



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



In the matter of:)
)
) ISCR Case No.11-11953
)
Applicant for Security Clearance)

Appearances

For Government: Richard Stevens, Esq., Department Counsel
For Applicant: *Pro se*

08/27/2012

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

The Defense Office of Hearings and Appeals (DOHA) issued Applicant an undated 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) effective within the Department of Defense on September 1, 2006.

On February 21, 2012, Applicant answered the SOR and requested a hearing. The case was assigned to me on May 11, 2012. DOHA issued a notice of hearing on May 24, 2012. The hearing was convened as scheduled on June 6, 2012. At the hearing, Department Counsel offered Government's Exhibits (GE) 1 through 5 that were admitted into evidence without objection. Applicant testified and offered Applicant's

Exhibit (AE) A that was admitted into evidence without objection. The record was left open until June 20, 2012, to provide Applicant an opportunity to submit additional documents. Applicant timely submitted AE B that was admitted into evidence without objection. DOHA received the hearing transcript (Tr.) on June 21, 2012.

Findings of Fact

Applicant is a 39-year-old electronics technician who works for a defense contractor. He has worked for his current employer since January 1999. He graduated from high school in 1990 and attended college for about three years. He served in the Army from November 1994 to November 1998, attained the grade of specialist (E-4), and received an honorable discharge. He is divorced and was married from 1994 to 2007. He has two sons, ages 9 and 15. He has held security clearances without incident from 1995 to 1998 and from 2003 to present.¹

The SOR alleged ten delinquent debts totaling about \$105,568. In his answer, Applicant admitted seven of those debts (SOR ¶¶ 1.a, 1.c, 1.d, 1.e, 1.f, 1.g, and 1.j) totaling about \$98,570. His admissions are incorporated as findings of fact. Credit reports admitted into evidence provide substantial evidence of the debts in SOR ¶¶ 1.h, and 1.i.²

Applicant attributed his financial problems to a divorce and Hurricane Katrina. He testified that he and his ex-wife divorced because she used drugs and had extra-marital affairs. He also indicated that he is not the biological father of his two children, although he claims them as his children. He noted that he is listed on their birth certificates as their father, and they believe he is their father. He pays \$420 per month in child support.³

Before the divorce, Applicant and his ex-wife had a home that was totally destroyed during Hurricane Katrina in 2005. They had flood insurance coverage up to \$100,000 on that home. After the storm, they obtained a U.S. Government loan of \$39,000 to assist them in recovering from the disaster. They eventually sold the property after encountering difficulties in obtaining building permits. They bought a new home in February 2006.⁴

Applicant testified that his ex-wife was financially irresponsible. For example, while on business trips or on other occasions before their divorce, he provided her money to pay the mortgage, but she would spend that money on other things. After one

¹ Tr. 4-7; GE 1; AE B.

² Applicant's Answer to the SOR.

³ Tr. 14-16, 21-27, 50-52; GE 2, 3.

⁴ Tr. 14-16, 21-29, 32-37; GE 2, 4. Applicant was given a one-year grace period before having to make payments on the U.S. Government loan.

business trip, he had to take \$2,000 from his 401(k) account to catch up on three mortgage payments because she failed to make those payments.⁵

As part of their divorce, he and his ex-wife were equally responsible for making monthly payments of \$176 on the Government disaster recovery loan. Each was responsible for making the payment every other month. He stated that she refused to make her payments. When the Government loan became delinquent, his pay was garnished. The garnishment limited his ability to pay other debts and he fell behind on them. Since then, he rehabilitated the Government loan over a six-month period. During that period, he made \$170 monthly payments. By rehabilitating the Government loan, the garnishment will cease, and his disposable income will increase. The Government loan is not alleged as a delinquent debt. In their property settlement agreement, his ex-wife was also responsible for making car payments and paying half of the children's medical bills. She failed to make those payments.⁶

The alleged debts are addressed separately below.

SOR ¶ 1.a – judgment for \$369. This was a medical debt. The judgment was filed in February 2006. In his Answer, Applicant indicated that his ex-wife was responsible for half of this debt under their divorce decree. This debt remains unpaid.⁷

SOR ¶ 1.b – collection account for \$6,062. In his Answer, Applicant denied this debt. He indicated that it was the past-due amount of the foreclosed mortgage in SOR ¶ 1.f, and was a duplicate of that debt. A review of the credit reports supports Applicant's contention.⁸

SOR ¶ 1.c – collection account for \$808. This is a joint account that Applicant had with his ex-wife. It was her cell phone account. He admitted this debt. He stated that it became delinquent when she refused to pay her half, and he could not afford to pay it along with his other bills and expenses. He indicated that he has not taken any steps to settle or resolve this debt in the past five years.⁹

SOR ¶ 1.d – collection account for \$432. This is a car insurance account that was placed for collection in June 2007. Applicant admitted this debt and indicated that his ex-wife was ordered to pay this debt in their divorce decree. He also stated that he has taken no steps to resolve it.¹⁰

⁵ Tr. 14-16, 21-29, 44-45; GE 2, 4.

⁶ Tr. 14-16, 32-37; GE 2-4.

⁷ Tr. 23, 38-39, 51; GE 2-5.

⁸ Tr. 29-32, 39; GE 4.

⁹ Tr. 39-40; GE 2, 5.

¹⁰ Tr. 27-28, 40-41; GE 2, 3.

SOR ¶ 1.e – collection account for \$3,115. From July to October 2003, Applicant and two coworkers attended an out-of-state training course. He used his credit card to rent a car for the three of them. They used the vehicle separately on the weekends and exceeded the mileage the company was willing to reimburse. Applicant was responsible for this unreimbursed expense and did not seek reimbursement from the other two employees. Before departing for this trip, Applicant made arrangements for his wife to pay the household expenses. As noted above, he learned upon his return that she did not make the mortgage payments for three months. He withdrew funds from his 401(k) account to pay the mortgage and was unable to pay the rental car expenses. No evidence was presented to show this debt is resolved.¹¹

SOR ¶ 1.f – collection account for \$93,329. This account was the mortgage on the home that Applicant and his ex-wife purchased after Hurricane Katrina. They purchased the home for \$105,000 with an \$18,000 down payment. Their monthly mortgage payments were about \$880. As part of his March 2007 divorce, Applicant was given exclusive use and possession of this home. He was also responsible for all mortgage payments, taxes, insurance, and other expenses related to the home. The date of last activity on this loan was June 2009. At a foreclosure sale in January 2010, the mortgage holder purchased the home for \$45,451. Applicant has not contacted the mortgage holder to determine whether there is a deficiency on the mortgage loan.¹²

SOR ¶ 1.g – collection account for \$194. This was a medical debt that was placed for collection in February 2006. In his Answer, Applicant indicated that his wife is responsible for half of this debt. He testified that he has not done anything regarding this debt.¹³

SOR ¶ 1.h – collection account for \$605. Applicant denied this debt and claimed he had no knowledge of it. He testified that he has not contacted the collection agency to determine the original creditor. His credit report, however, indicated that payments were made under a partial payment agreement.¹⁴

SOR ¶ 1.i – collection account for \$331. This debt was a medical bill that was placed for collection in April 2010. In his Answer, Applicant denied this debt.¹⁵

SOR ¶ 1.j – collection account for \$323. This debt was a medical bill that was placed for collection in April 2010. In his Answer, Applicant admitted this debt and

¹¹ Tr. 24, 41-45; GE 3.

¹² Tr. 28-32, 56-59; GE 2, 3.

¹³ Tr. 23, 46-48, 51; GE 3.

¹⁴ Tr. 26-27, 48; GE 2, 4.

¹⁵ Tr. 23, 51-52 GE 5.

indicated that his wife was responsible for half of it. He has made no payments on this debt.¹⁶

Applicant has not received financial counseling. He indicated that he recently moved into a smaller apartment to cut his expenses. He also stated that he would like to start making payments to reduce his medical bills, but could not specify when he could begin making such payments. He is currently paying his rent on time and has enough money for food and transportation. He indicated that his finances are getting better and plans to get married around the beginning of next year. In December 2011, he submitted a Personal Financial Statement (PFS) that reflected his net monthly income was \$1,840, his total monthly expenses were \$1,575, and his monthly debt payments were \$176, which left him a net monthly remainder of \$89. In that PFS, he also noted that his girlfriend covered some of the bills that he was unable to pay. Because he recently moved to another apartment and reduced his rent payment by \$250 per month, he indicated that his net monthly remainder would have increased. He filed his federal income taxes for 2011, but still owes about \$500 in taxes for that tax year.¹⁷

While in the Army, Applicant received the Joint Service Achievement Medal and Good Conduct Medal, served as a signal intelligence analyst, and held high level security clearances. He submitted letters of reference attesting to his integrity, strong work ethic, and high moral character.¹⁸

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.

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

¹⁶ Tr. 23, 51-52; GE 2, 5.

¹⁷ Tr. 49-54, 59-62; GE 2, 3.

¹⁸ Tr. 54-55; AE A, B.

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 accumulated delinquent debts that he was unable or unwilling to satisfy over a number of years. 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 has a number of delinquent debts that remain unresolved. His financial problems are ongoing, significant, and cast doubt on his current reliability, trustworthiness, and good judgment. AG ¶ 20(a) is not applicable.

Applicant has been continuously employed since 1999. He was a victim of Hurricane Katrina in 2005 and obtained a divorce in 2007. In the property settlement agreement, his ex-wife was responsible for various debts. However, she refused to pay her debts. In particular, when she failed to pay her half of the Government disaster recovery loan, Applicant's pay was garnished. This garnishment reduced his disposable income and caused him to default on other loans. The hurricane, his divorce, and his ex-wife's failure to pay her share of the joint debts were conditions beyond his control. To receive full credit under AG ¶ 20(b), however, an applicant must show not only that financial problems resulted from conditions beyond his or her control, but also that he or she acted responsibly under the circumstances. Here, Applicant provided no proof of payments towards the alleged debts. He has not received any financial counseling. He has not remained in contact with some of the creditors. He does not know how much he owes on the foreclosed mortgage. He has not presented a realistic plan for resolving these debts. In short, he failed to establish that his delinquent debts are being resolved

or are under control. Based on the evidence presented, I cannot find that he has acted responsibly under the circumstances. AG ¶¶ 20(b), 20(c), and 20(d) are not applicable.

The debt alleged in SOR ¶ 1.b is a duplicate of the one in SOR ¶ 1.f. AG ¶ 20(e) applies to SOR ¶ 1.b.

In summary, Applicant has failed to provide sufficient evidence to mitigate the alleged debts. His financial problems remain a security concern.

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.

I considered Applicant's military service and his years of service to his current employer. He encountered two significant financial setbacks, i.e., the hurricane and divorce, within a three year period. His ex-wife's conduct contributed to his financial problems. On the other hand, he has been continually employed since 1999. He has taken little action to resolve the alleged debts. His financial situation remains unstable, and he failed to present any plan for resolving the alleged delinquent debts. 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 has not mitigated the Financial Considerations security concerns.

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
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	For Applicant
Subparagraphs 1.c –1.j:	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