



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



In the matter of:)	
)	
-----)	ISCR Case No. 05-15637
SSN: -----)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Jeff Nagel, Esquire, Department Counsel

For Applicant: Jeremiah J. Sullivan, III, Esquire

November 24, 2008

DECISION

ROSS, Wilford H., Administrative Judge:

Applicant submitted his Security Clearance Application (SF 86), on September 8, 2006 (Government Exhibit 1). On January 22, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guidelines F and E concerning the 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 President Bush on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant submitted an Answer to the SOR on February 16, 2008, and requested a hearing before an Administrative Judge. Department Counsel was prepared to proceed on March 20, 2008. I received the case assignment on March 25, 2008. DOHA issued a notice of hearing on April 9, 2008, setting the hearing for May 20, 2008. Applicant's counsel requested a continuance due to the fact that he would be on active

duty with the United States Armed Forces on that date. The request was granted and a new notice of hearing was issued on June 11, 2008. I convened the hearing as rescheduled on June 30, 2008. The Government offered Government Exhibits 1 through 9, which were received without objection. Applicant testified on his own behalf, called one witness, and submitted Applicant's Exhibits A through I, without objection. The Applicant requested that the record remain open, and he submitted one post hearing exhibit (Applicant's Exhibit J) on July 18, 2008, without objection. DOHA received the transcript of the hearing on July 11, 2008. The record closed on July 18, 2008. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

Findings of Fact

The Applicant is 50 and retired from the United States Armed Forces as a senior non-commissioned officer. He is employed by a defense contractor as an Engineering Technician and seeks to obtain a security clearance in connection with his employment.

Guideline F, Financial Considerations

The Government alleges under this paragraph that the Applicant is ineligible for clearance because he is financially overextended and at risk of having to engage in illegal acts to obtain funds. The Applicant admits all of the allegations under this guideline.

The Applicant submits that the majority of his financial problems began after he retired from the military in 1996. (Government Exhibit 1 at question 16.) There were several deaths on both sides of his family. These necessitated travel to a State in another part of the country. In addition, both of his children were attending college. His son also had two serious automobile accidents, with the attendant expenses. (Applicant's Exhibit B at 3.) The end result was that by 2001 the Applicant was seriously in debt. (Transcript at 37-41.)

1.a. The Applicant admits that he is indebted to Crescent/Providian in the amount of at least \$11,900.00. The Applicant is currently making payments on this debt of \$150.00 a month, as agreed to by the creditor. The Applicant submitted evidence showing he has been making these payments since at least February 2008. (Applicant's Exhibit D.) He intends to increase his payments to this creditor in the near future. (Transcript at 42, 56, 74.)

1.b. The Applicant admits that he was indebted to a creditor in the amount of \$79.00. The Applicant stated that this account is current, and he submitted a wire transfer receipt in the amount of \$199.02. (Transcript at 42-43; Applicant's Exhibits E, and J at 5.) The Government's most recent credit report dated June 26, 2008, confirms that this payment was made and that the Applicant is current on this debt. (Government Exhibit 9 at 2.)

1.c. The Applicant admits that he was indebted to a collection agency in the amount of at least \$2,378.00. The Applicant made a payment arrangement with this creditor to pay \$1,850.00 on this debt, and he has been paying \$462.50 since April 2008. He has successfully paid off this creditor with his payment of July 18, 2008. (Transcript at 43-44, 74; Applicant's Exhibits C, F, and J at 3.)

1.d. The Applicant admits that he is indebted on his Military Star account in the amount of at least \$20,435.56. The Applicant has made no direct payments on this debt for several years. He indicated some confusion about the amount owed, believing it should be about \$5,000.00. However, his own sworn statement of May 2, 2002, indicates that he owed at least \$13,500.00 to the Exchange system, which became the Military Star system. (Government Exhibit 6 at 3.) The Applicant's retirement pay is being attached in the amount of \$164.25 a month to begin repayments on this debt. (Applicant's Exhibit G.) After deductions for interest and fees, his balance is reduced by about \$5.00 each month. He is not currently making direct payments on this account, but intends to begin doing so in the near future. (Transcript at 44, 54-56.)

1.e. The Applicant admits that he was indebted to a storage company in the amount of \$143.00. The Applicant stated that this account is current, and he submitted a receipt showing this payment was made in February 2008. (Transcript at 44; Applicant's Exhibit H.) The Government's most recent credit report dated June 26, 2008, confirms that this payment was made and that the Applicant is current on this debt. (Government Exhibit 9 at 1.)

Guideline E - Personal Conduct

The Government alleges in this paragraph that the Applicant is ineligible for clearance because he has made false statements to the Government during the clearance screening process. The Applicant has denied both allegations under this guideline.

2.a. Documentary evidence in the record shows that the Applicant's security clearance eligibility was denied in January 2004. The reason for this action was the Applicant's failure to return financial interrogatories to the Government. (Government Exhibits 3 and 4.)

The Applicant filled out a security clearance questionnaire on September 8, 2006, in which he gave the false answer "No" to question 26.b., which asks:

To your knowledge, have you ever had a clearance or access authorization denied, suspended or revoked, or have you ever been debarred from government employment? If "Yes" give date of action and agency. Note: An administrative downgrade or termination of a security clearance is not a revocation.

The Applicant denies falsifying this answer, stating that he had no knowledge his clearance authorization had been revoked. In addition, the Applicant testified that he

had returned to the Government every form he had been asked to fill out through the years. Finally, the Applicant completely denied any intent to deceive the Government concerning this fact. (Transcript at 58-60, 68-71, 78-80.)

2.b. The Government alleges in this subparagraph that the Applicant falsified a security clearance application dated November 26, 2001. The Applicant denied this allegation and the Government failed to produce the questionnaire. In addition, the Applicant did not have any independent knowledge of his filling out this questionnaire. (Transcript at 71.) The Government failed to prove this subparagraph, and it is found for the Applicant.

Mitigation

The Applicant's supervisor testified. This witness is also a commanding officer in the Reserves. He has known the Applicant since 2006 and described him as a person who is of good character, trustworthy and a model employee. The witness did not believe the Applicant to be any kind of a security risk. (Transcript at 23-30.)

The Applicant also submitted a packet of character reference letters. (Applicant's Exhibit B.) His children describe the Applicant as a loving and helpful father. (Applicant's Exhibit B at 3 and 8.) Co-workers and military colleagues describe him as "person with good moral values," "a dedicated, faithful to his word truthful person," and a person with "integrity." (Applicant's Exhibit B at 1, 2, and 5.)

Policies

Security clearance decisions are not made in a vacuum. 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. In addition, the Administrative Judge may also rely on his own common sense, as well as his knowledge of the law, human nature, and the ways of the world, in making a reasoned 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. Security clearance decisions include, by necessity, consideration of the possible risk that 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.

Finally, as emphasized by President Eisenhower in Section 7 of Executive Order 10865, “Any determination under this order . . . shall be a determination 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. The Applicant has over \$30,000.00 in past due debts, which have

been due and owing for several years. The evidence is sufficient to raise these potentially disqualifying conditions, requiring a closer examination.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Under AG ¶20(a), the disqualifying condition may be mitigated where “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’s financial difficulties arose primarily before 2001. However, the Applicant made no attempt to even begin to try to pay these debts voluntarily until just this year. This mitigating condition is not applicable to this case.

The Applicant has just begun the task of paying off his two largest debts. As stated above, currently the Military Star debt is only being paid down at the rate of \$5.00 a month. He will increase his payments to both this creditor and Crescent/Providian in the near future. While that will be a good start, he has no track record of paying his past due debts over an extended period. Under the particular facts of this case, I cannot find that the Applicant has initiated a good-faith effort to pay off his creditors. Accordingly, AG ¶20(d) is not applicable. For all the foregoing reasons, Paragraph 1 is found against the Applicant.

Guideline E - Personal Conduct

I have carefully considered the available evidence concerning whether the Applicant falsified his 2006 questionnaire. Specifically, whether he had previously had his clearance access revoked. (Government Exhibit 1.) The Applicant’s witness, co-workers, and his children, describe him as a truthful man. His testimony was candid, even if somewhat confusing. He was adamant that he returned the forms presented to him by the Government and, furthermore, that he never received the document indicating that his clearance had been revoked. I find his testimonial evidence on this point to be credible and believable, based on my analysis of him. Accordingly, using all the available evidence, I cannot find that the Applicant *intentionally* falsified his security clearance on this point. Subparagraph 2.a. is found for the Applicant. As previously stated subparagraph 2.b. is found for the Applicant. Accordingly, Paragraph 2 is found for the Applicant.

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. The Applicant is a hard-working, highly respected, professional person who has made poor decisions concerning his debts. The Applicant has just begun to successfully work out his debts.

Of course, the issue is not simply whether all the Applicant’s debts are paid - it is whether his financial circumstances raise concerns about his fitness to hold a security clearance. Under AG ¶2(a)(3), this conduct is recent. Given the Applicant’s complete failure to begin to resolve these debts until this year, I cannot find that there have been permanent behavioral changes under AG ¶2(a)(6). Accordingly, at the present time, I cannot find that there is little to no potential for pressure, coercion, exploitation, or duress (AG ¶2(a)8); or that the likelihood of recurrence is close to nil (AG ¶2(a)9)).

Overall, the record evidence leaves me with questions and/or doubts as to Applicant’s eligibility and suitability for a security clearance. For all these reasons, I conclude the Applicant has not mitigated the security concerns arising from his financial considerations. If the Applicant shows over a longer period of time that he has truly taken control of his finances, he may well be eligible for a clearance. He is not eligible now.

On balance, it is concluded that the Applicant has not successfully overcome the Government's case opposing his request for a DoD security clearance. Accordingly, the evidence supports a finding against the Applicant as to the factual and conclusionary allegations expressed in Paragraph 1 of the Government's Statement of Reasons. As stated above, Paragraph 2 is found for the Applicant.

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 THE APPLICANT
Subparagraph 1.a.:	Against the Applicant
Subparagraph 1.b.:	For the Applicant
Subparagraph 1.a.:	For the Applicant
Subparagraph 1.a.:	Against the Applicant
Subparagraph 1.a.:	For the Applicant

Paragraph 2, Guideline E: FOR THE APPLICANT

Subparagraph 2.a.: For the Applicant

Subparagraph 2.b.: For the 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.

WILFORD H. ROSS
Administrative Judge