



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



In the matter of:)
)
) ISCR Case No. 11-05932
)
Applicant for Security Clearance)

Appearances

For Government: Fahryn Hoffman, Esq., Department Counsel
For Applicant: *Pro se*

11/08/2012

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 April 23, 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.

Applicant answered the SOR on May 8, 2012, and requested a hearing on June 6, 2012. The case was originally assigned to another administrative judge and was reassigned to me on August 1, 2012. DOHA issued a notice of hearing on August 6, 2012, and the hearing was convened as scheduled on August 29, 2012. At the hearing,

Department Counsel offered Government's Exhibits (GE) 1 through 5 that were admitted into evidence without objection. Department Counsel's list of exhibits was marked as Hearing Exhibit (HE) 1. Applicant testified and offered documents marked as Applicant's Exhibits (AE) A through C that were admitted into evidence without objection. The record was left open until September 5, 2012, for Applicant to submit additional matters. He timely submitted AE D. On September 25, 2012, Applicant submitted AE E. AE D and E were admitted into evidence without objection. Department Counsel's memoranda forwarding Applicant's post-hearing exhibits were marked as HE 2 and 3. DOHA received the hearing transcript (Tr.) on September 7, 2012.

Findings of Fact

Applicant is a 50-year-old employee of a defense contractor. He has been working for his current employer for about eight years. He graduated from high school in June 1981 and later attended college for about a year. He enlisted in the U.S. Army in June 1981, attained the grade of staff sergeant (E-6), and retired honorably in June 2001. He has been married twice. His first marriage began in June 1989 and ended in divorce in June 2002. He married his current wife in September 2002. He has three children, ages 7, 9, and 22, and two step-children, ages 13 and 31. For most of the past 30 years, he has held a security clearance without incident.¹

The SOR alleged that Applicant received a Chapter 7 bankruptcy discharge in October 2002 and that he had 15 delinquent debts totaling about \$78,000. Those debts were listed on credit reports obtained on December 16, 2010, and February 10, 2012. In his Answer, Applicant admitted each of the delinquent debt allegations. He noted the debts remained unpaid, but were listed in a pending bankruptcy. His admissions are incorporated herein as findings of fact.²

In June 2002, Applicant filed Chapter 7 bankruptcy. He attributed his financial problems in that bankruptcy to his ex-wife. He indicated that, before their divorce, his wife started sending money to a neighbor whom she later married. She also had a power of attorney from Applicant and used that authority to incur debts. He also claimed that, after the divorce, she went on a military post and wrote bad checks. He received a bankruptcy discharge in October 2002. He estimated that debts totaling between \$50,000 and \$60,000 were discharged in that bankruptcy.³

Applicant submitted a security clearance application in November 2010. In that application, he did not disclose that he had any reportable financial delinquencies. At the hearing, he indicated that he was not aware of the debts alleged in the SOR until he learned of them during the subsequent security clearance investigation.⁴

¹ Tr. at 6-7, 25-34, 69; GE 1, 3, AE D.

² Applicant's Answer to the SOR; GE 2, 4, 5.

³ Tr. at 25, 34-36, 59-61; GE 2-5.

⁴ Tr. at 25, 36-48; GE 1, 3.

Applicant's current wife has a chronic illness and is unemployed. He stated that she is very sick, and her illness prevents her from working. His wife handles their finances. He noted that he travels often for his job, which precludes him from handling the finances. She has a power of attorney from him. At the hearing, he attributed his current financial problems to her illness. During an Office of Personnel Management (OPM) interview, he acknowledged that his failure to monitor family finances also led to his financial problems.⁵

The date of last activity on the alleged debts ranges from July 2004 (SOR ¶ 1.p) to May 2010 (SOR ¶ 1.b). Most of those debts became delinquent in 2005 and 2006. Four of the delinquent debts (SOR ¶¶ 1.f, 1.i, 1.j, and 1.o) were for vehicle loans. During the OPM interview, Applicant stated that he had a vehicle involuntarily repossessed in about September 2003. At that time, his wife had not informed him of any pending financial problems, and he only became aware that she was not making the monthly payments when the vehicle was repossessed. Another of the delinquent debts (SOR ¶ 1.i) was for a truck that he sent to a repair shop after it was vandalized in 2005. While the truck was in the repair shop, he decided that he no longer wanted to keep it and requested the creditor pick up the truck at the repair shop. He later moved from the state where the truck was being repaired and did not know whether the creditor ever picked up the truck from the repair shop. Two other debts (SOR ¶¶ 1.k and 1.l) were for furniture purchased in 2003 and 2004. This furniture was purchased for his wife's cousins, and he was not aware of those purchases at the time they were made. The cousins were supposed to pay for the furniture, but failed to do so.⁶

On June 27, 2012, Applicant again filed Chapter 7 bankruptcy. His bankruptcy petition reflected that he had \$1,050 in assets and \$241,208 in liabilities. All of his liabilities involved creditors holding unsecured, nonpriority claims. Schedule F of the bankruptcy petition listed all of the debts alleged in the SOR. On September 4, 2012, he was granted a Chapter 7 discharge. He presented no evidence that he made any attempts to resolve the delinquent debts before filing bankruptcy.⁷

Applicant participated in credit counseling as a prerequisite to filing bankruptcy. At the hearing, Applicant stated that the debt in SOR ¶ 1.e was the same as the one in SOR ¶ 1.n. An examination of the credit reports supports his contention. SOR ¶ 1.e listed the original creditor, while SOR ¶ 1.n listed the collection agency.⁸

⁵ Tr. at 25, 37, 49-53, 55, 58-62, 65-68, 75-76; GE 3.

⁶ Tr. at 36-37, 40-42, 45-48 62-63; GE 2, 3, 4. SOR ¶ 1.o most likely alleges the delinquent debt for the truck repossessed in September 2003. At the hearing, Applicant stated that his uncle who worked for a car company supposedly stated that truck should have never have been repossessed because the payments were being made. After the repossession, Applicant never got the truck back.

⁷ Tr. at 48-54, 69-74; GE 3; AE A-C, E.

⁸ Tr. at 43-45, 49, 67; GE 2-4.

In October 2011, Applicant and his wife entered into a rent-to-own agreement to purchase a home. At the end of the first year of rent payments, they will be able to purchase the home. He did not know the exact sales price, but estimated it to be about \$160,000, with about \$30,000 having already been paid through monthly rent payments. Between July and October 2011, he opened four credit card accounts and an installment contract. Those credit card accounts and the installment contract were not listed in the SOR, but were discharged in the bankruptcy.⁹

In March 2012, Applicant submitted a Personal Financial Statement (PFS) that reflected his net monthly income was \$4,838 and his total monthly expenses were \$4,738. Of note, the PFS was submitted before his most recent bankruptcy petition and did not list any debt payments. In the PFS, he indicated that his net monthly remainder was \$100. However, he also provided a handwritten note that indicated he forgot to provide information about his telephone services. The note indicated that he paid \$280 for his cell and home telephone services, which would result in him having a negative net monthly remainder.¹⁰

In the Army, Applicant was awarded the Joint Service Commendation Medal, two Army Commendation Medals, four Army Achievement Medals, and five Good Conduct Medals.¹¹

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.

⁹ Tr. at 28-31, 63-65; GE 2, 5. Conduct not alleged in the SOR may be considered to assess an applicant's credibility; to decide whether a particular adjudicative guideline is applicable; to evaluate evidence of extenuation, mitigation, or changed circumstances; to consider whether an applicant has demonstrated successful rehabilitation; or as part of the whole-person analysis. ISCR Case No. 03-20327 at 4 (App. Bd. Oct 26, 2006). I have considered Applicant's non-alleged debts for these limited purposes.

¹⁰ Tr. at 54-59; GE 3.

¹¹ Tr. at 69-70; AE D.

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 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 received a Chapter 7 bankruptcy discharge in 2002. Since then, he accumulated delinquent debts that he was unable or unwilling to satisfy for an extended period. 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's wife has a chronic illness that resulted in her unemployment. Her illness is a condition beyond Applicant's control that contributed to the delinquent debts. For AG ¶ 20(b) to apply fully, an individual must not only experience one or more conditions beyond his or her control that contributed to the financial problems, but also must have acted responsibly under the circumstances. Here, Applicant received a Chapter 7 bankruptcy discharge in 2002, incurred additional delinquent debts over an eight year period, and again filed Chapter 7 bankruptcy in 2012. No evidence was presented to show he took any action to attempt the resolve the debts before filing the second bankruptcy. Another cause for concern is his reliance on his wife to manage their finances. In that regard, he indicated that he was not aware that his wife was not making monthly payments on his vehicle until it was involuntarily repossessed in 2003. After that repossession, he should have known that he needed to monitor his finances better, but he failed to do so. During the OPM interview, he indicated that he was unaware of many of his delinquent debts and acknowledged that his failure to monitor family finances led to his financial problems. From the evidence presented, I cannot find that he acted responsibly under the circumstances. AG ¶ 20(b) partially applies.

Applicant received financial counseling as a prerequisite to filing bankruptcy. While bankruptcy is intended to provide a person with a fresh start financially, it does not immunize an applicant's history of financial problems from being considered for its security significance.¹² In this case, Applicant has a long history of financial problems. His most recent bankruptcy discharge was granted after the hearing was held. He has failed to establish a track record of fiscal responsibility. Based on the record evidence, the likelihood of him encountering future financial problems cannot be ruled out. The alleged debts, even though discharged in the most recent bankruptcy, continue to cast doubt on his current reliability, trustworthiness, and good judgment. AG ¶ 20(a) and 20(d) do not apply. AG ¶ 20(c) partially applies.

Applicant claimed that the debt in SOR ¶ 1.e is a duplicate of the one in SOR ¶ 1.n. The credit reports support his contention. AG ¶ 20(e) applies to SOR ¶ 1.e.

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 served in the Army for 20 years and retired in the grade of staff sergeant. He has held a security clearance for about 30 years without incident. Despite the presence of some mitigation, Applicant's financial problems remain a security concern. In the past ten years, he received two Chapter 7 bankruptcy discharges. He

¹² See *e.g.*, DISCR Case No. 87-1800 (February 14, 1989) at p.3 n. 2 ("Although bankruptcy may be a legal and legitimate way for an applicant to handle his financial problems, the [administrative judge] must consider the possible security implications of the history of debts and problems that led to the filing of bankruptcy").

filed his latest bankruptcy after the SOR was issued and was granted a discharge after the hearing. Most importantly, he has failed to establish a record of fiscal responsibility. 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 failed to mitigate the security concerns arising under Guideline F.

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.d:	Against Applicant
Subparagraph 1.e:	For Applicant
Subparagraphs 1.f – 1.p:	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.

James F. Duffy
Administrative Judge