



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



In the matter of:)	
)	
)	ISCR Case No. 11-05568
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Tovah A. Minster, Esquire, Department Counsel
For Applicant: *Pro se*

08/30/2012

Decision

CURRY, Marc E., Administrative Judge:

Applicant failed to mitigate the security concern raised under Guideline F, financial considerations. Clearance is denied.

Statement of the Case

On April 4, 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. 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 implemented by the DoD on September 1, 2006. (AG).

In an undated answer, Applicant admitted all the allegations and requested a decision based on the written record instead of a hearing. On May 24, 2012, Department Counsel prepared a File of Relevant Material (FORM). Applicant received it

on May 30, 2012, and was instructed to file any objections or provide any supplementary information by May 29, 2012. Applicant did not file any additional information, and the case was assigned to me on July 17, 2012.

Findings of Fact

Applicant is a 35-year-old married man. He has no children, and has been married for seven years. He earned a bachelor's degree in marketing in 1999, and earned a master's degree in 2005. Since October 2010, he has worked for a defense contractor as an engineer.

After graduating from college, Applicant worked for the same employer for the next eight years. In March 2006, he left this job and took another job. The new job involved sales and paid him an annual base salary of approximately \$55,000 per year. Although this was approximately \$15,000 less than what he previously earned, employees had the opportunity to earn lucrative sales commissions in addition to the base salary. Applicant anticipated that he would ultimately earn more money on this new job.

Applicant's tenure at the new job was unsuccessful, and he earned no sales commissions. (Item 6 at 4) By the time he left this job in August 2007, he had accrued multiple delinquent credit card accounts and his home mortgage payments were delinquent. (Item 6 at 12-13)

After leaving the sales job in August 2007, Applicant worked for another company as a business analyst for approximately six months, and as a manager for an online education services company for nearly three years. Although it is unknown from the record whether Applicant's salary between 2007 and 2010 ever equalled the salary he earned at the job he left in March 2006, he has never had any periods of unemployment that were more than two weeks. (Item 6 at 7) Also, he went on a luxury vacation cruise in December 2009. (Item 6 at 12)

By 2012, Applicant had accrued approximately \$115,000 of delinquent debt, including his mortgage delinquency, totalling \$87,000 (subparagraph 1.d), a delinquent cell phone account (subparagraph 1.e), and multiple credit card debts ranging from \$116 to \$14,000. Applicant contends he has paid two debts, totalling approximately \$3,600, in their entirety (subparagraphs 1.f and 1.h) Also, he disputes subparagraphs 1.e and 1.g, the two smallest accounts listed in the SOR, each of which is less than \$200. He provided neither corroborating documentary evidence demonstrating that he had paid subparagraphs 1.f and 1.h, nor any corroborating evidence that he had contacted the creditors of the disputed bills.

By February 2012, Applicant had contacted the creditors listed in subparagraphs 1.a through 1.c, 1.i, and 1.j, and had arranged payment plans. (Item 6 at 28, 31-37) He contends that he has been making \$100 monthly payments to the creditors listed in subparagraphs 1.a and 1.b, together with \$130 monthly payments to the creditor listed

in subparagraph 1.j, since December 2011. Also, he contends that he has been making \$100 monthly payments to the creditor listed in subparagraph 1.c together with \$130 monthly payments to the creditor listed in subparagraph 1.i, since February 2011. (Item 6 at 6-12)

Applicant's supporting documents corroborate that he arranged payment plans to each of these five creditors. However, there is no evidence establishing that he has been adhering to these payment plans.

Applicant contends that he is in the process of resolving the mortgage delinquency through the short-sale process. The creditor rejected the most recent short sale offer. (Item 4 at 1) Applicant provided no further details.

Currently Applicant earns approximately \$110,000 annually. (Item 6 at 27) He has approximately \$249 in monthly discretionary income. (Item 6 at 27)

Policies

The adjudicative guidelines list potentially disqualifying conditions and mitigating conditions. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, they are applied together with the factors listed in the adjudicative process. According to AG ¶ 2(c), the entire process is a 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. 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 for obtaining a favorable security decision.

Analysis

Guideline F, Financial Considerations

Under this guideline, "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" (AG ¶ 18). Moreover, "an individual who is financially overextended is at risk of having to engage in illegal acts to generate funds" (*Id.*). Applicant's financial delinquencies trigger the application of AG ¶¶ 19(a), "inability or unwillingness to satisfy debts," and

19(c), “a history of not meeting financial obligations.” The following mitigating conditions under AG ¶ 20 are potentially applicable:

(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 chose to leave his job in March 2006 for a lower-paying job. Even if the miscalculation of the potential sales commissions at the new job, which led to his financial problems, were to be generously construed as a business downturn beyond his control, Applicant provided insufficient evidence demonstrating that he acted responsibly under the circumstances to address his financial delinquencies.

Applicant arranged payment plans for some of his delinquencies. However, he provided insufficient evidence that he has adhered to these payment plans. Similarly, Applicant provided no evidence substantiating the basis of the disputed debts, nor any evidence of concrete actions to resolve them. None of the mitigating conditions apply.

Whole-Person Concept

Under the whole-person concept, the administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a). They are as follows:

(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.

With no children and a salary of approximately \$110,000 a year, Appellant appears to have ample income to gradually eliminate his delinquencies. Absent supporting documentation of his payment efforts, I cannot gauge his debt repayment progress, or whether he is even focused on debt repayment. Upon considering this case in light of the whole-person concept, I conclude Applicant has failed to mitigate the security concern.

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.j:	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.

MARC E. CURRY
Administrative Judge