



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



In the matter of:)	
)	
SSN:)	ISCR Case No. 06-20177
)	
Applicant for Security Clearance)	

Appearances

For Government: Braden M. Murphy, Esquire, Department Counsel
For Applicant: Pro Se

May 12, 2008

Decision

HOGAN, Erin C., Administrative Judge:

Applicant submitted a security clearance application, Standard Form 86, on April 11, 2006. On September 11, 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 3, 2007, Applicant answered the SOR. On October 24, 2007, his answer to the SOR was returned because it was incomplete. On November 29, 2007, Applicant submitted a complete answer to the SOR, and requested his case be decided on the written record. Department Counsel prepared a File of Relevant Material (FORM) on January 4, 2008. The FORM was forwarded to Applicant on January 9, 2008. Department Counsel did not receive confirmation that Applicant received the FORM. On April 9, 2008, Department Counsel contacted Applicant who confirmed he had received

the FORM in January but did not submit matters or documents verifying proof of service, and acceptance of the FORM. Upon further discussion, Department Counsel gave Applicant until April 16, 2008, to submit matters. Applicant submitted a response on April 14, 2008. His response consisted of a one page letter from his payroll office, dated April 10, 2008. The document was admitted as AE 1 with no objection. The FORM was forwarded to the hearing office on April 14, 2008, and assigned to me on April 23, 2008. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

Findings of Fact

In his Answer to the SOR, dated November 29, 2007, Applicant admitted all of the SOR allegations.

Applicant is a 44-year-old aircraft mechanic employed with a Department of Defense contractor seeking to maintain his security clearance. He has been employed with the defense contractor since April 2006. He served on active duty in the Air Force as an enlisted person from November 1984 to November 1987. He is single and has no children. (Item 6.)

On April 11, 2006, Applicant submitted a Questionnaire for National Security Positions (SF 86). A subsequent background investigation revealed the following delinquent accounts: a \$5,980 federal tax lien entered in August 2002 for delinquent income taxes for tax year 1999 (SOR ¶ 1.a; Item 7 at 4; Item 8 at 1; Item 10 at 3; Item 12); and a \$4,637 credit card account charged off in March 2000 (SOR ¶ 1.b; Item 8 at 1; Item 10 at 2.)

In a signed, sworn statement, dated January 5, 2004, Applicant indicated that the last time he remembers using the credit card alleged in SOR ¶ 1.b was in March 1997. He stated: "I believe after reaching my credit card limit, I stopped using it and paying on it. I was out of work when I returned and as a result needed the card to cover my basic living expenses." (Item 11 at 2.) He acknowledged that he did not pay his taxes, and was not sure what the process would be for him to be notified by the Internal Revenue Service (IRS). He stated that he intends to contact his listed creditors and repay his delinquent debts by the end of 2004. (Item 11 at 2.)

In a response to interrogatories, dated December 6, 2006, Applicant indicates that payments to the IRS were taken out of his pay check at a previous job. He was subsequently laid off and unable to afford the payments. He noted that he needs to contact the IRS in order to resolve the matter, and to provide the IRS with his current address at an overseas location. He claims that he was unaware of the \$4,637 charged off credit card account. He maintains the account was closed several years ago. (Item 7.)

In his Answer to the SOR, he states that the IRS levied his wages on September 29, 2007, and maintains the credit card account was closed many years ago. (Item 5.)

On April 14, 2008, Applicant submitted a response to the FORM. He provided a document which he claims provides proof that his IRS debt is settled. It is a signed statement, dated April 10, 2008, from his company's payroll clerk, who also apparently acts as the Facility Security Officer, which states that his final payment on his IRS garnishment was paid on December 26, 2007 and his debt is satisfied. (Item 13, AE 1.) Applicant provided no documentation from the IRS indicating that his tax debt is resolved. He provided no information on the credit card debt alleged in SOR ¶ 1.b.

Applicant had several periods of unemployment. His security questionnaire indicates that he was unemployed between November 2005 and April 2006, and between June 2001 to October 2002. (Gov 1.) Applicant provided no information about his work performance or current financial situation.

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); FC DC ¶19(c), (a history of not meeting financial obligations) apply to Applicant’s case. Although Applicant only has two outstanding delinquent accounts, the total balance is \$10,617. Both accounts have been delinquent since 2000. This shows that Applicant has a history of not meeting financial obligations and also demonstrates an unwillingness to satisfy debts.

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 history of financial irresponsibility goes back to the late 1990s. He did not pay his 1999 federal income taxes. He ran up the credit card bill to the maximum in 1997 without making payments. He presented no evidence that he paid the credit card bill. His long standing neglect of these two accounts casts doubt as to his reliability, trustworthiness, or good 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) should be considered due to Applicant's periods of unemployment (June 2001 to October 2002; November 2005 to April 2006). However, in early January 2004, Applicant stated that he would pay the two delinquent debts by the end of 2004. He was employed during the entire year of 2004. Presently, he has worked full-time since April 2006. Although he claims the credit card account was closed a long time ago, he does not indicate whether he made payments towards this account. Any payments made to the IRS were the result of the IRS obtaining a garnishment as opposed to being initiated by Applicant. While, he has had several periods of unemployment, I cannot conclude Applicant acted responsibly under the circumstances.

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. There is no evidence that Applicant attended financial counseling. Insufficient proof was provided to verify that either debt was resolved.

FC MC ¶20(d) (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts) does not apply. The IRS apparently garnished his wages at a previous employer and apparently levied his wages at his current place of employment. Applicant provided no garnishment paperwork to verify this. Although, Applicant provided a letter from his payroll clerk that his last payment towards the IRS garnishment occurred in December 2007, it cannot be concluded that his IRS debt is settled in full, absent some corroboration from the IRS. There is no evidence that Applicant made attempts to settle the delinquent credit card account. Passively waiting for the statute of limitations to occur does not negate Applicant's history of financial irresponsibility. (see ISCR 03-20327 (App. Bd. October 26, 2006) citing ISCR Case 98-0349 (App. Bd. February 3, 1999)). I cannot conclude that Applicant initiated a good-faith effort to resolve his overdue accounts.

Under the revised AG, the overall concern under financial considerations is not only whether a person who is financially over-extended is at risk of having to engage in illegal acts to generate funds but also the 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. Applicant's failure to honor his financial obligation to his creditors remains a security concern. He has not mitigated the security concerns raised under financial considerations.

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 has provided no information about his work performance or current financial situation. He is a mature adult. He was aware that he had two delinquent accounts to resolve since 2004 but took little action to resolve them. His negligent handling of his financial issues raises questions about his reliability and trustworthiness and 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:	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