



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



In the matter of:)
)
) ISCR Case No. 11-04421
)
)
Applicant for Security Clearance)

Appearances

For Government: Jeff Nagel, Esq., Department Counsel
For Applicant: *Pro se*

June 29, 2012

Decision

GOLDSTEIN, Jennifer I., Administrative Judge:

Applicant has not mitigated Financial Considerations security concerns raised by his unpaid debts totaling \$31,921. Eligibility for access to classified information is denied.

Statement of the Case

On February 2, 2012, 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 (EO) 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 for cases after September 1, 2006.

Applicant answered the SOR (Answer) on March 19, 2012, and requested a hearing before an administrative judge. The case was assigned to me on May 4, 2012. DOHA issued a notice of hearing on May 7, 2012, and the hearing was convened as

scheduled on May 24, 2012. The Government offered Exhibit (GE) 1 through 8, which were admitted without objection. Applicant offered no documentary evidence, and testified on his own behalf. DOHA received the transcript of the hearing (Tr.) on June 5, 2012.

Findings of Fact

Applicant is a 51-year-old employee of a defense contractor. He is currently married to his second wife. Applicant and his first wife divorced in July 1995. Applicant has two adult children with his first wife and a three-year-old daughter from his second marriage. (GE 1; Tr. 21-25, 33.)

Applicant has financial problems that date back as far as 1983. Applicant was struggling with finances at that time and began taking money out of a cash register at the retail store where he worked. He stole \$1,400. He used the money to satisfy his debts. Applicant's theft was discovered, he was arrested, and he was convicted of misdemeanor embezzlement. (GE 2; Tr. 34-35.)

The SOR alleges Applicant is indebted to 12 creditors in the total amount of \$31,921. In addition, he failed to file his state tax returns for tax years 1993 through 2001. In his Answer, Applicant admitted each debt, with the exception of those listed in SOR ¶¶ 1.l and 1.m, which he denied. Each debt can be found listed in credit reports dated June 18, 2004; November 19, 2010; November 8, 2011; April 24, 2012; and May 24, 2012; as well as Applicant's Answers to Interrogatories. Applicant attributed his financial difficulties to "an inconsistent employment history." He indicated that many of his delinquent accounts first became delinquent in 1995. At that time, he was living on a month-to-month basis, trying to support his wife and children. (Answer; GE 3; GE 4; GE 5; GE 6; GE 7; GE 8; Tr. 24-25.) His debts are as follows:

Applicant is indebted on a judgment against him in the amount of \$1,570, as alleged in SOR ¶ 1.a. Applicant testified he could not recall if he satisfied this judgment. Applicant's most recent credit report reflects that the debt is still past due. Applicant has not contacted the creditor to arrange repayment or to contest this debt. (GE 5; Tr. 40-42.)

Applicant is indebted on a collection account in the amount of \$324, as alleged in SOR ¶ 1.b. He has not contacted the creditor to arrange repayment. This account has been past due since 2010. (GE 5; Tr. 43.)

Applicant is indebted on a medical account in the amount of \$665, as alleged in SOR ¶ 1.c. Applicant testified that this debt was for a dental bill. He has not contacted the creditor to arrange repayment. (GE 5; Tr. 44-45.)

Applicant is indebted on a charged-off account in the amount of \$14,817, as alleged in SOR ¶ 1.d. This debt was for a personal loan from a credit union made in 2006. Applicant has not made any payments on this debt in the past five years, and he has not had any contact with this creditor in three to four years. (GE 5; Tr. 46-48.)

Applicant is indebted on a collection account in the amount of \$592, as alleged in SOR ¶ 1.e. This debt was for a cell phone that Applicant used between 2000 and 2005. Applicant testified that he has not had contact with this creditor since 2005. (GE 5; Tr. 48-49.)

Applicant is indebted on a collection account in the amount of \$441, as alleged in SOR ¶ 1.f. Applicant testified that this debt was also for a cell phone. He has not contacted the creditor or made payments on this account. (GE 6; Tr. 48-49.)

Applicant is indebted on a charged-off account in the amount of \$4,506, as alleged in SOR ¶ 1.g. This debt was for a car that Applicant purchased in 2005. The vehicle was repossessed in December of 2011. Applicant ceased making payments on the vehicle in 2008. (GE 5; Tr. 51-53.)

Applicant is indebted on a collection account in the amount of \$46, as alleged in SOR ¶ 1.h. This debt was for a home phone line. Applicant has not contacted this creditor to arrange repayment of this debt. (GE 5; Tr. 53-54.)

Applicant is indebted on a collection account in the amount of \$440, as alleged in SOR ¶ 1.i. This debt was for another cell phone that Applicant used between 2006 and 2008. Applicant has not contacted this creditor to arrange repayment. (GE 5; Tr. 55-56.)

Applicant is indebted to the Federal Government on a tax debt in the amount of \$5,000, as alleged in SOR ¶ 1.j. Applicant testified that while he filed his tax returns, he failed to pay what he owed the IRS for approximately four different tax years. He indicated that he has not entered into a repayment plan or satisfied this debt. (GE 3; Tr. 57-59.)

Applicant is indebted to his state government on a tax debt in the amount of \$3,000, as alleged in SOR ¶ 1.k. Applicant testified that the state entered a garnishment against him and was taking \$100 out of each of his paychecks from one, but not both, of his part-time jobs. Applicant has not contacted the state to arrange further payments. He testified that between 1993 and 2001, he did file his state tax returns in a timely manner, but that he did not pay what he owed the state in taxes. However, he admitted in his Answer that he did not file his state taxes between 1993 and 2001, and he failed to produce evidence establishing that he filed them as he claimed. (GE 3; Tr. 60.)

Applicant is indebted to his state's department of motor vehicles in the amount of \$550, as alleged in SOR ¶ 1.l. This debt was incurred when Applicant failed to pay the registration fees on his vehicle in 2010. Applicant has not satisfied this debt. (GE 3; Tr. 55-57.)

Applicant is currently working two part-time jobs and his wife is employed full time, however he said that, "dealing with the household finances is really tough." He does not have funds available to satisfy his past debts and is focusing their family income on meeting their current needs. He has been late on his rent for his current

residence and has had to satisfy late fees for the late rent payments. He testified that he has not taken any actions on the debts listed on the SOR because he earns less than he spends each month. (Tr. 25-28, 66-67.)

Applicant also indicated that he has asked his wife to join him in receiving debt counseling, but that their marital relationship is failing due to financial stress. He indicated his wife will not agree to attend any debt counseling with him. (Tr. 29, 70.)

Applicant failed to introduce any evidence of good character, trustworthiness, or honesty. He testified that he would not do anything to jeopardize the national interests of our country. (Tr. 67.)

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 and mitigating conditions, 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, administrative judges apply the 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 the applicant or proven by Department Counsel." The applicant has the ultimate burden of persuasion 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 EO 10865 provides that adverse 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 for Financial Considerations is set out in AG ¶ 18, as follows:

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 concern under AG ¶ 19. Three are potentially applicable in this case:

- (a) inability or unwillingness to satisfy debts;
- (c) a history of not meeting financial obligations;
- (e) consistent spending beyond one’s means, which may be indicated by excessive indebtedness, significant negative cash flow, high debt-to-income ratio, and/or other financial issues; and
- (g) failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same.

Applicant has a long history of financial delinquencies. His debts have remained unresolved for a number of years. Further, he admitted in his Answer that he failed to file his state tax returns for tax years 1993 through 2001. He failed to present any proof that he did in fact file them, as he claimed in his testimony. The evidence is sufficient to raise the disqualifying conditions set forth above.

Five Financial Considerations Mitigating Conditions under AG ¶ 20 are potentially applicable:

(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's debt is recent and ongoing. He failed to address any of his delinquent accounts, including his tax debts to the Federal Government. While he attributed his debts to periods of unemployment, he and his wife are currently employed but are unable to meet their current expenses. Applicant has not acted responsibly under the circumstances by continuously living beyond his means. There are no indications that their financial problems are resolved or under control, nor has there been a good faith effort to resolve any of the debts. He has not received any financial counseling nor has he shown any effort to repay his creditors. While he testified that his state tax debt is being repaid through garnishment, he failed to produce evidence to support this claim. Further, the garnishment is involuntary and does not establish good judgment on the part of Applicant. He failed to provide documented proof regarding any disputes with his creditors. The financial concerns remain unmitigated.

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. I have incorporated my comments under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

Applicant has made irresponsible financial choices that do not demonstrate the judgment, reliability, or trustworthiness needed to hold a security clearance. There are significant unresolved concerns about Applicant's finances and judgment, and he remains at substantial risk of pressure, coercion, exploitation, or duress.

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated the Financial Considerations security concerns.

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
Subparagraph 1.a~1.m:	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.

Jennifer I. Goldstein
Administrative Judge