 2008, Applicant petitioned for Chapter 13 bankruptcy, noting about \$72,250 in assets and approximately \$116,876 in debt. Applicant was laid off from his position as a laborer in August 2008, shortly after "a few" months off from work for medical reasons.⁸ He depleted his 401K plan and took part-time jobs to help pay for his expenses. Applicant was able to make payments on his bankruptcy plan for about a year. He again found work in March 2010 at a casino. By November 2010, his petition was dismissed for failure to make payments in accordance with the bankruptcy plan.

In the interim, Applicant and his ex-wife reconciled in late 2009, at which point his ex-wife quit working. In late 2010, they abandoned their mortgaged home in one state to relocate to their current state of residence so that Applicant could find a better-paying job.⁹ He was offered his present position in November 2010. Since January 2011, Applicant has been steadily employed. He and his ex-wife are looking forward to remarrying.

Applicant is now settled and anticipating remarriage to his ex-wife. He acknowledges that her abuse of credit cards significantly helped lead to his past bankruptcy petitions. He is relying on trust that she will not again abuse credit cards.¹⁰ Applicant is hoping to resolve his old delinquent debts through Chapter 7 bankruptcy.¹¹ His fiancée has a college degree in business management with a minor in accounting, but hopes to remain at home for a couple of years to reconnect with her children. Their prior home in their former city of residence remains unoccupied and unmaintained. They anticipate that foreclosure proceedings will eventually commence.

Although he and his ex-wife are trying to budget, Applicant does not currently earn sufficient funds to cover his family's monthly expenses.¹² He does not currently have the money to proceed with a bankruptcy filing with his attorney.¹³ His current

⁷ Tr. 27.

⁸ Tr. 54.

⁹ Tr. 24. Applicant does not recall the last time he made a payment on the mortgage associated with this property. The SOR at ¶ 1.y reflects a past-due balance of approximately \$9,000. Tr. 52-53.

¹⁰ Tr. 61.

¹¹ Tr. 26.

¹² Tr. 41-42.

¹³ Tr. 29.

income is “not cutting it.”¹⁴ He is currently anticipating six weeks of temporary disability insurance payments due to tendinitis. At the time of the hearing, they were living off of Applicant’s last pay check, which was received two weeks earlier; Applicant did not have sufficient funds to pay for heating oil at their current home.¹⁵ Applicant received financial counseling in the past, in connection with his 2002 and 2008 bankruptcy filings. Neither Applicant nor his ex-wife currently use credit cards. Applicant feels that because he is comfortable at his current position and well-regarded at work that he will succeed.

At issue in the SOR are the two bankruptcy filings and 26 debts, amounting to approximately \$69,700. They range from \$23 to \$17,325, with nine being for sums under \$500. Applicant admits the debts are his. Although he disputes the actual amounts owed on many of the debts, he provided no evidence showing that the sums reflected in the SOR are incorrect. Applicant admits that no payments have been paid on the debts noted in the SOR.¹⁶ The debts at issue were originally included in the dismissed 2010 Chapter 13 bankruptcy petition that was filed in July 2008, shortly before Applicant was laid off from his position as a laborer in August 2010.¹⁷

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.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ Tr. 51.

¹⁷ Tr. 32. Applicant testified that the debt noted at SOR allegation ¶ 1.j for \$775 should have been included in his 2002 bankruptcy discharge, but provided no evidence showing that it was included in that petition. See Tr. 50-51.

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. . . .”¹⁸ The burden of proof is something less than a preponderance of evidence. The ultimate burden of persuasion is on the applicant.¹⁹

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.”²⁰ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.²¹

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.”²² It

¹⁸ See *also* ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

¹⁹ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

²⁰ *Id.*

²¹ *Id.*

²² AG ¶ 18.

also states that “an individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.”²³ The Government’s evidence showed that Applicant owes about \$70,000. Although Applicant suggests that the balances owed are lower than represented by the SOR, he presented scant evidence to reduce this sum. He is now poised to again file for bankruptcy and remarry his former spouse, who admits to being the source of much of Applicant’s admitted debt. Such facts are sufficient to raise 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*). With such conditions raised, it is left to Applicant to overcome the case against him and mitigate security concerns.

The debts at issue are multiple in number and remain largely unpaid. There is no evidence that either Applicant or his ex-wife have effectively received financial counseling that has helped them keep Applicant from generating more debt. Due to insufficient savings, Applicant has yet to re-petition for bankruptcy in an attempt to eliminate his current debt. The main explanation for the genesis of the debt at issue is Applicant’s ex-wife’s continual overspending.²⁴ While there is no evidence that Applicant, himself, has generated significant debt, his fiancée and current co-habitant openly admits responsibility for most of Applicant’s debt, including a vehicle that was initially taken in her name. Applicant disputes some of the balances of the debts at issue, but presented scant evidence to show that the balances alleged are not sufficiently reduced. Even if the sum of the debt was shown to be reduced to a quarter of what they are shown to be in the SOR, the remaining sum is highly significant, and the need to file for a third bankruptcy remains worrisome. Without some demonstration that Applicant has reigned in responsibility for the debts acquired in his name, none of the 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 potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case, as well as the whole-person factors.

²³ *Id.*

²⁴ Applicant also cites to a period of medical convalescence lasting “a few” months in 2008 as the root of the debts at issue. However, that period without income occurred shortly before he was laid off from work in August 2008, a month after he filed for Chapter 13 bankruptcy in July 2008. Therefore, it is difficult to discern how much debt, if any, attributable to that period could have been included in the bankruptcy petition.

Applicant is a 36-year-old father of two who is planning to remarry his ex-wife. During their early courtship, his then-fiancee abused his credit cards and acquired sufficient debt that Applicant declared Chapter 7 bankruptcy in the same year they married. After they married, Applicant's wife, who managed the household accounts, continued to abuse credit cards. A self-described "shopaholic," she admits that most of the debt that would ultimately be included in Applicant's July 2008 bankruptcy petition was attributable to her shopping and vacations. Applicant suggests that some of that debt may have been attributable to his medical leave shortly before he was laid off from a job in August 2008. However, Applicant provided no evidence linking his debts with that period in time, and the chronology leaves only a small window of time before the July 2008 petition for his acquisition of delinquent debt during a convalescence of "a few" months.

Today, Applicant is preparing to remarry his ex-wife. They have not recently received financial counseling or articulated a method to avoid encountering financial issues in the future. Although her "shopaholic" nature has twice led him to bankruptcy, he intends to rely on trust and the absence of current credit cards to prevent future misspending. He enjoys his current position and believes he has a future with his present employer. However, he does not presently earn sufficient income to meet his family's needs. Applicant is relying on the prospect of a third bankruptcy filing to eliminate the debt presently at issue. Meanwhile, his former home remains unmanaged and poised for foreclosure.

Although one of the 26 debts at issue may have been included in Applicant's 2002 Chapter 7 bankruptcy discharge, none of the other debts have been paid, formally disputed, or otherwise addressed since 2008, when Applicant filed for Chapter 13 bankruptcy. He has been employed since that bankruptcy was dismissed in November 2010, yet multiple debts between \$23 and \$500 remain unaddressed. This process does not demand that every debt at issue be paid. It does, however, require that an Applicant have a reasonable and workable plan for eliminating his debt, and a demonstration that such a plan has been implemented. Here, Applicant's plan is to once again file for bankruptcy. As the sole source of family income at present, however, he lacks the funds to proceed with another bankruptcy filing at this time. Absent some showing that the significant debt at issue is poised for resolution with some indication that Applicant will not again fall prey to delinquent debt, financial considerations security concerns remain unmitigated. As noted, any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information. 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:

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| Paragraph 1, Guideline F: | AGAINST APPLICANT |
| Subparagraphs 1.a-1.bb: | Against Applicant |

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with national interest to grant Applicant a security clearance. Clearance denied.

ARTHUR E. MARSHALL, JR.
Administrative Judge