



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



In the matter of:)	
)	
)	ISCR Case No. 12-01977
)	
Applicant for Security Clearance)	

Appearances

For Government: Caroline Heintzelman, Esq., Department Counsel
For Applicant: *Pro se*

10/29/2013

Decision

ANTHONY, Joan Caton, Administrative Judge:

After a thorough review of the pleadings and written record in this case, I conclude that Applicant failed to rebut or mitigate the Government’s security concerns under Guideline F, Financial Considerations. His eligibility for a security clearance is denied.

Statement of the Case

On October 19, 2011, Applicant completed and certified an Electronic Questionnaire for Investigations Processing (e-QIP). On June 4, 2013, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing the security concerns under Guideline F, Financial Considerations. DOD acted under Executive Order 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) effective within the DOD for SORs issued after September 1, 2006.

Applicant provided a notarized answer to the SOR, dated June 19, 2013, and on July 22, 2013, he requested that his case be determined on the written record. The File

of Relevant Material (FORM), compiled by the Government, is dated August 28, 2013. The FORM lists documents identified as Items 1 through 11.¹ By letter dated August 27, 2013, Defense Office of Hearings and Appeals (DOHA) forwarded a copy of the FORM to Applicant, with instructions to submit any additional information or objections within 30 days of receipt. Applicant received the file on September 23, 2013. Applicant timely submitted a response to the FORM. On October 18, 2013, the case was assigned to me for a decision. I marked Applicant's response to the FORM as Ex. A and entered it in the record without objection.

Findings of Fact

The SOR contains seven allegations of financial conduct that raise security concerns under Guideline F, Financial Considerations (SOR ¶¶ 1.a. through 1.g.) In his answer to the SOR, Applicant admitted all seven allegations, with explanation. Applicant's admissions are entered as findings of fact. (Item 1; Item 4.)

The facts in this case are established by the record provided by the Government and the Applicant. In addition to Applicant's response to the FORM, the record evidence includes Applicant's October 2011 e-QIP; his responses to DOHA interrogatories;² his credit reports of August 2013, April 2012, and November 2011; and records showing a Chapter 13 bankruptcy. (See Items 5 through 10; Item A.)

Applicant is 58 years old, married, and the father of two adult sons. He is a high school graduate. In 1973, he enlisted in the U.S. military. He served on active duty for 20 years, and he was honorably discharged in 1993. In December 2002, Applicant filed for Chapter 13 bankruptcy. His debts were discharged by the bankruptcy court in about December 2004. The bankruptcy is alleged at SOR ¶ 1.g. (Item 1; Item 5; Item 10.)

Since 2004, Applicant has been employed as an aircraft mechanic. He has worked for his present employer, a government contractor, since February 2011. He seeks a security clearance. (Item 5.)

¹ The FORM lists as Item 10 the Applicant's credit report of July 7, 2005, a record more than seven years old. However, this document does not appear in the FORM. In the absence of this document, I have marked the records of Applicant's bankruptcy as Item 10 (See FORM at 2.).

² Applicant was interviewed by an authorized investigator from the U.S. Office of Personnel Management (OPM) on November 15, 2011. On May 6, 2013, in response to DOHA interrogatories, Applicant signed a notarized statement in which he declined to agree that the investigator's summary accurately reflected his interview. He disagreed with the investigator's statement that the debt alleged at SOR ¶ 1.a. became delinquent because his wife did not timely pay it. He asserted that the debt was incorporated into a debt settlement account, and he and his wife pay \$549 each month to settle that debt and several others. He also corrected the interview record to reflect that a lien he owed was not a tax lien, and that the past due amount of \$40,458 alleged on his home mortgage loan did not reflect that the loan was in modification status and his monthly payments were current. He also stated that the delinquent debt identified as "e" in the interrogatories was, in fact, the same debt identified at "f." After correcting his interrogatory responses and making the revisions described above, Applicant agreed with and adopted the investigator's summary as accurately reflecting his interview. (Item 6.)

When Applicant was interviewed by an OPM investigator in November 2011, he explained that his wife managed his family's finances and paid their bills. He explained that in the previous two years, he and his wife earned less money from overtime. In about 2010, Applicant stated, his wife spent more than they earned. To remedy this problem, she contacted a debt repayment firm and entered into a contract with the firm for the payment of delinquent debts belonging to Applicant and to her.³ Applicant told the investigator that he did not know how much his wife paid the debt repayment firm each month, and he did not know the status of the debts being paid by the firm. (Item 6.)

The SOR alleges six delinquent debts totaling approximately \$63,584. In his answer to the SOR, Applicant admitted the debts at SOR ¶¶ 1.a.(\$3,198), 1.c.(\$8,520), 1.d.(\$609), and 1.e.(\$5,926) and stated that they were included in the agreement with the debt repayment firm. As attachments to his responses to DOHA interrogatories, Applicant provided documentation corroborating his participation in the debt repayment plan and records showing cleared payments to the firm between May 2012 and May 2013. The debt at SOR ¶ 1.e. is the only debt in the SOR that appears on the list of creditors to be paid pursuant to the agreement with the debt repayment firm. (Item 1; Item 4; Item 6; Item 7.)

Applicant admitted the past-due mortgage debt of approximately \$40,458, which is alleged at SOR ¶ 1.b. In his answer to the SOR, he stated that account was current and the past-due amount reflected that the loan had undergone modification. He provided a payment history showing payments made and fees assessed between November 2011 and April 2013. The payment each month on the mortgage debt, as listed on the payment history, was \$3,582. Applicant did not provide documentation showing that the loan had been modified. (Item 6.)

The SOR alleges at ¶ 1.f. that Applicant owes another mortgage creditor approximately \$4,873 on a past-due account. In his answer to the SOR, Applicant admitted the debt but stated: "[T]he amount is different now, as of today \$683." He provided a payment schedule showing payments between September 2012 and April 2013. However, he did not provide documentation corroborating his statement asserting that the current amount past due on the loan was \$683. (Item 1; Item 4; Item 6.)

Applicant provided a personal financial statement dated May 4, 2013. The personal financial statement showed his net monthly income from employment was \$3,180. His wife's net monthly income was \$2,156, and his military retirement was \$1,391. Applicant's total net monthly income was \$6,727. (Item 6.)

Applicant listed monthly living expenses of \$2,522. His scheduled monthly payment on the mortgage debt listed at SOR ¶ 1.b. was \$1,791.⁴ His monthly payment

³ Applicant's wife was the principal on the debt repayment service agreement. Applicant cosigned the agreement, which was dated January 9, 2010. (Item 6.)

⁴ Applicant provided a note stating that the scheduled monthly payment was different from the actual payment because the property was owned by four individuals. He also provided a deed of trust showing

on the mortgage debt listed at SOR ¶ 1.f was \$2,436. Applicant's monthly payment to the debt reduction service was \$549. Additionally, Applicant listed a monthly payment to another creditor of \$100. Applicant's monthly debt payments total \$4,876. Applicant's monthly expenses and monthly debt payments exceed his monthly income by \$671. (Item 6.)

Applicant reported real estate assets of \$225,000, bank savings of \$8,000, cars and boats valued at \$25,000, and savings of \$101,000 in his 401(k) account. The record does not reflect that Applicant has had financial credit counseling. (Item 6.)

In response to the FORM, Applicant asserted that he and his family experienced the following financial hardships: loss of tenants in a rental property; loss of overtime income by Applicant and his wife; and loss of a job by one of the two sons responsible for a mortgage payment on the property held with Applicant and his wife. (Item A.)

Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security, and it has emphasized that "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information." *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant Applicant's eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.

When evaluating an applicant's suitability for a security clearance, an administrative judge must consider and apply the revised adjudicative guidelines (AG). 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, the administrative judge applies these 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.

that he and his wife owned an undivided one-half interest in the property as joint tenants and their two sons, both single men, each owned an undivided one-fourth interest as tenants in common in the property. The record is not clear whether the \$1,791 listed by Applicant as a scheduled payment on the mortgage represents the payment for himself and his wife as joint tenants. (Item 6.)

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.

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 applicant or proven by Department Counsel. . . .” The applicant has the ultimate burden of persuasion in seeking 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 protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to 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 relating to the guideline 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(a), an “inability or unwillingness to satisfy debts” is potentially disqualifying. Similarly, under AG ¶ 19(c), “a history of not meeting financial obligations” may raise

security concerns. Under AG ¶ 19(e), “consistent spending beyond one’s means, which may be indicated by excessive indebtedness, significant negative cash flow, high debt-to-income ratio, and/or other financial analysis” may also raise a security concern. Applicant accumulated substantial delinquent debt and was unable or unwilling to pay his creditors. His financial statement indicated he spends approximately \$671 more each month than he earns. This evidence is sufficient to raise security concerns under AG ¶¶ 19(a), 19(c), and 19(e).

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Several Guideline F mitigating conditions could apply to the security concerns raised by Applicant’s financial delinquencies. Unresolved financial delinquency might be mitigated if it “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.” (AG ¶ 20(a)) Additionally, unresolved financial delinquency might be mitigated if “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.” (AG ¶ 20(b)) Still other mitigating circumstances that might be applicable include evidence that “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” (AG ¶ 20(c)) or “the individual has initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.” (AG ¶ 20(d)) Finally, if “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 options to resolve the issue,” then AG ¶ 20(e) might apply.

Applicant has been steadily employed as an aircraft mechanic since 2004. He delegated the management of family financial matters to his wife. He reported that, in 2009 or 2010, he and his wife did not receive opportunities for overtime pay, as they had anticipated. Their expenses exceeded their income. His wife contracted with a debt repayment firm in an attempt to restore the family’s financial stability.

The delinquent debts alleged in the SOR remain unresolved. However, Applicant provided some documentation establishing that payments were made on the delinquent debts alleged at SOR ¶¶ 1.b., 1.e., and 1.f. Even so, Applicant admitted a history of financial difficulties and inattention to his financial responsibilities.

Applicant’s 2002 Chapter 13 bankruptcy, which was discharged in 2004, does not raise a present security concern, and, accordingly, allegation 1.g. is concluded for Applicant. To his credit, he provided documentation showing a payment plan initiated by his wife for the payment of their joint debts. His personal financial statement shows, however, that his monthly expenses exceed his monthly income by \$671 each month. There is insufficient record evidence to conclude that Applicant is able to make consistent and timely payments on his delinquent debts and meet his ongoing monthly living expenses. These facts suggest that Applicant’s financial situation could become

unstable if unexpected financial emergencies should occur. At the same time, Applicant appears to have sufficient assets that could be used to satisfy his delinquent debts if he decided to do so.

In his response to the FORM, Applicant recited a number of circumstances that he believed contributed to his financial delinquencies: tenants unable to pay him rent, as agreed; loss of overtime opportunities by Applicant and his wife; and a son's loss of employment, which affected his ability to pay one-quarter of a monthly mortgage commitment shared with Applicant, his wife, and a second son. These conditions, which resulted in financial problems for Applicant, were beyond his control, thereby suggesting the possible application of AG ¶ 20(b). For AG ¶ 20(b) to apply in these circumstances, however, Applicant must demonstrate that in the face of these circumstances, he acted responsibly. Applicant provided documentation showing that he was making payments on the property he owned with his wife and sons. He did not provide documentation to support his assertion that the \$40,458 alleged as past due on the account was the result of a loan modification. Moreover, according to his personal financial statement, Applicant's monthly expenditures surpassed his income by \$671 each month. His financial overextension was not responsible behavior.

The record does not reflect that Applicant has had financial credit counseling. Applicant's current financial situation raises security concerns about his reliability, trustworthiness, and good judgment.

Applicant provided documentation showing he has made a good-faith effort to resolve one of his debts (SOR ¶ 1.e.), and he also provided evidence of payment plans to address the debts alleged at SOR ¶¶ 1.b. and 1.f. However, his personal financial statement suggests that he lacks the resources to consistently meet those obligations.

I conclude that AG ¶ 20(d) applies in part to his case. However, after carefully weighing the facts of Applicant's case, I conclude that AG ¶¶ 20(a), 20(b), 20(c), and 20(e) do not fully apply in 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. Applicant is a mature person of 58 years. His financial problems began several years ago and are ongoing. Despite a steady income for a number of years, he has failed to budget his income, and he continues to live beyond his means.

Overall, the record evidence leaves me with questions and doubts about Applicant's judgment as well as his eligibility and suitability for a security clearance. For these reasons, I conclude Applicant failed to mitigate the security concerns arising from his financial delinquencies.

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.:	Against Applicant
Subparagraph 1.b.:	For Applicant
Subparagraphs 1.c.-1.d.:	Against Applicant
Subparagraphs 1.e.-1.g.:	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 eligibility for a security clearance. Eligibility for access to classified information is denied.

Joan Caton Anthony
Administrative Judge