



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



In the matter of:)
)
) ISCR Case No. 11-05490
)
Applicant for Security Clearance)

Appearances

For Government: Richard Stevens, Esq., Department Counsel
For Applicant: *Pro se*

08/10/2012

Decision

DUFFY, James F., Administrative Judge:

Applicant failed to mitigate the security concerns arising under Guideline F, Financial Considerations. Eligibility for access to classified information is denied.

Statement of the Case

On March 21, 2012, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F. This 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) implemented on September 1, 2006.

On April 20, 2012, and May 1, 2012, Applicant answered the SOR and requested a hearing. This case was assigned to me on May 23, 2012. DOHA issued a notice of hearing on May 24, 2012, and the hearing was convened as scheduled on June 7, 2012. At the hearing, Department Counsel offered Government's Exhibits (GE) 1 through 5 that were admitted into evidence without objection. Applicant testified, called

one witness to testify on his behalf, and offered Applicant's Exhibits (AE) A and B that were admitted into evidence without objection. The record was left open until June 21, 2012, to provide Applicant an opportunity to submit additional matters. He timely submitted documents that were marked as AE C through F and admitted into evidence without objection. Department Counsel's email forwarding Applicant's post-hearing submission was marked as Hearing Exhibit (HE) 1. DOHA received the hearing transcript (Tr.) on June 22, 2012.

Procedural Issue

At the hearing, Applicant affirmatively waived the 15-day notice requirement in Paragraph E3.1.8 of the Directive.

Findings of Fact

Applicant is a 42-year-old prospective employee of a defense contractor. In October 2010, he submitted a security clearance application for this prospective employment that would involve working in Afghanistan in support of coalition forces. Applicant received a bachelor's degree in management and technical operations in 2001. He served in the Air National Guard from September 1990 to June 1998 and in the Air Force from July 1998 to December 2001, achieved the grade of staff sergeant (E-5), and received an honorable discharge. From January 2002 to July 2006, he served as an officer in the Air Force and received honorable discharge. Since then, he has been serving in the grade of captain (O-3) in the Air Force Reserve. He has been married twice. His first marriage was from November 1992 to March 1997. He married his current wife in January 2002. He has one child, a daughter who is 17 years old, and three step-children who range in age from 23 to 32. From approximately 1990 to 2008, he held a security clearance without incident.¹

The SOR alleged that Applicant had 20 delinquent debts totaling \$598,395. In his Answer to the SOR, Applicant denied three debts (SOR ¶¶ 1.m, 1.n, and 1.o) totaling about \$280,000 and, with comments, admitted the remaining debts totaling \$318,395. His admissions are incorporated as findings of fact.²

Applicant's wife has been a licensed real estate agent for about 25 years. In 1998, he obtained his real estate license. In 2005, he purchased four properties totaling about \$787,000. These included the home in which he currently resides and a home for his parents in another city. In about 2006, his wife left a teaching position that she held for 15 years because they thought he was being reassigned to a new duty station. However, his stepson had a blood condition that required special medical treatment.

¹ Tr. at 5-6, 37-39; GE1, 2; AE A.

² Applicant's Answer to the SOR; GE 1-5.

Because he was not offered a duty station that could accommodate his stepson's medical needs, Applicant decided to leave active duty to start a real estate business.³

In the beginning, Applicant's real estate business was successful. The real estate market, however, started to decline in 2007. Because his income was based on commissions, his financial situation was negatively impacted as the housing market deteriorated. He also had difficulty renting his investment properties. In January 2008, his mother passed away and he was saddled with the funeral expenses. He continued to perform Reserve duties until April 2008 when his security clearance was revoked due to his financial problems. In 2009, his wife was diagnosed with a Fibromyalgia and had knee replacement surgery. Because he fell behind on child support payments, his real estate license was suspended in February 2010, which further exacerbated his financial situation. The alleged debts are addressed below.⁴

SOR ¶ 1.a – charged-off account for \$1,451. This is a credit card account with a date of first delinquency/date of last activity of September 2010. This account remains unresolved.⁵

SOR ¶ 1.b – collection account for \$200. This is a retail store account with a date of first delinquency/date of last activity of May 2009. This account remains unresolved.⁶

SOR ¶ 1.c – collection account for \$5,700. This is a credit card account with a date of first delinquency/date of last activity of September 2009. This account remains unresolved.⁷

SOR ¶ 1.d – collection account for \$22,413. This is a credit card account with a date of first delinquency/date of last activity of June 2009. Applicant entered into an agreement to make monthly payments of \$230 on this debt. He stated he made only two of those payments, one in August 2010 and the other in May 2012. This debt remains unresolved.⁸

SOR ¶ 1.e – charged-off account for \$1,385. This is a telephone services account with a date of first delinquency/date of last activity of July 2009. The creditor

³ Tr. at 29-37; Applicant's Answer to the SOR; GE 1, 2. See also notes 11, 14, 15, and 16, *supra*, and accompanying text.

⁴ Tr. at 6, 29-34; Applicant's Answer to the SOR; GE 1, 2.

⁵ Tr. at 52; GE 2, 5.

⁶ Tr. at 53; GE 5.

⁷ Tr. at 53; GE 2, 5.

⁸ Tr. at 53-54; GE 2. GE 2 at 20 reflects that he made a \$230 payment in July 2010 instead of August 2010.

offered to settle this account for half of the delinquency, but Applicant was not able financially to accept that offer. This debt remains unresolved.⁹

SOR ¶ 1.f – collection account for \$16,454. This account is for child support arrearages. In his divorce, Applicant was ordered to pay \$435 per month in child support. He fell behind in those payments. In December 2009, his ex-wife instituted legal action to garnish his wages and, for a period of time, his wages were garnished. Applicant's real estate license and his driver's license were suspended because of the child support arrearages. In his post-hearing submission, Applicant provided documentation showing he made child support payments of \$707 in June 2009, \$1,005 in February 2011, and \$983 in March 2012. His driver's license was reinstated after the February 2011 payment. His real estate license is still suspended. This debt remains unresolved.¹⁰

SOR ¶ 1.g – foreclosed mortgage for \$36,568. This mortgage is for a house that Applicant purchased in January 2005. This house was purchased for \$143,000 and had monthly mortgage payments of \$1,100. From March to September 2005, he lived in this property and then rented it. At times, the property was unoccupied, and he began falling behind on payments. Foreclosure proceedings were initiated, but not completed. For the past six or seven months, the property has been vacant. Three short sale offers have been made on this property, but the mortgage holder has refused to accept those offers. This debt remains unresolved.¹¹

SOR ¶¶ 1.h and 1.p – collection accounts for \$8,760 and \$13,943, respectively. Both of these accounts are vehicle loans from the same creditor. Both vehicles were purchased for over \$25,000 in 2005 and were repossessed in October 2007. In 2009, the creditor offered to settle both debts for \$10,000. Under that settlement agreement, Applicant was required to pay \$100 per month. He has made two payments under that agreement. The first payment was made shortly after the offer and the second was in the middle of 2011. These debts remain unresolved.¹²

SOR ¶ 1.i – charged-off account for \$11,991. This was a bank account with overdraft protection. Applicant and his wife used this account for living expenses. The date of first deficiency/date of last activity on this account was January 2010. This account remains unresolved.¹³

⁹ Tr. at 54-55; Applicant's Answer to the SOR; GE 2.

¹⁰ Tr. at 55-60; Applicant's Answer to the SOR; GE 1, 2; AE F.

¹¹ Tr. at 39-42, 60-62; GE 2.

¹² Tr. at 62-65, 68; Applicant's Answer to the SOR; GE 2, 4.

¹³ Tr. at 65; GE 2. In his post-hearing submission, Applicant provided bank statements from this creditor, but those statements do not pertain to this alleged debt. See AE E.

SOR ¶¶ 1.j – mortgage past-due for \$53,074 – and 1.l – charged-off mortgage for \$49,322. These are the second and third mortgages on a house that Applicant purchased in 2005. This house was purchased for \$235,000 and had monthly payments of \$2,000. Applicant and his family currently reside in this home. The first mortgage was not alleged in the SOR as a delinquent debt. He entered into negotiations to modify the first mortgage. At the time he was negotiating that loan modification, the first mortgage holder also initiated foreclosure proceedings, but he filed paperwork to challenge that legal action. In November 2010, the court ordered the foreclosure proceedings to be held in abeyance. In December 2010, Applicant was approved for a loan modification trial period plan. Under the trial period plan, he was to make payments of \$1,299 in February, March, and April 2011. He apparently made those payments and first mortgage was modified. However, he provided no proof of payments on the second and third mortgages. The third mortgage (SOR ¶ 1.j) was a homeowner equity line of credit that he obtained in 2005 to add a sun room to the house. The third mortgage holder has made him an offer to settle that debt for \$5,000, but he has not been able to accept that offer. These alleged debts remain unresolved.¹⁴

SOR ¶¶ 1.k – mortgage past-due for \$28,168 – and 1.m – foreclosed mortgage for \$50,000. These are the first and second mortgages on a house that Applicant purchased for his parents in June 2005. This house was purchased for \$184,000 and had monthly mortgage payments of \$1,585. The original plan was for his parents to pay a portion of the mortgage payments, and he would pay the remainder. However, his parents decided they did not want to reside in this house. He then began renting it. At times, the property was unoccupied, and he was unable to make the mortgage payments. This property was sold at a short sale for \$100,500 in 2010. He indicated the first mortgage (SOR ¶ 1.m) was satisfied in the short sale. In August 2010, he executed a promissory note for \$16,000 to address the deficiency arising from the second mortgage (SOR ¶ 1.k). He stated that he was initially paying \$133 per month towards that deficiency and later renegotiated a reduced payment of \$35 per month. He indicated that he has been making the \$35 payments for the past year, but provided no proof of those payments.¹⁵

SOR ¶¶ 1.n – mortgage for \$46,000 foreclosed or paid for less than full balance – and 1.o – mortgage for \$184,000 paid for less than full balance. These are the first and second mortgages on a house that Applicant purchased in 2005. This house was purchased for \$225,000 and had monthly mortgage payments of \$1,600. This was a rental property. At times, it was unoccupied, and he could not afford the mortgage payments. He indicated that the property was sold at a short sale for \$170,000 in 2009,

¹⁴ Tr. at 47-52, 65-67; Applicant's Answer to the SOR; GE 2 at 10-11, 40-43; GE 3-5. Applicant submitted documentation showing that he made a payment of \$1,299 in February 2011 as part of the loan modification trial period plan. He also provided paperwork showing the loan was modified.

¹⁵ Tr. at 42-46, 66, 68; Applicant's Answer to the SOR; GE 2, 3. In his post-hearing submission, Applicant provided bank statements showing he made payments of \$35 on January 27, 2011, February 14, 2011, and April 12, 2011, and a payment of \$70 on September 14, 2011, but it is unknown to whom these payments were made.

and he received releases for the mortgages. His most recent credit report supports his contention that he has been released from these mortgages.¹⁶

SOR ¶ 1.g – collection account for \$2,387. This is a loan that was used to purchase an all-terrain vehicle (ATV) for about \$6,725 in 2005. Applicant's last payment on this loan was two or three years ago. He still retains possession of the ATV. In January 2012, a collection agency offered to settle this debt for half of the amount owed, but he could not afford to accept that offer. This debt remains unresolved.¹⁷

SOR ¶¶ 1.r, 1.s, and 1.t – deferred student loans for \$12,500, \$21,807, and \$32,272, respectively. Applicant is currently enrolled in a master's degree program and indicated these student loans are deferred. At the hearing, he indicated one of the alleged debts was a duplicate. In his post-hearing submission, a document listing his the student loans does not contain SOR ¶ 1.r, which supports a determination that it is a duplicate. This document also indicated that he is \$658 past due on SOR ¶¶ 1.s and 1.t. Nevertheless, I find for the Applicant on these three student loans because the SOR allegations did not assert that these student loans were delinquent.¹⁸

Applicant acknowledged that he has not received financial counseling. He estimated that his and his wife's income was about \$27,000 in 2011. In January 2012, he submitted a personal financial statement (PFS) that reflected his net monthly income was \$1,701 and his total monthly expenses were \$1,980, which left him with a negative net monthly remainder.¹⁹

In 1998, the police charged Applicant with possession of a firearm on school property. In May 2010, he was charged with driving while his driver's license was suspended or revoked. In September 2010, he pled no contest to the driving violation and adjudication was withheld. At this hearing, he admitted that he committed both offenses. Regarding the firearm offense, he indicated that he unintentionally carried a loaded handgun to school in a backpack. While he was in a class, a bag holding the handgun fell out of the backpack unbeknownst to him, and the bag with the handgun was later discovered in the classroom after he departed. At that time, he did not have a license to carry a concealed weapon. The firearm charge was eventually dropped, and the handgun was confiscated. He believes the firearm charge has been expunged from his record. In about 2001, he disclosed the firearm offense before his security clearance was renewed.²⁰

¹⁶ Tr. at 46-47, 67-68; GE 3, 5.

¹⁷ Tr. at 68-69; GE 3, 5.

¹⁸ Tr. at 69-72; GE 5; AE C, D.

¹⁹ Tr. at 76; GE 2.

²⁰ Tr. at 58-60, 73-76; GE 1, 2.

Applicant has been awarded two Air Force Achievement Medals and three Air Reserve Forces Meritorious Service Medals. An officer performance report and education and training report reflect that his is an outstanding officer and selfless contributor. He has received numerous letters of appreciation or commendation for his professional achievements and volunteer services. At the hearing, a master sergeant testified that he has known the Applicant for approximately 18 years. The master sergeant stated Applicant was very reliable, honest, and trustworthy. Applicant also provided letters of reference that describe him as a dedicated, trustworthy, and talented individual.²¹

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions that 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 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 safeguard

²¹ Tr. at 24-28; GE 2; AE A, B.

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 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* Executive Order 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 concerns under AG ¶ 19. Two are potentially applicable in this case:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant accumulated delinquent debts that he was unable or unwilling to satisfy over a number of years. This evidence is sufficient to raise the above disqualifying conditions.

Several 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 has multiple delinquent debts that remain unresolved. His financial problems are ongoing, significant, and cast doubt on his current reliability, trustworthiness, and good judgment. AG ¶ 20(a) is not applicable.

Applicant started a real estate business in 2006. At that time, his wife also was working as a real estate agent. In 2007, the housing market experienced a significant downturn. In 2008, his mother passed away, and he paid for her funeral expenses. His stepson had a blood disorder. In 2009, his wife was diagnosed with Fibromyalgia and had knee replacement surgery. The downturn in the housing market, his wife's and stepson's medical problems, and the passing of his mother were conditions beyond his control that caused his financial difficulties. To obtain full credit under AG ¶ 20(b), however, both prongs of that mitigating condition, *i.e.*, conditions beyond the individual's control and responsible conduct, must be established. Of concern here are Applicant's financial commitments in 2005. During that year, he purchased four properties totaling about \$787,000, two vehicles totaling over \$50,000, and an ATV for about \$6,725, and he also obtained a homeowner equity line of credit of over \$50,000. Those significant financial commitments over that short period of time raise questions about his judgment that he did not satisfactorily address at the hearing. Additionally, he failed to show that he took meaningful action to address the delinquent debts before he stopped working due to the suspension of his real estate license or the revocation of his security clearance. Based on the evidence presented, I cannot find that he acted responsibly under the circumstances. AG ¶ 20(b) partially applies.

Applicant presented sufficient documentation to mitigate the debts in SOR ¶¶ 1.m, 1.n, and 1.o. Those mortgages were resolved during short sales of the applicable properties. AG ¶¶ 20(c) and 20(d) apply to those debts. As noted above, I find in favor of Applicant on the student loans alleged in SOR ¶¶ 1.r, 1.s, and 1.t. SOR ¶ 1.r is a duplicate debt to which AG ¶ 20(e) applies. Although SOR ¶¶ 1.s and 1.t did not allege delinquent debts, those student loans may still be considered in assessing Applicant's overall financial situation. The other 14 debts in the SOR have not been mitigated.

Applicant's financial situation remains unstable. He has not produced documentation showing regular payments towards his delinquent debts. He failed to

produce a realistic plan for addressing them. His financial problems continue to be a security concern.

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 relevant 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 served in the Air Force, Air National Guard, or Air Force Reserve for over 20 years. He has proven that he is an outstanding officer. Supervisors and acquaintances described him as a trustworthy and reliable individual. Although he was charged with criminal offenses in 1998 and 2010, those charges have limited security significance. The concern here is his financial situation, which remains unstable. His delinquent debts are not under control. In January 2012, he submitted a PFS that reflected he has a negative net monthly remainder. He has failed to present a realistic plan for resolving the delinquent debts. Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated the security concerns under the financial considerations guideline.

Formal Findings

Formal findings 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.l:	Against Applicant
Subparagraphs 1.m – 1.o:	For Applicant
Subparagraphs 1.p – 1.q:	Against Applicant
Subparagraphs 1.r – 1.t:	For 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.

James F. Duffy
Administrative Judge