



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



In the matter of:)
)
) ISCR Case No. 11-08941
)
Applicant for Security Clearance)

Appearances

For Government: Chris Morin, Esq., Department Counsel
For Applicant: *Pro se*

05/28/2013

Decision

LOUGHRAN, Edward W., Administrative Judge:

Applicant has not mitigated financial considerations security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On February 5, 2013, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, financial considerations. The action was taken under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) implemented by the DOD on September 1, 2006.

Applicant answered the SOR on February 25, 2013, and requested a hearing before an administrative judge. The case was assigned to another administrative judge on March 28, 2013. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on April 12, 2013, scheduling the hearing for April 30, 2013. The hearing was cancelled. The case was reassigned to me on May 8, 2013. DOHA issued

another notice of hearing on May 9, 2013, scheduling the hearing for May 14, 2013. The hearing was convened as scheduled. Government Exhibits (GE) 1 through 5 were admitted in evidence without objection. Applicant testified, called a witness, and submitted Applicant's Exhibits (AE) A through D, which were admitted without objection. DOHA received the hearing transcript (Tr.) on May 21, 2013.

Findings of Fact

Applicant is a 32-year-old employee of a defense contractor. He has worked for his current employer since July 2010. He served in the U.S. military from 1997 until he received an other than honorable (OTH) discharge in 2001. He has a General Educational Development (GED) high school equivalency diploma. He married in 1999 and divorced in 2006. He has a 12-year-old child from that marriage. He married again in 2009. He has two stepchildren, ages 14 and 8.¹

Applicant has had financial problems for several years. He had periods of unemployment and underemployment. His ex-wife handled the family's finances, and she did not always pay their bills. After they separated and divorced, she did not pay her share of the marital debt. His current wife also had periods of unemployment. Applicant had to have an operation in 2007, and he had other medical problems. He did not always have medical insurance, and when he did have medical insurance, it did not cover all his treatment. He was unable to pay all his bills, and a number of debts became delinquent.²

The SOR alleges 38 delinquent debts. All of the debts appear on at least one credit report. The majority of the debts are medical debts. Applicant denied owing the debts alleged in SOR ¶¶ 1.g (\$366), 1.p (\$366), 1.q (\$366), 1.hh (\$317), and 1.jj (\$65). He stated that the three debts in SOR ¶¶ 1.g, 1.p, and 1.q are duplicates of the \$366 debt alleged in SOR ¶ 1.f. I find that the debts are duplicates. He admitted owing the remaining debts. Individual debts are discussed below.

SOR ¶ 1.a alleges a judgment of \$1,183 awarded to a car dealer. Applicant worked as an automotive technician for the car dealer. He stated that the service manager had him work on a car with which he was unfamiliar. He damaged the car when he repaired it. The dealership told him to sign an acknowledgment that he would pay for the bill to repair the car. He was afraid that he would lose his job if he did not sign the acknowledgment. The dealership terminated his employment after he signed the document and sued him for the damage to the car. Applicant admits that the court ordered the judgment against him in 2007. He feels that he should not have to pay the judgment because of the way he was treated by the dealership.³

¹ Tr. at 19-20, 26, 46-49; GE 1, 2.

² Tr. at 18-19, 25-29; Applicant's response to SOR; GE 1, 2.

³ Tr. at 30-34; Applicant's response to SOR; GE 1, 2.

Applicant admitted owing the \$1,962 delinquent debt to a tool company that is alleged in SOR ¶ 1.ff. The debt became delinquent in about 2010. Applicant testified that he intends to start paying \$45 per week on his account.⁴

SOR ¶ 1.gg alleges a \$560 delinquent debt to a utility company. Applicant stated that the debt is for propane used to heat the house where he and his ex-wife lived. The account was in his name. He moved out of the house, but he left the account in his name because his ex-wife had poor credit. She did not pay the bill. He stated that he made a payment of \$25 toward the debt, but he did not provide any documentation of the payment.⁵

SOR ¶ 1.hh alleges a \$317 debt to a cable television company for equipment. Applicant credibly testified that he returned the equipment but did not retain a receipt. He contacted the cable company, but they would not acknowledge that he returned the equipment without a receipt.⁶

Applicant admitted owing the \$1,962 delinquent debt to a cellular telephone services company that is alleged in SOR ¶ 1.ii. He has not made any payments on the debt.⁷

Applicant credibly testified that he paid the \$65 debt to an insurance company (SOR ¶ 1.jj) at least five years ago. He stated that he does not understand why the company listed this delinquent debt on his credit report because he currently has insurance through the company. The debt was transferred to a collection company. He contacted the insurance company and was told that it did not show the debt. He contacted the collection company who told him that he owes the debt.⁸

Applicant admitted owing 29 medical debts totaling about \$24,000. The debts range from \$23 to \$7,048. Applicant stated that he paid \$25 per month to the hospital for a period. His finances worsened and he was unable to maintain the payments. He stated that after the medical debts went to collection, he contacted the collection company, but it wanted more each month than he could afford to pay.⁹

Applicant received advice from a financial counselor. His finances remain tight. His wife has worked for the same company as Applicant for the last 18 months. Applicant stated that he and his wife “make enough money to basically take care of

⁴ Tr. at 30-36; Applicant’s response to SOR; GE 2-5.

⁵ Tr. at 36-37; Applicant’s response to SOR; GE 2-5.

⁶ Tr. at 21-23, 25; Applicant’s response to SOR.

⁷ Applicant’s response to SOR; GE 2-5.

⁸ Tr. at 23-24; Applicant’s response to SOR.

⁹ Tr. at 29-30; Applicant’s response to SOR; GE 1-5.

[their] kids, pay [their] mortgage and you know, put food on the table, and whatever else happens, if the car breaks down or something like that.” He stated that his salary will increase substantially if he receives a security clearance. He stated that he would use that extra money to pay his delinquent debts. He also plans on obtaining a \$10,000 consolidation loan that he will use to pay his debts.¹⁰

A witness testified, and Applicant submitted several letters attesting to his excellent job performance, character, professionalism, kindness, honesty, maturity, trustworthiness, and integrity.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, which 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.”

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 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

¹⁰ Tr. at 20, 27, 38-46, 48; GE 2; AE B, D.

¹¹ Tr. at 50-54; AE A, C.

extrapolation of 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* 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 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 a number of delinquent debts and was unable or unwilling to pay his financial obligations. The evidence is sufficient to raise the above disqualifying conditions.

The debts alleged in SOR ¶¶ 1.g (\$366), 1.p (\$366), and 1.q (\$366) are duplicates of the \$366 debt alleged in SOR ¶ 1.f. When the same conduct is alleged twice in the SOR under the same guideline, one of the duplicative allegations should be resolved in Applicant’s favor. See ISCR Case No. 03-04704 (App. Bd. Sep. 21, 2005) at 3 (same debt alleged twice). SOR ¶¶ 1.g, 1.p, and 1.q are concluded for Applicant.

I am satisfied that Applicant returned the cable equipment that is the basis for the \$317 debt alleged in SOR ¶ 1.hh and that he paid the \$65 debt to an insurance company (SOR ¶ 1.jj) at least five years ago. SOR ¶¶ 1.hh and 1.jj are concluded for Applicant.

Conditions that could mitigate financial considerations security concerns are provided under AG ¶ 20. The following 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 financial problems were caused or aggravated by his medical issues, his and his wife's periods of unemployment and underemployment, and his ex-wife's failure to pay her share of the marital debt. Those matters were beyond his control. To be fully applicable, AG ¶ 20(b) also requires that the individual act responsibly under the circumstances.

Applicant has worked for his current employer since July 2010. In that time he has made no payments toward his delinquent debts. He received financial counseling, but he is essentially living paycheck to paycheck. He stated that his salary will increase substantially if he receives a security clearance, and that he would use that extra money to pay his delinquent debts. He also stated that he planned to obtain a \$10,000 consolidation loan to pay his debts. The Appeal Board has held that a "promise to take remedial action in future, however credible and sincere, is not evidence of actual rehabilitation." See ISCR Case No. 08-05379 at 2 (App. Bd. Nov. 24, 2009) (quoting ISCR Case No. 96-0544 at 5 (App. Bd. May 12, 1997)).

I am unable to find that Applicant acted responsibly under the circumstances or that he made a good-faith effort to pay his debts. His finances are not yet under control. His financial issues are recent and ongoing. I am unable to determine that they are unlikely to recur. They continue to cast doubt on his current reliability, trustworthiness, and good judgment. AG ¶¶ 20(a) and 20(d) are not applicable. AG ¶ 20(b) is partially applicable. The first section of AG ¶ 20(c) is applicable; the second section is not. I find that financial concerns remain despite the presence of some mitigation.

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.

I considered Applicant's favorable character evidence. However, he has not convinced me that his finances are sufficiently in order to warrant a security clearance.

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. I conclude Applicant has not mitigated financial considerations security concerns.

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
Subparagraphs 1.h-1.o:	Against Applicant
Subparagraphs 1.p-1.q:	For Applicant
Subparagraphs 1.r-1.gg:	Against Applicant
Subparagraph 1.hh:	For Applicant
Subparagraph 1.ii:	Against Applicant
Subparagraph 1.jj:	For Applicant
Subparagraphs 1.kk-1.ll:	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.

Edward W. Loughran
Administrative Judge