



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



In the matter of:)	
)	
-----)	ISCR Case No. 11-06393
)	
Applicant for Security Clearance)	

Appearances

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

03/28/2012

Decision

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

On September 12, 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 October 5, 2011, response, Applicant admitted 15 of 17 allegations raised under Guideline F and requested a hearing before a DOHA administrative judge. DOHA assigned the case to me on December 14, 2011. The parties proposed a hearing date of February 1, 2012. A notice setting that date for the hearing was issued on January 6, 2012. I convened the hearing as scheduled.

Applicant gave testimony and offered two documents, which were accepted without objection as exhibits (Exs.) A-B. He was given until February 24, 2012, to submit any additional documents. The Government introduced five documents and one schematic aid, which were accepted into the record without objection as Exs. 1-5 and

Hearing Exhibit 1, respectively. The transcript (Tr.) of the proceeding was received on February 9, 2012.

On February 27, 2012, Applicant contacted Department Counsel and stated that he had difficulties submitting his materials by facsimile transmission. Department Counsel responded by urging Applicant to resend the transmission and send a copy either via post or email. Department Counsel also checked with his office to make sure no transmissions were accidentally delivered to another counsel. When no documents arrived, Department Counsel emailed Applicant on March 7, 2012, asking him to confirm whether documents were sent, en route, or whether Applicant had decided not to submit any materials. When no response was received by March 12, 2012, Department Counsel left a voice message on Applicant's phone asking him to return the call. After consultation with me, Department Counsel left a second telephonic message explaining the urgency of receiving the materials or hearing from him in some manner that day.¹ On March 15, 2012, four additional documents were received and forwarded to me from Department Counsel. They were accepted into the record as Exs. C-F and the record was 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 33-year-old electrical mechanic who has worked for the same defense contractor for a year. He has a high school diploma, completed some college courses, and has four years experience as an electrical journeyman. Applicant is a single parent raising one pre-teen child.

In 2006, Applicant was involved in a car accident which left him disabled and demanded a little over a year off from work to recuperate. While he tried to honor his obligations during his period of unemployment, some bills went unpaid as he depleted his savings. Many of those debts were related to his medical care. He returned to his workplace in late 2007, where he discovered layoffs were underway. Applicant was required to reapply for employment, but no offers were extended. Consequently, he filed for food stamps (SNAP benefits) at the end of 2007, which he received for about four months. He did not otherwise receive unemployment or disability assistance.²

Starting in early 2008, Applicant did itinerant subcontracting work for area electrical contractors to generate some income. Jobs, however, were sporadic due to a downward trend in the local economy. He ultimately started work with his present employer in March 2011.

¹ Confirmation of this call was made telephonically. It is noted that Applicant may have inadvertently mailed a hard copy of his materials to the hearing site, which was in a non-DoD facility in a different state, or to another DOHA address. Lacking contact from Applicant, however, those possibilities cannot be explored.

² Tr. 23.

Since that time, Applicant has made it a goal to satisfy “one to two debts every two months or so depending on the amount.”³ He currently earns about \$2,400 a month with regular monthly expenses of under \$1,950. He and his family moved in with Applicant’s father, with whom Applicant shares expenses. He uses a prepaid phone service. He saved sufficient funds to purchase a used vehicle, which enables him to be available for overtime work. He had hoped to apply his 2011 tax refund toward his debts, but the used vehicle recently needed repairs. It is his goal to satisfy his delinquent debt as soon as possible so he can start saving for a home. To that end, he uses a flexible budget to help him sustain his current lifestyle while addressing past debt. But for the delinquent debt at issue, Applicant lives well within his means and is able to support his son and girlfriend. Any net monthly remainder is put into savings to apply toward old debt. At his present job, he has a 401(k) account. Applicant has no other savings accounts because any savings he acquires are applied toward his delinquent debt.

The 17 debts at issue amount to approximately \$15,700. Applicant provided evidence showing that the \$55 debt noted at ¶ 1.g was paid through a collection entity.⁴ The \$503 debt noted at ¶ 1.i was shown as paid. He also showed that the \$131 and \$111 debts noted at ¶ 1.k and ¶ 1.l were addressed.⁵ Consequently, there is evidence that about \$800 of the debt at issue is paid. Applicant wrote that he has disputed some of the accounts at issue, but he failed to provide evidence of those disputes.⁶

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

³ Tr. 13.

⁴ Ex. B (Bank statement, period ending Oct. 27, 2011) regarding debt of \$55.41; Tr. 42-43.

⁵ *Id.*

⁶ Ex. C (Handwritten note, Feb. 26, 2012).

decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record.

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. . . .”⁷ The burden of proof is something less than a preponderance of evidence. The ultimate burden of persuasion is on the applicant.⁸

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.”⁹ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.¹⁰ 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

⁷ See *also* ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

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

⁹ *Id.*

¹⁰ *Id.*

an individual's reliability, trustworthiness and ability to protect classified information.¹¹ It also states that "an individual who is financially overextended is at risk of having to engage in illegal acts to generate funds."¹² The Government's evidence shows that Applicant owes about \$15,700 in delinquent debt. Applicant admitted most of the debts at issue. There is only evidence tending to show that four debts have been paid (¶¶ 1.g, 1.i, 1.k, and 1.l, amounting to about \$800. 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 her and mitigate security concerns.

The debts at issue are multiple in number and became delinquent in the last five years, the result of an unforeseen accident and periods of unemployment or underemployment. Such facts are sufficient to give rise to Financial Considerations Mitigating Condition (FC MC) AG ¶ 20(b) (*the conditions that resulted in the behavior 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*).

However, while mitigation may be available with regard to the creation of the debts at issue, there is no documentary evidence proving that any debts except those noted at ¶¶ 1.g, 1.i, 1.k, and 1.l have been paid, formally disputed, or otherwise addressed. Applicant uses a budget, but there is no evidence he has received financial counseling. Lacking more evidence as to his efforts to meet his obligations, it is unclear as to how he would behave if ill health, unemployment, or financial hard times should come again. In the absence of such documentary evidence, no other 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. Applicant is a 33-year-old engineer. He has considerable training and experience in

¹¹ AG ¶ 18.

¹² *Id.*

electrical engineering. Applicant is raising his child and supporting his girlfriend. He suffered a severe injury in 2006 that necessitated a protracted recovery, then was unemployed before accepting itinerant jobs. These events depleted his savings and caused him to acquire delinquent debt.

Applicant was very credible and straightforward at the hearing. The Government was lenient in extending Applicant's deadline for submitting additional materials on multiple occasions. In the end, the record was kept open for nearly six weeks, affording Applicant sufficient time to amass his evidence. In the end, Applicant only offered evidence of four debts being paid, amounting to about \$800 of the approximately \$15,700 at issue. His hope to apply a 2011 tax refund toward his debts was dashed when the refund proceeds were needed for car repairs. Although his representations at the hearing indicated considerably more progress toward resolving his financial situation, undocumented representations and promises to pay in the future carry little weight in these proceedings.

Based on the evidence before me and in light of Applicant's credible testimony, it can be concluded that only the four debts noted at ¶¶ 1.g, 1.i, 1.k, and 1.l (amounting to about \$800) have been addressed; the balance of the approximately \$15,700 at issue remains unaddressed. This process does not require that an applicant satisfy all debts at issue, but it does require a showing that a workable and effective plan for addressing one's debts has been successfully implemented. Although Applicant articulated a workable and reasonable plan for repaying his debts, he presented insufficient evidence to show that it has been successfully implemented. 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. Consequently, financial considerations security concerns remain unmitigated. 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:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a-1.f:	Against Applicant
Subparagraph 1.g:	For Applicant
Subparagraph 1.h:	Against Applicant
Subparagraph 1.i:	For Applicant
Subparagraph 1.j:	Against Applicant
Subparagraphs 1.k-1.l:	For Applicant
Subparagraphs 1.m-1.q:	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