



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



In the matter of:)	
)	
)	ISCR Case No. 11-07374
)	
)	
Applicant for Security Clearance)	

Appearances

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

09/18/2012

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the Government’s security concerns under Guideline F, Financial Considerations. Applicant’s eligibility for a security clearance is denied.

Statement of the Case

On May 17, 2012, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F. The actions were taken 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 (AG) effective within the Department of Defense on September 1, 2006.

Applicant answered the SOR on June 7, 2012, and requested a hearing before an administrative judge. The case was assigned to me on July 18, 2012. DOHA issued a notice of hearing on August 6, 2012. I convened the hearing as scheduled on

September 5, 2012, by video-teleconference. The Government offered Exhibits (GE) 1 through 4, which were admitted into evidence without objection. Applicant offered Exhibits (AE) A through C, which were admitted into evidence without objection. The record was held open until September 13, 2012, to allow Applicant to submit additional documents, which he did. AE D through F were offered. Department Counsel indicated she did not object, and they were admitted into evidence and the record closed. Department Counsel's memorandum is marked as Hearing Exhibit (HE) I. DOHA received the hearing transcript (Tr.) on September 11, 2012.

Findings of Fact

Applicant admitted all SOR allegations. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is 66 years old. He has a bachelor's degree in business administration and sales. He and his wife married in 1970, divorced, and then remarried in 2003. They were divorced for about five years. They have four grown daughters.¹

In anticipation of moving and retiring to a different state in 2003, Applicant and his wife purchased waterfront land in the state where they planned to retire. They paid approximately \$192,000 in cash for the land. They installed a dock with a boat lift for a boat that Applicant already owned.²

Applicant was employed for approximately 35 years with the same employer. In 2005, he was a senior employee when the company was purchased by another company, and he was terminated. He received an annuity from his employer that he planned to use to retire. He estimated the annuity to be about \$400,000. Applicant collected unemployment for approximately six months after his termination.³

In approximately 2005, Applicant and his wife sold their house and realized a \$250,000 profit. In September 2005, he and his wife moved to the state where they owned the waterfront land and planned their retirement. He and his wife rented a residence while there. He worked for an electrical company from 2005 to 2007. They later decided they did not like the area and placed the waterfront land for sale in mid-2007. Their original sale price was \$489,000. The price was determined by the realtor who believed it would sell in approximately three to four months.⁴

Applicant and his wife moved to another state in mid-2007 and purchased a house. They obtained an interest-only mortgage for \$205,000. They paid a cash down

¹ Tr. 21-23.

² Tr. 47-48.

³ Tr. 23, 48-50.

⁴ Tr. 25-31, 46-52, 58-59.

payment of \$25,000 and obtained a second interest-only home equity loan for \$25,000. The cash he used was from the profit he made from the sale of his previous house.

Applicant stated he expected that the waterfront land he purchased would sell for a profit, and he would be able to use the money to pay bills. He incrementally reduced the sale price of the waterfront land to sell it more quickly. It is presently listed at \$239,000 and remains unsold. He decided to purchase another house even though the property has not sold.⁵

Applicant stated that when he moved he was not looking for employment, because he was trying to retire. He worked some small jobs and made about \$400 a week. He worked as a handyman for nominal wages for a period of time. In 2009, after drawing from his annuity for two years, he realized it was dwindling, and he had to look for a full-time job. He had difficulty finding employment. In December 2010, he participated in a vocational rehabilitation program. In May 2011, he obtained full-time employment. He and his wife now have medical insurance through his employer.⁶

As his financial resources were depleting, Applicant began using credit cards to pay his expenses. When he reached the maximum limit on one credit card, he used another until he reached the maximum limit. He made minimum payments on the cards for a period of time until he was no longer able to afford them and then defaulted.⁷

Applicant did not have health insurance when he first moved because he had been relatively healthy in the past. His wife needed extensive dental work that cost approximately \$6,000 to \$7,000. Applicant used a credit card to pay for the dental work.⁸

Applicant anticipated that he would be able to resolve all of his financial problems once the waterfront land sold and would not have to draw as much from his annuity. He intended to use the profits from the sale of the house and his annuities to fund his retirement. He stated he applied for food stamps. He began collecting Social Security benefits in 2009. His wife also receives Social Security benefits. He paid both of his mortgages until early 2010 when he could not afford to pay them. He believes he ran out of annuity money sometime in 2009.⁹

Applicant attempted to obtain a loan modification on the mortgage listed in SOR ¶ 1.a (past-due \$21,294 on the \$226,754 balance). He indicated he repeatedly attempted to proceed through the modification process, and each time the lender would

⁵ Tr. 39-40, 52-54.

⁶ Tr. 25, 39-40, 84-85, 87.

⁷ Tr. 54, 69-70.

⁸ Tr. 31-32, 36, 38, 54, 57-58.

⁹ Tr. 32-36, 39-40, 54-56, 82-83.

request new information and take months for a response. Finally, in June 2012 Applicant was able to modify the loan. He participated in a trial period that began in June, and he made three monthly payments of \$1,179 (his original payment was \$1,336).¹⁰ Subsequent to his hearing, he provided a document from the lender stating that he satisfied the trial period and his loan will be modified to a conventional loan. The arrearages were added to the total amount of the loan, which is now \$236,000.¹¹

Regarding the home equity loan, Applicant recently received a letter from the lender advising him that his account was approved for participation in a principal forgiveness program offered as a result of the Department of Justice and State Attorneys General global settlement with major mortgage servicers. Applicant received “full forgiveness of the remaining principal balance of \$24,990” on his home equity line of credit account.¹² This account was not included on the SOR.¹³

The debts in SOR ¶¶ 1.b, 1.c, and 1.d (\$11,999, \$3,616, and \$17,235 respectively) are credit card debts. These are the credit cards Applicant used to pay his living expenses and for his wife’s dental bills. He defaulted on them in about 2009 when he could no longer afford to make the minimum payments. He has not paid any of these debts. He indicated the creditors in SOR ¶¶ 1.b and 1.c offered settlements, but he could not afford to pay them. The creditor in SOR ¶ 1.d demanded full payment. The debt in SOR ¶ 1.e (\$226) for medical services is not paid. Applicant indicated he would be able to pay that debt, but he has not.¹⁴

Applicant sold his boat about two years ago for \$25,000. He owed \$10,000 and used the remaining \$15,000 profit to pay overdue bills. He also paid \$1,900 in property taxes on the waterfront land.¹⁵

Applicant has not received financial counseling. He stated he has a written budget that he adheres to, but did not provide it. His wife is unable to work because of medical issues. He stated he has about \$150 remaining at the end of the month after paying his monthly expenses.¹⁶

¹⁰ AE B.

¹¹ Tr.41-45, 59-61, 75, 83; AE D, E, F.

¹² AE C.

¹³ Tr. 40, 42; 61-63. This account is not considered for disqualifying purposes. It is mentioned to provide a complete analysis of Applicant’s financial circumstances and will be considered when analyzing mitigating conditions and in the context of the “whole person.”

¹⁴ Tr. 45, 64-74.

¹⁵ Tr. 77-79.

¹⁶ Tr. 76, 80-82, 85-86.

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, which are 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, 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. 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, 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 and 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 safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of 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).

Analysis

Guideline F, Financial Considerations

The security concern for Financial Considerations is set out in AG ¶ 18:

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. I have considered all of the disqualifying conditions under AG ¶ 19 and the following two are potentially applicable:

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

Applicant has delinquent debts totaling approximately \$33,075 that he has been unable or unwilling to pay or resolve since approximately 2009. I find there is sufficient evidence to raise the above disqualifying conditions.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. The following 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; and
- (d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant's behavior is recent because his delinquent debts remain ongoing and unpaid. Based on Applicant's current financial status, I am unable to conclude that his financial problems are unlikely to recur in the future. He has been waiting five years for his land to sell and in the meantime depleted his retirement savings, lived off of credit cards he could not pay, and he does not have an alternative plan to resolve his debt. I cannot apply AG ¶ 20(a).

Applicant chose not to seek full-time employment after he moved because he intended to retire. He believed he could live off of his annuity. He expended funds by putting in a boat dock on the property he purchased, and then he changed his mind about where he wanted to live. These were voluntary choices and were within his control, as was his decision to purchase a house before he sold the waterfront property. Although the difficulty in selling his waterfront property was beyond his control because of the real estate market, his poor planning and financial decisions were within his control. For the full application of AG ¶ 20(b), Applicant must have acted responsibly under the circumstances. Applicant chose not to work for a period of time because he wanted to retire. Later, realizing his annuity was dwindling he began looking for a full-time job and had difficulty finding one. Although he could not have anticipated the difficulty in selling his property, his poor choices exacerbated his already tenuous financial situation. I find Applicant did not act responsibly. I find AG ¶ 20(b) minimally applies.

Applicant has not participated in financial counseling. He believes he can resolve his financial problems when he sells the waterfront property. That has not occurred yet, and he has not taken action to resolve his large consumer debt or the small medical debt. I am not convinced Applicant has a firm grasp on managing his finances. He was able to obtain a loan modification for his mortgage and fortuitously received forgiveness for his home equity loan. At this juncture, there are not clear indications his financial problems are being resolved or are under control. He has not made good-faith efforts to pay his creditors or otherwise resolve his debts. I find AG ¶¶ 20(c) and 20(d) do not apply.

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 is a 66-year-old man. He began having financial problems after he moved from one location to another and purchased a house, anticipating he would live off the profits of land he intended to sell. When the land did not sell, Applicant had difficulty paying his living expenses and used credit cards for his living expenses. Applicant's credit cards and a medical debt remain delinquent. His plan is to use the proceeds from the sale of his waterfront property to satisfy his debts. Unfortunately, he has had the land on the market for five years, and it remains unsold. He has not sought an alternative means to resolve the debts. Applicant's finances remain a security concern. He does not have a stable track record of managing his finances. Applicant has not met his burden of persuasion. 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 the Financial Considerations guideline.

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:	For Applicant
Subparagraph 1.b-1.e:	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 a security clearance. Eligibility for access to classified information is denied.

Carol G. Ricciardello
Administrative Judge