



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



In the matter of:)
)
) ISCR Case No. 11-11359
)
Applicant for Security Clearance)

Appearances

For Government: Fahryn Hoffman, Esq., Department Counsel
For Applicant: Personal Representative

09/05/2013

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 December 21, 2012, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F. The action was 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 DOD on September 1, 2006.

Applicant answered the SOR on January 27, 2013. On May 2, 2013, Applicant requested a hearing before an administrative judge. The case was assigned to me on June 14, 2013. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on July 10, 2013. I convened the hearing as scheduled August 14, 2013. The

Government offered exhibits (GE) 1 through 4, and they were admitted into evidence without objection. Applicant testified, and he offered exhibits (AE) A and B, which were admitted into evidence without objection. The record was held open until August 28, 2013, to allow Applicant to submit additional documents, which he did. They were marked as AE C through G and admitted into evidence without objection.¹ DOHA received the hearing transcript (Tr.) on August 22, 2013.

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 58 years old. He holds a bachelor's degree in business. He was previously married from 1972 to 1976 and has one child from the marriage, who is 40 years old. He remarried in 1979, and he and his wife have two children, ages 31 and 21. Their youngest child, a son, is in college.²

Applicant experienced two periods of unemployment. In May 2008, he was laid off from a job where he was earning approximately \$115,000 annually. He began working again in April 2009 until March 2010, earning about \$70,000, when he was again laid off. He was unemployed until February 2011, when he started working for his present employer. Applicant's wife has been consistently employed as a school teacher during this time, earning approximately \$77,000. During the periods of unemployment, Applicant was able to pay the first and second mortgages on his home, but used credit cards to help pay other expenses. He was receiving unemployment benefits when he was unemployed.³ Applicant currently earns about \$107,000 in gross salary.⁴

Applicant explained that after he lost his job the interest rates on his credit cards increased drastically, and it was impossible to keep up with the payments. He and his wife stopped making minimum payments on all of their credit cards in April 2010. They contacted the credit card companies to explain their financial situation. They have been making \$10 payments on all of their credit card debts to show the creditors that they intend to pay the debts.⁵

¹ AE C is a letter from Applicant dated August 26, 2013 (2 pages); AE D is a Table of Contents and credit report document with seven sections (166 pages); AE E is an unemployment compensation document (1 page); AE F is a budget (2 pages); AE G is a letter from Applicant dated January 21, 2013 (4 pages). Hearing Exhibit I is Department Counsel's memorandum noting there were no objections to the documents.

² Tr. 25.

³ AE E.

⁴ Tr. 19-21, 47-49, 66-71.

⁵ Tr. 19-21, 49.

Once Applicant got a job, he and his wife decided the best way to retire their delinquent debt was to save their money, and when they accumulated a certain amount, they would contact the creditor that they owed with the smallest balance and negotiate a settlement agreement.⁶

The SOR lists ten credit card debts totaling approximately \$169,445. Applicant settled the debt in SOR ¶ 1.a (\$19,811) for \$9,200 in August 2012. He received an Internal Revenue Service (IRS) form 1099-C for \$9,445 for the amount canceled on this debt.⁷

The credit card debt in SOR ¶ 1.b (\$33,009) was used by Applicant in 2010 to purchase his son a car and for other expenses that he could not recall. The 2006 car cost approximately \$6,000. The debt is charged off. Applicant pays the insurance on his son's vehicle, which is approximately \$1,000 annually. His son began college in 2010 and uses student loans to pay for his education. Applicant provides him between \$500 and \$1,000 a semester. Applicant stopped paying the minimum payment on this debt in April 2010, when he began paying \$10 a month on it. The debt is not paid. Applicant indicated he intended to pay the debt in 2014.⁸

The credit card debt in SOR ¶ 1.c (\$6,635) is not paid and is charged off. Applicant's plan was to pay this debt in 2012, but had unexpected repairs to make on two of his vehicles and additional college expenses for his son. He used the money he would have used to pay this debt to pay the other expenses. He indicated he intended to pay the debt in 2013.⁹

The credit card debts in SOR ¶¶ 1.d (\$25,676), 1.e (\$23,987), 1.f (\$6,300), and 1.g (\$8,927) are charged off. The credit card debt in SOR ¶ 1.h (\$23,597) is in collection and not paid. Applicant stated he intended on paying the debt in SOR ¶ 1.h in 2013, but he has now moved that date to 2014. He intends to pay the debts in ¶¶ 1.f and 1.g in 2013.¹⁰

Applicant stated the credit card debt in SOR ¶ 1.i (\$9,434) was settled for \$2,818 in October 2011. He received an IRS 1099-C form noting that \$6,577 of the debt and \$866 of interest was canceled.¹¹

⁶ Tr. 51-52.

⁷ AE C, G, and D at page 54; Tr. 21-24, 35-40, 71.

⁸ AE G; Tr. 27-34, 40-41.

⁹ AE C, G, and D at pages 42-46; Tr. 42-45.

¹⁰ AE C, G, and D at pages 68-72, 81-84; Tr. 46, 49-52.

¹¹ AE C, G, and D at page 96; Tr. 52, 71; GE 4 at 203.

The debt in SOR ¶ 1.j (\$12,369) was in collection. Applicant settled the debt in December 2011 for approximately \$6,160. He received an IRS 1099-C form noting \$4,002 was canceled. Applicant indicated he has paid other debts that were not listed on the SOR.¹²

Applicant and his wife own three older model cars. They keep the third car in case the other two need repairs. They maintain the minimum insurance required on the third car. They also own a second home in another state. It was Applicant's wife's family home, and they bought out her siblings' interests in the home in 2000. Applicant estimated they pay about \$1,200 a year in property taxes and about \$120 a month for utilities.¹³

Applicant borrowed about \$3,000 against his life insurance policy in 2002 and \$27,000 in 2008. He and his wife refinanced their home in approximately 2006 or 2007. He indicated he took equity out of the house, but he could not recall how much. He and his wife used about \$36,000 of the money to pay his wife's sisters for the family home. He could not recall what they used the rest of the money for. Applicant stated he contributes money to a 401k retirement account. He estimated he has about \$350,000 in 401k accounts. He has an Individual Retirement Account 72T program that provides him with \$1,200 month as conditional income for five years. He began receiving the payments in July 2010. He indicated that when his wife retires in 2015, she will be entitled to a lump-sum payment of \$250,000 that will help them pay their delinquent debts. He intends on retiring all of his delinquent debt in 2015.¹⁴

Applicant and his wife continue to hold three credit cards. He indicated they have balances under \$500 on two cards and about \$800-\$900 on a third card. He indicated they are current with their payments on the cards. They have about \$17,000 in savings they have accumulated that they intend on using to settle debts. They have not settled a debt since August 2012. He indicated he received financial counseling beginning in 2010 and was counseled at different times, including in 2012. He was advised to save his money until he had enough to settle his debts, starting with the smallest.¹⁵

Applicant provided a 2008 credit bureau report that shows he had more than \$100,000 in consumer debt before he lost his job. These credit card debts were not delinquent. He was making monthly payments on them. When he lost his job, and the interest rates increased, he had difficulty paying them. He admitted that he did not have any reserve money saved at that time.¹⁶

¹² AE C, G, and D at pages 106-120; Tr. 53-54, 57; GE 4 at 230-231.

¹³ Tr. 34, 43-45, 59-63.

¹⁴ Tr. 56-58, 64-66, 82, 85, 91-95.

¹⁵ Tr. 57, 58, 64-66, 72-73, 85-89.

¹⁶ Tr. 76-81; AE B.

Applicant provided a character letter from the facilities security officer of his employer. His commitment to the adherence of corporate policies and security is described as commendable. He has shown great initiative and is a dedicated hardworking member of the corporate team. Applicant is an integral component of the employer's security program and is constantly seeking to improve the safeguarding capabilities of their technology. He is vigilant in identifying and reporting unauthorized attempts to access data. He has no history of security violations.¹⁷

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 not drawn 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

¹⁷ AE A.

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 numerous delinquent debts totaling more than \$100,000, from at least 2010 that he is unable or unwilling to pay. 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.

AG ¶ 20(a) is not established because Applicant's debts are numerous, recent, and unresolved. Applicant attributed his history of financial problems to two periods of unemployment. His unemployment was beyond his control. The interest rates on his credit cards increased due to his inability to maintain payments on the cards because of his unemployment. He used credit cards to subsidize his expenses during his periods of unemployment. For the full application of AG ¶ 20(b) Applicant must have acted responsibly under the circumstances. Prior to his unemployment periods, Applicant had a large amount of consumer debt that was not delinquent and he was making monthly payments on. He had minimal cash reserve. When he lost his job the consumer debts became unmanageable. In 2010, he purchased a car for his son. He was aware he was already experiencing financial problems during that time. He used a credit card to make the purchase. He stopped paying all of his credit cards, except for \$10 a month, in April 2010. His wife was employed during his periods of unemployment and he received small unemployment benefits. He also has been receiving \$1,200 a month from his IRA. Applicant was able to pay his mortgage expenses and maintain the property taxes and maintenance expenses on a second home. He did not abandon his debts. He contacted his creditors advising them he intended to pay the debts. He settled and paid three debts. He is saving to resolve others, but he has not been compliant with his plan because of unexpected expenses. Applicant's unemployment impacted his finances, but his large amount of consumer debt reflects spending beyond his means. I find there were conditions beyond Applicant's control that attributed to his financial problems. However, Applicant was also making poor financial decisions that negatively impacted his ability to pay his bills. I find AG ¶ 20(b) only partially applies.

Applicant's financial position is improving, but it is not sufficiently stable and under control to conclude it is no longer an issue. He has a plan for resolving his debts, but has not followed it because other expenses were more pressing. He has not abandoned his debts, but paying \$10 a month on some delinquent debts of over \$25,000 is not considered a good-faith effort to repay the creditors or resolve the debt. Applicant's wife was working during his unemployment. He borrowed on his life insurance and owes approximately \$33,000 on it. He is receiving payments from his IRA. He also took equity from his home when he refinanced it. Yet he is still in financial difficulty. He stated he has received financial counseling. Applicant has made some efforts to resolve his debts. Although he stated he intends to resolve all of his debts by 2015, he still has over \$100,000 in consumer debt, and at this juncture, I am not confident that there are clear indications that his financial problems are under control.

Applicant needs more time to aggressively pursue decreasing his delinquent debts. I find AG ¶¶ 20(c) and 20(d) partially applies.

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 58 years old. He has over \$100,000 of consumer credit card debt that is unpaid and unresolved. When he became unemployed the interest rates on his credit cards escalated, and he was unable to pay them. He was carrying an extraordinary amount of consumer debt even before he experienced periods of unemployment. He has resolved some debts, and stated he intends to pay the remaining ones. It appears Applicant was living beyond his means and the escalated interest rates made it impossible to continue to pay his creditors. It is too early to conclude that Applicant's finances are no longer an issue and that there are clear indications that his finances are under control. They remain a security concern, and he 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
Subparagraph 1.a:	For Applicant
Subparagraphs 1.b-1.h:	Against Applicant
Subparagraphs 1.i-1.j:	For 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