



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



In the matter of:)
)
-----) ISCR Case No. 07-01144
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Stephanie C. Hess, Esquire, Department Counsel
For Applicant: *Pro Se*

April 25, 2008

Decision

ABLARD, Charles D., Administrative Judge:

Applicant failed to mitigate security concerns regarding Guidelines F (Financial Considerations). Clearance is denied.

Statement of the Case

On September 20, 2005, Applicant submitted an Electronic Questionnaires for Investigations Processing (e-QIP) also known as Security Clearance Application (SF 86). On October 3, 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to him, pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended, modified and revised. The SOR alleges security concerns under Guideline F (Financial).

The SOR detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for him, and recommended referral to an administrative

judge to determine whether a clearance should be granted, continued, denied, or revoked.

Applicant responded to the SOR allegations in a sworn statement signed on November 5, 2007, and elected to have his case decided on the written record in lieu of a hearing. A letter was attached to the answer with some explanatory information. A complete copy of the file of relevant material (FORM), dated November 29, 2007, was provided to him, and he was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant did not provide any additional information. The case was assigned to me on March 13, 2008.

Findings of Fact

Applicant admitted in his answer to the SOR 14 of the 19 allegations in the SOR of financial considerations specifically relating to delinquent debts. After a complete and thorough review of the evidence of record, I make the following findings of fact:

Applicant is 37-years-old. He has been an employee of a defense contractor since September 2004 and now works as a program analyst. He did not hold a security clearance before his present SF 86 was filed. He is married with one child. He was diagnosed as bi-polar in 1987 and was on medication until 1997 when he had progressed to the point that he no longer needed it. He has been in good health since that time with the exception of one medical event in 2004 when he was under stress. He was unemployed and his income was low from 2000 to 2004. Part of that time he was studying in a university. He does not have a university degree.

Financial Considerations

The security concern under Guideline F of the Directive is that Applicant incurred debts totaling over \$38,000 which became delinquent and have not been resolved. He admits to over \$36,000 of the debts. None of the remaining delinquent debts have been resolved. He defaulted on student loans and two automobiles have been repossessed. The largest single debt is approximately \$14,000 and the smallest is \$70.

Applicant avers in the answer to one interrogatory (Exh. 5) that he has consolidated a number of these debts and is paying to a consolidator and three creditors on a monthly basis. Even the smallest debts have not been resolved. He and his wife have a combined monthly salary of \$4,500 and have a remainder of \$1,100 after payments of living expenses as well as almost \$1,000 on the delinquent debts according to his financial statement in the interrogatory.

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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

In the decision-making process, the Government has the initial burden of establishing controverted facts alleged in the SOR by "substantial evidence," demonstrating, in accordance with the Directive, that it is not clearly consistent with the national interest to grant or continue an applicant's access to classified information. Once the Government has produced substantial evidence of a disqualifying condition, the burden shifts to Applicant to produce evidence "to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel, and [applicant] has the ultimate burden of persuasion as to obtaining a favorable clearance decision." Directive ¶ E3.1.15. The burden of disproving a mitigating condition never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

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* Executive Order 12968 (Aug. 2, 1995), Section 3.

Analysis

Upon consideration of all the facts in evidence, and after application of all appropriate legal precepts, factors, and conditions, including those described briefly above, I conclude that Guideline F provides the standard for resolution of the allegations set forth in the SOR. It states:

Guideline F Financial Considerations

AG ¶ 18 articulates the security concern relating to financial problems:

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.

AG ¶ 19 provides two Financial Considerations Disqualifying Conditions that could raise a security concern and may be disqualifying in this case, "(a) inability or unwillingness to satisfy debts," and "(c) a history of not meeting financial obligations."

Applicant's history of delinquent debt is documented in his credit report (Item 7). At least 14 of the debts remain unresolved. The majority of his delinquent debts remain delinquent. He has indicated in his interrogatory that some have been consolidated and are being paid but has provided insufficient documentation to show that this is occurring and that significant progress is being made to resolve his debts. The government established the disqualifying conditions in AG ¶¶ 19(a) and 19 (c).

Five Mitigating Conditions (MC) under AG ¶¶ 20(a)-(e) are provided and have been considered:

(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 provided no documentation in either his answer or through interrogatories to establish mitigation under AG ¶¶ 20(a) to 20(e). His statement about his payments to creditors is insufficient because he did not provide documentary proof of such payments. Even if he had provided proof of such payments, those payments would not be sufficient to mitigate financial considerations because of the magnitude of the remaining delinquent debt. Although his unemployment and medical problems contributed to his financial problems and were largely beyond his control, he did not act responsibly under the circumstances since his current employment, and AG ¶ 20(b) does not apply.

AG ¶¶ 20(c) and 20(d) do not apply because there are not clear indications that the problem is being resolved or is under control, and he did not establish that he acted in good faith to resolve his debts. AG ¶ 20(e) is not applicable because he did not provide “documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.”

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.

Applicant did not provide sufficient evidence to mitigate the disqualifying conditions previously discussed through application of the whole person concept. After weighing the disqualifying and mitigating conditions, and all the facts and circumstances, in the context of the whole person, I conclude he has not mitigated the

security concerns pertaining to financial considerations. He has had health and unemployment issues which no doubt contributed to his financial problems. He may well have made some progress in resolving the debts but has failed to produce reliable evidence to support his contentions. Applicant currently has substantial unresolved, delinquent debt. He has had and now has sufficient income to make greater progress resolving the delinquent debt.

I take this position based on the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), a careful consideration of the whole person factors and supporting evidence, application of the pertinent factors under the Adjudicative Process, and interpretation of my responsibilities under the Guidelines. Applicant has not mitigated or overcome the government's case. For the reasons stated, I conclude he is not eligible for access to classified information.

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
- Subparagraph 1.c.: For Applicant
- Subparagraph 1.d.: For Applicant
- Subparagraph 1.e.: Against Applicant
- Subparagraph 1.f.: Against Applicant
- Subparagraph 1.g.: Against 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
- Subparagraph 1.m.: Against Applicant
- Subparagraph 1.n.: Against Applicant
- Subparagraph 1.o.: Against Applicant
- Subparagraph 1.p.: Against Applicant
- Subparagraph 1.q.: For Applicant
- Subparagraph 1.r.: For Applicant
- Subparagraph 1.s.: Against Applicant

Conclusion

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

Charles D. Ablard
Administrative Judge