



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



In the matter of:)	
)	
)	ISCR Case No. 07-01887
SSN:)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Gina L. Marine, Esquire, Department Counsel
For Applicant: Pro Se

January 28, 2008

Decision

HOGAN, Erin C., Administrative Judge:

Applicant submitted his Security Clearance Application (SF 86), on February 6, 2006. On August 31, 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline F, Financial Considerations for Applicant. 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.

On October 5, 2007, Applicant answered the SOR and requested a hearing before an Administrative Judge. Department Counsel was prepared to proceed on October 11, 2007. The case was assigned to another administrative judge on October 15, 2007. The case was transferred to me on November 1, 2007. DOHA issued a notice of hearing on November 13, 2007, and I convened the hearing as scheduled on December 11, 2007. The government offered Exhibits (Gov Ex) 1 through 8, which were admitted without objection. Applicant testified on his own behalf and submitted Applicant

Exhibits (AE) A through C, which were admitted without objection. DOHA received the transcript of the hearing (Tr) on January 4, 2008. I granted Applicant's request to keep the record open until January 2, 2008, to submit additional matters. I granted Applicant's request for an extension until January 7, 2008. Applicant timely submitted AE D which was admitted. The record closed on January 7, 2008. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

Procedural and Evidentiary Rulings

At the beginning of the hearing, the Government motioned to amend the SOR by withdrawing SOR ¶ 1.b. There being no objection SOR ¶ 1.b was withdrawn. (Tr at 9.) All remaining SOR allegations were not renumbered.

Findings of Fact

In his Answer to the SOR, dated October 5, 2007, Applicant admitted the factual allegations in ¶¶ 1.a and 1.c and denied the allegations in ¶¶ 1.b, 1.d, 1.e, 1.f, and 1.g.

Applicant is a 54-year-old systems engineer employed by a Department of Defense contractor seeking to maintain his security clearance. He has held a security clearance for approximately 30 years. He served on active duty in the Air Force for 20 years, retiring at the grade of E-5. He has worked for the same defense contractor for ten years after retiring from the Air Force. He is a high school graduate but is taking courses in information technology with an online university. (Tr at 4-6; Gov 1.)

Applicant is married. He supports his wife, a 27-year-old daughter and her seven-year-old daughter, and a 13-year-old son. (Tr at 15, 32-33.) He also has a 29-year-old son who is on active duty in the Air Force. (Tr at 49.) Applicant has always lived from pay check to pay check. (Tr at 55.) His financial problems started in 2000 when his wife was no longer able to work due to health problems. Applicant also has health problems. The medical costs made it difficult to pay their debts. His wife was denied social security benefits. (Tr at 15-16; Answer to SOR; see also AE C.) Applicant provided a list of his and his wife's prescription medications. (AE B.) A current budget submitted during the hearing, indicates that Applicant pays approximately \$450 monthly in medical/dental expenses. (AE A.)

On July 18, 2005, Applicant filed for Chapter 13 Bankruptcy. He listed total assets of \$7,580 and total liabilities of \$76,305.76. (Gov 5; Gov 6.) He made payments on the Chapter 13 plan for at least six months. Applicant found it difficult paying expenses after making Chapter 13 payments. (Tr at 40-41.) As a result, he converted his bankruptcy from Chapter 13 to Chapter 7 on February 21, 2007. At the time of the filing for Chapter 7, he listed assets of \$4,163 and liabilities of \$96,042. (Gov 7.) His dischargeable debts were discharged on June 11, 2007. (Answer to SOR.)

Applicant listed three unsecured priority claims with the Internal Revenue Service (I.R.S.) in schedule E of the Chapter 7 bankruptcy. He owed a total of \$6,835 in income taxes for tax years, 2002, 2003, and 2004. In schedule F of the Chapter 7 bankruptcy, he listed five claims for federal income taxes owed for tax years 1997, 1998, 1999, 2000 and 2001. The total amount of the taxes owed for these years was \$8,850. (Gov 7.) The total amount of the tax debt included in the bankruptcy is \$15,685. The total amount of consumer debt listed in the bankruptcy is approximately \$62,608. Of that amount, \$14,125 is a student loan account. The total amount of medical debt included in the bankruptcy is \$19,200.03. (Id.) Federal income tax debts and student loan debts are not usually discharged in bankruptcy. (See 11 U.S.C. 523(a)(1) and 11 U.S.C. 523(a)(8).)

Applicant owed income taxes for taxes 1997 – 2004 because he did not elect to take the deduction upfront out of his military retirement check. When he filed his tax returns, he did not have the money to pay the amount of taxes owed. He made some payments and claims that some of the tax debts were discharged in bankruptcy. (Tr at 30-31, 51; see also 11 U.S.C. 507(a)(8)(A).)

At hearing, when asked whether he owed any money to the federal or state government for unpaid taxes, he replied that he will not owe any taxes until the end of the year. (Tr at 31.) He anticipates that he will owe between \$2,400 to \$2,500. He owed \$2,500 for tax year 2005 and makes monthly payments but has not totally paid off the balance. He is not sure what the balance is. He claims that it is being automatically deducted from his paycheck. He intends to enter into a payment arrangement with the I.R.S. for the taxes that will be due this year. He is not willing to have the taxes automatically deducted from his military retirement check because that is what he uses to pay rent. (Tr at 46.) He claims all taxes owed were discharged in the bankruptcy except for tax years 2004 and 2005. He currently has a payment agreement with the IRS and was advised to submit a copy of the payment agreement after the hearing. (Tr at 51.)

After the hearing, Applicant submitted a copy of a paycheck dated December 24, 2007. The paycheck listed two garnishments. Neither garnishment currently has money deducted from his paycheck. The first garnishment deducted a total of \$675 for the year. Applicant indicated that this is the I.R.S garnishment. He claims the second garnishment with total of \$550 deducted for the year is related to his Chapter 13 bankruptcy. In his explanation letter, dated January 7, 2008, Applicant claims that both of these payments were stopped when he converted to the Chapter 7 bankruptcy. (AE D at 1-2.) He recently took out a 401K loan in order to pay his tax debt. (Id.) However, he did not provide a copy of a formal payment agreement with the I.R.S. or anything which indicates the status of his tax debts.

On February 6, 2006, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) in order to update his security clearance. (Gov 1.) A March 7, 2006, credit report listed numerous delinquent debts, many of which were later discharged in Applicant's Chapter 7 bankruptcy. (Gov 4.) On July 6, 2007, another

credit report was obtained. It listed the following delinquent accounts: a \$65 delinquent phone bill (SOR ¶ 1.c); a \$486 medical collection account (SOR ¶ 1.d); a \$414 medical collection account (SOR ¶ 1.e); a \$440 medical collection account (SOR ¶ 1.f) and a \$546 collection account (SOR ¶ 1.g). (Gov 3.)

Applicant provided proof that the debt alleged in SOR ¶ 1.c, the \$65 phone bill, was resolved. (Tr at 19-20; AE D at 4.) He claims the debts alleged in SOR ¶¶ 1.d – 1.g are medical bills that were turned over for collection. Applicant claims that either he or his wife contacted each collection agency and they have no records indicating that they owe anything. He has taken no action to dispute these accounts on his credit report. (Tr at 25-27; Answer to SOR.) All of these account became delinquent prior to Applicant's Chapter 13 and Chapter 7 bankruptcy. (Gov 3 and Gov 4.) Applicant thinks these accounts might have been included in his Chapter 7 bankruptcy because none of the company's have information indicating they owe them money. (Tr at 50.)

The debts alleged in SOR ¶ 1.d and 1.e have the same account number. They appear to be duplicate entries of the same account. (Gov 2 at 1-18 and 1-19; Gov 3 at 2.) I find for Applicant with respect to SOR ¶1.e for this reason. I also find for Applicant with respect to SOR ¶1.f which is a \$440 medical account because it is listed in Applicant's Chapter 7 bankruptcy. (Gov 7 at 9; AE A at 1-19; Gov 3 at 2; Gov 4 at 5.) The debt alleged in SOR ¶1.g is an account related to an automobile loan rather than a medical account. (Gov 2 at 1-19; Gov 4 at 4.)

Applicant's current annual income is \$52,000. In addition, he receives a monthly military retirement check of \$1,030, and works a part-time job on the weekends that brings in about \$500 a month. (Tr at 34-35, 47, 53.) Applicant's current budget lists that he has approximately \$4,530 in total monthly income. His total monthly expenses are approximately \$4,200, leaving him approximately \$330 in discretionary income. (AE A.) He has one open credit card account that has a balance of \$250. The maximum on the account is \$250. He makes the minimal payments of \$20 a month. (Tr at 27-29; AE D at 1.) Applicant's health insurance policy is with a private insurance company. When asked whether he uses any medical benefits he is eligible for as a military retiree, he claimed he had very limited benefits. He is not sure which insurance company is taking care of the medical bills because he never sees any of them. (Tr at 49-50.)

His most recent performance appraisal which closed out on June 30, 2007, indicates that he meets or exceeds standards. (AE D at 5-12.)

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 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.

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 disqualifying conditions that could raise security concerns. I find Financial Considerations Disqualifying Condition (FC DC) ¶19(a) (an inability or unwillingness to satisfy debts) and FC DC ¶ 19(c), (a history of not meeting financial obligations) apply to Applicant's case. He has a history of not meeting financial obligations which ultimately resulted in his filing for Chapter 7 bankruptcy in February 2007. He listed approximately \$96,000 in liabilities in his Chapter 7 bankruptcy. He admits that he was unable to pay much of the debt.

FC DC ¶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) applies. Although Applicant and his wife incurred medical expenses related to their health condition, the majority of the debt listed on his Chapter 7 bankruptcy was consumer debt, totaling \$62,608. The medical bills included in the bankruptcy totaled, approximately \$19,200. Applicant continued to accumulate debt after he filed for Chapter 13 bankruptcy. When he filed the Chapter 7 bankruptcy, he had a negative monthly balance of \$488.50 which indicates living beyond one's means. (AE 7 at 19.)

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. 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) is not applicable. Applicant's debts were discharged in bankruptcy just six months prior to the hearing. Not enough time has passed to conclude Applicant is on the path of financial stability. Under bankruptcy law, tax debts and student loans are usually not considered dischargeable. Although the Government did not allege Applicant's tax debts and student loan in the SOR, they are listed in his Chapter 7 bankruptcy and raise a concern when considering the mitigation of Applicant's case. He has failed to provide sufficient information to support that these debts were discharged in bankruptcy. Applicant's budget indicates that after monthly expenses, he has \$330 remaining in discretionary income. An unexpected expense could result in continuing financial problems. In addition, Applicant has been unable to pay the amount of federal income taxes owed since 1997. This problem could be prevented if Applicant were to change his deduction on his military retirement check to have the taxes deducted. Instead, every year, it is likely that he will have a tax debt that he owes the IRS. Questions remain about Applicant's financial judgment.

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) applies, in part, due to the medical expenses incurred as a result of Applicant and his wife's health problems. Applicant's financial situation became more troublesome in 2000, after his wife was no longer able to work due to her health condition. However, I give less weight to this mitigating condition because I cannot conclude that Applicant acted responsibly under the circumstances. Aside from the medical bills, Applicant and his wife had a substantial amount of consumer debt which indicates a lack of fiscal restraint. An additional issue are the federal tax debts incurred by Applicant from 1997 to present. These debts could have been prevented by changing the deduction pertaining to his military retirement check.

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 attended one financial counseling session one month prior to his hearing. Given his history of financial irresponsibility additional counseling would be helpful to assist him with a plan to avoid financial problems in the future. Although the majority of his debts were discharged in his bankruptcy, a question remains about the federal tax debt. At the close of the record, the amount of taxes actually owed to the IRS is uncertain. I cannot conclude that Applicant's financial problems are under control due to the recency of the bankruptcy discharge and the fact that Applicant's budget indicates that he still lives paycheck to paycheck.

FC MC ¶ 20(d) (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts) applies, in part. Bankruptcy is a legitimate way to resolve one's debts. However, the burden was on Applicant to demonstrate that he has a plan in place to establish a track record of financial stability. It is too soon to conclude such, based on the fact that his expenses remain almost equal to his income. Applicant did not provide sufficient evidence to mitigate the issue pertaining to his delinquent tax debts.

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 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 has held a security clearance for the past 30 years without incident. I have considered his military service and his favorable performance report. While some of the debt was incurred due to circumstances beyond his control, the record does not establish that Applicant took preventive action to control his expenses. It is also unclear what steps he intends to take in the future. Most problematic, is the ongoing issue with his federal income taxes. Aside from his own assertions, Applicant has provided no corroboration regarding the status of his past tax debts.

Overall, the record evidence leaves me with doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the security concerns arising under financial considerations.

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:	Withdrawn
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	For Applicant
Subparagraph 1.f:	For Applicant
Subparagraph 1.g:	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.

ERIN C. HOGAN
Administrative Judge