

DATE: November 27, 2007

In re:)	
)	
-----)	ISCR Case No. 07-03879
SSN: -----)	
)	
Applicant for Security Clearance)	

**DECISION OF ADMINISTRATIVE JUDGE
ERIN C. HOGAN**

APPEARANCES

FOR GOVERNMENT

Gina L. Marine, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant has a history of financial irresponsibility. He has twelve delinquent accounts with a total approximate balance of \$56,729. Of that amount, \$40,509 relates to a mortgage foreclosure and \$16,220 consists of ten consumer debts. Although Applicant has taken steps to resolve some of the debts, his future financial situation remains questionable. He paid some debts by taking out a 401k loan. He has not started to pay the mortgage foreclosure debt. Applicant's ability to repay all of his debtors on a timely basis is uncertain due to his recent history of failed repayment agreements. Security concerns raised under financial considerations remain. Clearance is denied.

STATEMENT OF CASE

On July 13, 2007, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) stating they were unable to find that it is clearly consistent with the national interest to grant or continue a security clearance.¹ The SOR, which is in essence the administrative complaint, alleges security concerns under Guideline F, Financial Considerations, of the revised Adjudicative Guidelines (AG) issued on December 29, 2005, and implemented by the Department of Defense effective September 1, 2006.

In a sworn statement, dated April 9, 2007, Applicant responded to the SOR allegations and elected to have a hearing before an administrative judge. The case was assigned to me on August 29, 2007. On September 6, 2007, a notice of hearing was sent scheduling the hearing for October 24, 2007. The hearing was held as scheduled. The government offered six exhibits which were admitted as Government Exhibits (Gov) 1-6 without objection. Applicant offered 13 exhibits which were marked and admitted as Applicant Exhibits (AE) A - M without objection. The record was held open until November 7, 2007, in order to allow Applicant to submit additional documents. Applicant timely submitted a 33-page document that was admitted as AE N. The transcript was received on November 5, 2007.

FINDINGS OF FACT

In his SOR response, Applicant admits SOR ¶¶ 1.a, 1.c, 1.d, 1.f, 1.i, 1.j, 1.k and 1.l. He denies SOR ¶¶ 1.b, 1.e, 1.g, and 1.h. Applicant's admissions are incorporated herein. In addition, after a thorough and careful review of the pleadings and exhibits, I make the following findings of fact.

Applicant is a 38-year-old man employed with a Department of Defense contractor who is applying for a security clearance. He is married and has two daughters, ages 21 and 18, from his first marriage and a six-year-old son from his current marriage. He also supports a 15-year-old stepdaughter.² His first wife passed away in 1999.³ He married his current wife in 2001.⁴ He has been employed with his current company since February 2005. He currently has an interim security clearance. He held a security clearance for ten years from 1987 to 1997 while serving on active duty with the United States Army. He separated from the Army in 1997 with an honorable discharge.⁵

¹This action was taken under Executive Order 10865, dated February 20, 1960, as amended, and DoD Directive 5220.6, dated January 2, 1992, as amended and modified (Directive).

² Tr. at 6; Gov 1.

³ Tr. at 58-59, 95.

⁴ Tr. at 87.

⁵ Tr. at 6-7; AE 2 at 25.

On January 10, 2006, Applicant completed a security clearance application, Standard Form 86.⁶ He listed his delinquent accounts on his security clearance application. A subsequent background investigation disclosed that Applicant had the following delinquent accounts: a \$1,819 delinquent loan placed for collection (SOR ¶ 1.a); a \$29 returned check written to a pizza place placed for collection (SOR ¶ 1.b); a \$63 past due medical account, identity of creditor unknown (SOR ¶ 1.c); a \$2,315 charged off credit card account (SOR ¶ 1.d); a \$1,314 charged off credit card account (SOR ¶ 1.e); a \$3,380 charged off computer store account (SOR ¶ 1.f); an \$83 telephone bill placed for collection (SOR 1.g); a \$337 charged off telephone account (SOR ¶ 1.h); a \$3,222 furniture store loan turned over for collection (SOR ¶ 1.i); a \$3,658 account from an automobile repossession (SOR ¶ 1.j); a \$25,166 charged off account related to a mortgage foreclosure (SOR ¶ 1.k); and a \$15,343 account owed after a mortgage foreclosure (1.1).⁷

The status of the delinquent debts are as follows:

SOR Paragraph	Debt	Status	Record
1.a	\$1,819 collection account on a payday advance loan.	Started payments of \$100/mo in May 07 Current balance, \$1,500.	Tr. at 30, 42, 53; AE N at 15, 21, 25, 27, 29, 31; AE H; Gov 2 at 5-7; Gov 5 at 2; Gov 6 at 2.
1.b	\$29 collection account for bounced check written to a pizza restaurant.	Initially denied. Now intends to pay 11-15-07.	AE N at 15; Tr. at 43, 56-57; Gov 5 at 2; Gov 6 at 2.
1.c	\$63 medical account, creditor unknown.	Paid 11-02-07.	AE N at 15; AE G; Tr. at 29, 57; Gov 5 at 2; Gov 6 at 2.
1.d	\$2314 charged off credit card account.	Started payments \$100/mo in May 07; unable to pay July, August, and September; intends to settle 11-26-07.	AE N at 15, 25, 27; Tr. at 31, 45, 58, 64-65; AE I; Gov 2 at 9; Gov 3 at 2; Gov 4 at 2; Gov 6 at 2.
1.e	\$1,314, charged off credit card account.	Paid May 2007.	AE N at 15; AE E; AE G; Tr. at 46; Gov 2 at 8; Gov 3 at 3; Gov 5 at 1, 5; Gov 6.

⁶ Gov 1.

⁷ See Gov 3; 4; 5 and 6.

1.f	\$3,380 charged off computer account.	In May 07, agreed to pay \$285/mo for 12 mos. Unable to pay July, August and September; Intends to pay 11-26-07.	AE N at 27; Tr. at 46-47, 67; Gov 4 at 2; Gov 5 at 2; Gov 6 at 2.
1.g	\$83 telephone account turned over for collection.	Satisfied on May 2007.	AE at 15, 24; Tr. at 48, 68-69; Gov 4 at 2; Gov 5 at 3; Gov 6 at 2.
1.h	\$337 cell phone cancellation fee.	Claims unaware of debt. Intends to settle debt on 11-24-07.	AE N at 16; Tr. at 48, 69; Gov 2 at 11,12; Gov 5 at 3; Gov 6 at 3.
1.i	\$3,222 furniture account turned over for collection.	In May 07 agreed to pay \$150 per month; has paid \$100/mos.	AE N at 16, 21, 27, 29, 31; Tr. at 32-33, 49, 71-72; AE J; Gov 2 at 13; Gov 3 at 5; Gov 4 at 2; Gov 5 at 3; Gov 6 at 3.
1.j	\$3,658 automobile repossession account.	Agree to pay \$100/mo in May 07. Unable to pay July, August, and September.	AE N at 16, 21; Tr. at 49-50; 73-75; Gov 2 at 20; Gov 4 at 2; Gov 5 at 3; Gov 6 at 3.
1.k	\$25,166 charged off mortgage account.	Making future payment arrangements.	AE C; AE D; Tr. at 50-51, 76-77; AE C; AE D; Gov 2 at 18; Gov 4 at 3; Gov 5 at 3; Gov 6 at 3.
1.l	\$15,343 mortgage account.	Making future payment arrangements.	Tr. at 51, 76-77; Gov 2 at 16.

Applicant provided sufficient proof indicating that the debts alleged in SOR ¶¶ 1.c, 1.e, and 1.g have been paid. In May 2007, he began payment agreements with the creditors in SOR ¶¶ 1.a, 1.d, 1.f, 1.i, and 1.j. He was unable to make payments towards the debts in SOR ¶¶ 1.d, 1.f, and 1.j in the months of July, August, and September due to unforeseen automobile repairs.⁸ After the

⁸ Tr. at 45, 46, 50, 81-82.

hearing, Applicant mentioned that he intends to settle the debts in SOR ¶¶ 1.b, 1.c, 1.f, and 1.h by taking out a loan against his 401k account.⁹

Two additional delinquent accounts were listed on Applicant's October 17, 2007, credit report.¹⁰ There was a \$786 account with a payday loan company. Applicant claims he took out this loan in March 2005 for family member who did not make the payments on the account. As of the hearing, he had made no attempts to resolve this debt.¹¹ The other debt was an \$125 overdue medical bill for his son. The bill consists of co-payments between 2001-2005 which were not paid.¹² After the hearing, Applicant indicated that he entered into payment agreements with both creditors.¹³

Applicant claims that his financial problems began after September 11, 2001. He claims that the economy of the state where he resided was hit hard. He ended up with reduced hours on the job. His hours went for 60 hours a week to 40 hours a week.¹⁴ His salary was approximately \$28,000 per year before September 11, 2001. It was reduced to approximately \$22,000 after September 11, 2001. His salary gradually increased to \$45,000 per year prior to leaving his job.¹⁵ Applicant incurred most of the credit card debt during the time he was a single parent trying to complete his college degree.¹⁶ In 2005, Applicant was hired by his current employer for \$56,000 a year. He currently earns \$62,000 a year.¹⁷

Applicant's wife has worked "off and on" during their marriage. A month prior to the hearing, she started a job and accepted a new job which starts a week after the hearing. She is going to work 32 hours a week for \$8 an hour.¹⁸

In 2003, Applicant borrowed \$4,000 from his sister in order to help with expenses. He borrowed another \$1,200 from his sister in January 2005. He borrowed \$1,800 from his mother. He repaid both loans in May 2007.¹⁹

⁹ AE N.

¹⁰ Tr. at 83-85; Gov 6.

¹¹ Tr. at 83-84.

¹² Tr. at 85.

¹³ AE N at 16.

¹⁴ Tr. at 89-90.

¹⁵ Tr. at 39-40; 89-90.

¹⁶ Answer to SOR, dated August 15, 2007.

¹⁷ Tr. at 88.

¹⁸ Tr. at 87.

¹⁹ Tr. at 79-81.

In 1999, Applicant purchased a house in the previous state where he resided. He started to get behind the mortgage payments in 2002. From 2002 to 2005, he struggled to keep current on his mortgage payments.²⁰ When he moved to his new location in February 2005, he knew he would be unable to afford paying rent at his new location as well as the mortgage.²¹ In April 2005, he leased the house to his daughter and three of her friends. The lease did not work out.²² He unsuccessfully attempted to sell his home.²³ On December 28, 2006, the house was foreclosed.²⁴ He intends to start payment arrangements pertaining to debt alleged in SOR ¶¶ 1.k and 1.l in January 2008 once the foreclosure paperwork is finished pertaining to the mortgage debt. The Veterans Administration (VA) is currently finishing the payment process on the claim for the VA guaranteed loan.²⁵

Applicant's current annual salary is \$62,000. Applicant's most recent budget lists a total net monthly income as \$4,500; total monthly expenses as \$2,725; and total monthly debt payments as \$1,325. After expenses and debt payments, he has approximately \$450 left over each month.²⁶ The future payments towards the two mortgage foreclosure debts alleged in SOR ¶¶ 1.k and 1.l are not listed in this budget.

Applicant's performance evaluations for 2005 and 2006 indicate that he met or exceeded expectations.²⁷ His manager provided a letter indicating that Applicant has worked for him since February 2005. He states Applicant has proven to be reliable and competent. He has been willing to work overtime in order to complete his assignments on schedule. He was promoted in October 2006 and continues to meet or exceed expectations.²⁸

POLICIES

The President has "the authority to . . . control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to occupy a position . . . that

²⁰ Tr. at 78.

²¹ Tr. at 41.

²² Tr. at 22, 41; AE C.

²³ Tr. at 24; AE D.

²⁴ Tr. at 24.

²⁵ AE N at 16.

²⁶ AE N at 18-19.

²⁷ AE N at 4-11.

²⁸ AE N at 3.

will give that person access to such information."²⁹ In Executive Order 10865, *Safeguarding Classified Information Within Industry* (Feb. 20, 1960), the President set out guidelines and procedures for safeguarding classified information within the executive branch.

To be eligible for a security clearance, an applicant must meet the security guidelines contained in the Directive. The revised Adjudicative Guidelines, approved by the President on December 29, 2005 and implemented by the Department of Defense, effective September 1, 2006, sets forth personnel security guidelines, as well as the disqualifying conditions and mitigating conditions under each guideline. The adjudicative guideline at issue in this case is:

Guideline F - Financial Considerations: 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.³⁰

Conditions that could raise a security concern and may be disqualifying, as well as those which could mitigate security concerns pertaining to this adjudicative guideline, is set forth and discussed in the conclusions below.

"The adjudicative process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is an acceptable security risk."³¹ An administrative judge must apply the "whole person concept," and consider and carefully weigh the available, reliable information about the person. An administrative judge should consider the following factors: (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.³²

Initially, the Government must present evidence to establish controverted facts in the SOR that disqualify or may disqualify the applicant from being eligible for access to classified information.³³ Thereafter, the applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate the facts admitted by the applicant or proven by Department Counsel. The applicant has the

²⁹ *Department of the Navy v. Egan*, 484 U.S. 518, 527 (1988).

³⁰ Revised AG, dated August 2006, ¶ 18.

³¹ Revised AG, dated August 2006, ¶ 2(a).

³² *Id.*

³³ Directive ¶ E3.1.14.

ultimate burden of persuasion as to obtaining a favorable clearance decision.³⁴ "Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the national security."³⁵

A person granted access to classified information enters into a special relationship with the government. The government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to classified information. The decision to deny an individual a security clearance is not a determination as to the loyalty of the applicant. It is merely an indication that the applicant has not met the strict guidelines the President has established for issuing a clearance.

CONCLUSIONS

I have carefully considered all the facts in evidence and the legal standards. I make the following conclusions.

Guideline F - Financial Considerations

Applicant's history of financial irresponsibility raises a security concern. He encountered financial problems over the past several years, accumulating approximately \$16,220 in delinquent consumer accounts and an additional \$40,509 debt related to a mortgage foreclosure. Financial Considerations Disqualifying Condition (FC DC) ¶19(a) (*inability or unwillingness to satisfy debts*) and FC DC ¶19(c) (*a history of not meeting financial obligations*) apply to Applicant's case. Applicant has encountered difficulty meeting his financial obligations since 2002.

The concern under Financial Considerations can be mitigated. Applicant has a history of financial irresponsibility spanning several years. His financial problems remain. Therefore, I cannot apply Financial Considerations Mitigating Condition (FC MC) ¶20(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*). Applicant continues to have difficulty meeting his financial obligations. Two new debts were listed on his most recent credit report which was issued four months after his SOR was issued. Most of his delinquent debts remain unresolved at the close of the record. His financial problems are current.

FC MC ¶20(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*) does not apply. Although Applicant's annual income was reduced by approximately \$6,000 after September 11, 2001, due to a reduction in his work hours, his income has steadily increased since that time. When he departed his previous employer in early 2005, his annual income was \$45,000, twice the amount of his starting salary at the company. His income increased more than \$10,000 when he accepted his current position. Applicant did not initiate a plan to resolve his delinquent accounts until

³⁴ Directive ¶ E3.1.15.

³⁵ Revised AG, dated August 2006, ¶ 2(b).

2007. I cannot conclude that he has acted responsibly under the circumstances. The reduction in income occurred over six years ago. I cannot conclude that there were recent conditions beyond Applicant's control which contributed to his financial situation. FC MC ¶ 20(b) does not apply.

FC MC ¶ 20(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*) does not apply. Applicant has not attended financial counseling. Although he has taken steps to resolve his delinquent accounts, I cannot conclude that his financial problems will be resolved in the near future. He intends to pay off the debts alleged in SOR ¶¶ 1.d, 1.f, and 1.h, by taking out a loan against his 401k. He previously paid other debts by taking out a loan against his 401k. The amount of monthly payments Applicant will be required to pay to the two mortgage companies in SOR ¶¶ 1.k and 1.l is uncertain. Applicant has only \$450 left over each month. There is a question as to his ability to meet his financial obligations. Applicant's inability to make the payments after entering into payment agreements in May 2007 with his creditors in SOR ¶¶ 1.d, 1.f and 1.j reflects his difficulties meeting his financial obligations. It is unlikely that Applicant's financial situation will be resolved in the near future.

FC MC ¶ 20(d) (*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*) applies with respect to SOR ¶¶ 1.c, 1.e, and 1.g. Although, Applicant intends to resolve three of his debts within a month after the record being closed, he will be paying the debts off by taking out a loan. He hopes to pay off the other debts (SOR ¶¶ 1.a, 1.i, and 1.j) through future payment plans. Applicant should be commended for attempting to get his financial affairs in order, however, he started too late to demonstrate a sufficient track record of financial rehabilitation to mitigate the concerns raised under financial considerations.

In all adjudications, the protection of our national security is the paramount concern. The objective of the security clearance process is the fair-minded, commonsense assessment of a person's life to make an affirmative determination that the person is eligible for assignment to sensitive duties. Indeed, the adjudicative process is a careful weighing of a number of variables in considering the "whole person" concept. It recognizes that we should view a person by the totality of their acts, omissions, motivations and other variables. Each case must be adjudged on its own merits, taking into consideration all relevant circumstances, and applying sound judgment, mature thinking, and careful analysis.

I have considered all the evidence and the "whole person" in evaluating Applicant's security worthiness. I considered Applicant's favorable performance evaluations reports and the positive comments made by his manager. However, his financial situation remains questionable. Although his evidence of rehabilitation is insufficient at this time, this decision should not be construed as a determination that Applicant cannot attain a state of true reform and rehabilitation necessary to justify the award of a DoD security clearance. Should he be afforded an opportunity to reapply for a security clearance in the future and he were to demonstrate that he is able to meet his repayment plans with his creditors and other financial obligations, he may demonstrate persuasive evidence of security worthiness. Based on the evidence in the record, it is not clearly consistent with the national interest to grant Applicant a security clearance. Clearance is denied.

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:	Against Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	For Applicant
Subparagraph 1.f:	Against Applicant
Subparagraph 1.g:	For Applicant
Subparagraph 1.h:	Against Applicant
Subparagraph 1.i:	Against Applicant
Subparagraph 1.j:	Against Applicant
Subparagraph 1.k:	Against Applicant
Subparagraph 1.l:	Against Applicant

DECISION

In light of all of the evidence presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant a security clearance. Clearance is denied.

Erin C. Hogan
Administrative Judge