



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



In the matter of:)
)
) ISCR Case No. 07-09825
)
)
Applicant for Security Clearance)

Appearances

For Government: Ray T. Blank, Jr., Esquire, Department Counsel
For Applicant: *Pro Se*

February 15, 2008

Decision

LOUGHRAN, Edward W., Administrative Judge:

Applicant failed to mitigate the security concerns raised by his history of not meeting his financial obligations. Eligibility for access to classified information is denied.

On September 28, 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline F, Financial Considerations. 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 revised adjudicative guidelines (AG) promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant answered the SOR in writing on October 30, 2007, and requested a hearing before an Administrative Judge. The case was assigned to me on December 3, 2007. DOHA issued a notice of hearing on January 14, 2008, and I convened the hearing as scheduled on January 30, 2008. The government offered Exhibits (GE) 1

through 6, which were received without objection. Applicant testified on his own behalf and submitted Exhibit (AE) A, without objection. DOHA received the transcript of the hearing (Tr.) on February 7, 2008.

Findings of Fact

In his Answer to the SOR, dated October 30, 2007, Applicant admitted all the factual allegations in the SOR.

Applicant is a 31-year-old employee of a defense contractor. He attended a vocational school and college but did not obtain a degree. He remarried in 2001 after a divorce. He has one child from his previous marriage. He is current on his child support payments of about \$960 per month.¹

Applicant has several delinquent debts. He attributed his financial problems to him and his wife being laid off at the same time in about 2001. His employment was sporadic until he was hired by his current employer in 2005.² The SOR alleges three delinquent debts totaling approximately \$14,163. There is no evidence that any of the listed debts have been paid. Individual debts are discussed below.

SOR ¶ 1.a alleges a debt of \$4,539 to a financial institution that was charged off in about February 2006. This is a debt for a credit card that was used mostly by Applicant's current wife. SOR ¶ 1.c alleges a debt of \$1,797 to another financial institution that was charged off in about July 2004. This is a debt for a credit card that Applicant used for a side business. Applicant's wife sold her house in about 2004. He stated that the debt as alleged in SOR ¶ 1.a was supposed to be paid off as part of the closing on the sale of the house. According to Applicant, the debt was listed on the documents that estimated the closing costs, but was not listed on the actual closing documents. Applicant stated he did not notice that it was not paid until his debts became an issue for his security clearance. He just forgot about the debt in SOR ¶ 1.c. In his response to Interrogatories dated September 13, 2007, he stated that the debts were transferred to collection agencies, but that one agency had not yet received their debt and the other agency had not returned his calls. Applicant also stated that he and his wife were refinancing the two mortgages on their house and they would repay the two debts in the process. The house was refinanced in about November 2007, but it was just changed from an adjustable rate to a fixed rate mortgage and no equity was pulled out. Applicant testified that he finally received a letter from one company, and he plans on starting to make payments on both accounts.³

¹ Tr. at 54-55; GE 1-2.

² Tr. at 14, 20, 30-35; GE 1, 2.

³ Tr. at 17-19, 29, 41-46, 53-54; Applicant's Answer to SOR; GE 2.

The debt in SOR ¶ 1.b of \$7,827 to a credit card company was charged off in about September 2004. Applicant stated that this was an old account that he had with his ex-wife. The balance was about \$1,000 before she used the card to pay for her wedding to her new husband. He stated that he closed the account and she promised to pay the balance, but after a few payments, she stopped paying on the account. Applicant does not intend to pay this debt since most of it was from his ex-wife's wedding to her new husband.⁴

Applicant admitted that he needs to get better on his finances, and that it was forgetfulness more than an intentional design that caused him to disregard his debts. Applicant and his wife's current mortgage payments are locked in at a fixed rate totaling about \$4,500 per month. They also have real estate tax payments of about \$5,890 every six months. They use assets in a retirement account to pay the real estate taxes. He and his wife have car expenses of about \$1,650 per month. He drives an upscale car that he bought in 2005 for about \$32,000. Applicant had a truck with low gas mileage and a large payment. He felt it was better financially to trade to a car. His wife drives a leased luxury car.⁵

Applicant obtained a part-time job and rented a room in his house for about \$600 per month in an attempt to better his finances. He makes about \$57,000 per year through his full-time job and his wife earns about \$100,000 per year. He testified that if it was necessary for him to obtain a clearance, that he could pay his delinquent debts with money from his retirement account, but that it would incur a tax consequence. Applicant's personal financial statement, submitted with his response to Interrogatories, shows assets of \$57,000 in retirement accounts. It shows a remainder of \$5 after his monthly expenses and mortgage. It does not reflect the additional income generated by his part-time job and his renter. It also does not reflect the real estate tax payments of about \$5,890 which are due every six months. Applicant has not received financial counseling.⁶

Policies

When evaluating an Applicant's suitability for a security clearance, the Administrative Judge must consider 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 useful 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

⁴ Tr. at 15-16, 28-29; Applicant's Answer to SOR; GE 2.

⁵ Tr. at 15-16, 21-28, 51; GE 2.

⁶ Tr. at 19 36, 46, 51; GE 2; AE A.

factors listed in the adjudicative process. The Administrative Judge's over-arching adjudicative goal is a fair, impartial and common sense 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 avoided drawing 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, 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 as to obtaining 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 ¶ 10. Three are potentially applicable in this case:

- (a) inability or unwillingness to satisfy debts;
- (c) a history of not meeting financial obligations;
- (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.

Applicant accumulated several delinquent debts and was unable or unwilling to pay his obligations for a period of time. Applicant has what amounts to a negative cash flow. His monthly expenses are greater than his monthly income. His personal financial statement reflects a \$5 remainder every month. It does not reflect the additional income generated by his renter and part-time job, but it also does not reflect the \$5,890 in real estate taxes due every six months. It also does not leave any excess to pay the debts alleged in the SOR. The evidence is sufficient to raise the above potentially disqualifying conditions.

Five Financial Considerations Mitigating Conditions under AG ¶¶ 20(a)-(e) 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 currently has delinquent debt totaling more than \$14,000. He and his wife were both unemployed in 2001, causing financial problems. That constitutes conditions that were largely beyond Applicant's control. He has done nothing to pay the debts since they both started working again. That is not acting responsibly under the circumstances. He states he will start paying at least some of the debts but has done nothing to show that he will follow up on those statements. He will not pay the one account because he believes his ex-wife should be responsible for the debt. However, the credit card was in both their names, and the company was fully justified in looking to Applicant for payment. Applicant has not received financial counseling. There are not clear indications the financial problem is being resolved or is under control. His overall conduct with his creditors casts doubt on his current reliability, trustworthiness, and good judgment. Based on my evaluation of the record evidence as a whole, I conclude no mitigating condition is fully applicable.

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 the 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) 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 common sense 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 and his wife were both unemployed in 2001. However, they have been employed continuously since at least 2005, and he has done nothing to pay his debts. Applicant admitted that he is forgetful when it comes to his finances. Applicant and his wife like many couples in today's market, particularly those in high cost areas, spend a good chunk of their disposable income on their house. That in itself is not a bad thing, as they have to live somewhere and a house can also serve as an investment. They also drive and pay for expensive cars while Applicant is neglecting his delinquent debts. That is not acting financially responsible.

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated the security concerns arising from his financial issues.

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:	Against Applicant
Subparagraph 1.d:	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

EDWARD W. LOUGHRAN
Administrative Judge