



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



In the matter of:)	
)	
-----)	ISCR Case No. 06-23369
SSN: -----)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Nichole Noel, Esquire, Department Counsel
For Applicant: *Pro Se*

February 21, 2008

Decision

ABLARD, Charles, Administrative Judge:

Applicant submitted his Security Clearance Application (SF 86), on October 20, 2005. 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 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.

Applicant answered the SOR in writing on September 24, 2007, and requested a hearing before an Administrative Judge. Department Counsel was prepared to proceed on October 22, 2007. I received the case assignment on October 31, 2007. DOHA issued a notice of hearing on November 7, 2007, and I convened the hearing as scheduled on November 26, 2007. The government offered 14 exhibits (Exh.) which were received without objection. Applicant submitted three exhibits which were admitted

without objection. Applicant testified on his own behalf at the hearing. DOHA received the transcript of the hearing (Tr.) on December 4, 2007. Based upon a review of the case file, pleadings, exhibits, testimony, and the applicable statutory provision relating to an applicant, eligibility for access to classified information is granted.

Procedural and Evidentiary Rulings

Post-hearing Submission

Applicant was given 30 days from the date of the hearing or until December 31, 2007, to submit additional material which he stated that he intended to obtain by traveling to state where property that was the subject of the hearing was located. When he did not submit anything on that date, the government contacted him and learned that he believed the date was the end of January 2008. He was then given until January 25, 2008 to make a submission. He did so on January 28, 2008. The government objects to the documents based on the lateness of the submission. She also questions the value of the submissions as credible evidence. The documents were admitted.

Findings of Fact

In his Answer to the SOR, Applicant admitted the factual allegations in the SOR of financial security concerns with explanations.

Applicant is a 34-year-old employee of a major defense contractor working as a test engineer for the past four years. He holds a B.S. degree in electrical engineering from a well known southwestern university. Since graduation in 1997 he worked five years for another defense contractor before taking his present position. He has held a security clearance since 2003.

This matter concerns Guideline F Financial issues involving two allegations. The first concerns a 2005 judgment for \$95,512 arising from a bank mortgage on real estate (SOR 1.a.); the second concerns a 2002 repossession of an automobile (SOR 1.b.). He first became aware of his financial problems in December, 2004 when he was unable to buy a home for himself and his family because of his bad credit rating based these two delinquent debts (Tr. 17) which he reported on his SF 86. He advised his security office of these financial issues on September 28, 2005 (Exh. 2).

The debts of both allegations resulted from a real estate investment collaboration Applicant entered into in 2001 with his uncle to buy, renovate, and rent two houses to low income tenants (Exh. 4). The houses purchased were in the home state of Applicant which is over a thousand miles from his state of residence. The properties were purchased in Applicant's name by the uncle using a power of attorney given to him by Applicant. Thus, he is legally responsible for the debt. The \$95,000 judgment is based on a foreclosure on one of the houses. A loan was made by the bank to the uncle based on the appraised value of the house of \$125,000 which was apparently vastly overstated (Exh. B).

Payments were not made on the loan and three bankruptcies were filed in 2002 and 2003 in the Applicant's name by the uncle in an unsuccessful effort to preclude foreclosure of the property. Applicant has requested dismissal of the record of all of the bankruptcies from the trustee (Exh. 7). A full statement of the various dealings between Applicant and his uncle is in the record (Exhibit 4).

An inspection of the subject property was made in May 2006 and a report provided which indicates that the house is basically a shell with significant damage from the elements and fire (Exh. C). Pictures of the property were shown at the hearing and described in the record (Tr. 24-26). This has now developed into a question of the amount of the appraisal and whether it was obtained by fraud. Applicant has taken action to obtain a new appraisal and to revoke the actions of the bank that foreclosed. The post-hearing submission contains drafts of letters to local, state and federal officials that he intends to submit as soon as he has the new appraisal to show that he is not responsible for the debts and that the loan for which he is being held responsible was fraudulently obtained.

The second financial allegation concerns repossession of a new vehicle in 2002 purchased by his uncle in Applicant's name using the power of attorney Applicant provided to him. It has now been removed from his credit report because the creditor has agreed that it was obtained through identity theft (Exh. 8). He has also obtained letters advising of corrections in his credit reports based on identity theft by his uncle (Exhs. 8, 9, and 10). In 2006, he attempted to hire legal counsel (Exhs. A) but the attorney declined to take the case because of the distance from his office to the courts where the action occurred (Exh. 11). Applicant has since attempted to resolve the matter himself. He filed a fraud and identity theft complaint against his uncle (Exh. 12).

Applicant is unmarried but has two children by the woman with whom he lives who is employed. They have joint income of over \$5,000 a month with over \$1,000 left over after expenses each month (Exh. 3). He received a salary increase this year of \$2,600 per year. His credit reports and testimony indicates that he has had no other financial difficulties. He has been unable to buy a home for his family since the failed effort in 2004 and will not be able to do so until he clears up the present delinquent debt in this matter and his credit rating is restored.

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.

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. 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

The security concern relating to the guideline for financial concerns 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 over-extended is at risk of having to engage in illegal acts to generate funds. Compulsive gambling is a concern as it may lead to financial crimes

including espionage. Affluence that cannot be explained by known sources of income is also a security concern. It may indicate proceeds from financially profitable criminal acts.

AG ¶ 19 describes several conditions that might be applicable and could raise a security concern and may be disqualifying:

- (a) inability or unwillingness to satisfy debts;
- (b) indebtedness caused by frivolous or irresponsible spending and the absence of any evidence of willingness or intent to pay the debt or establish a realistic plan to pay the debt;
- (c) a history of not meeting financial obligations; and,
- (d) deceptive or illegal financial practices such as embezzlement, employee theft, check fraud, income tax evasion, expense account fraud, filing deceptive loan statements, and other intentional financial breaches of trust.

AG ¶ 20 describes several conditions that could mitigate security concerns that might be applicable in this matter. They are that:

- (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, and the individual acted responsibly under the circumstances;
- (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 was alleged to have two delinquent debts. The auto repossession, has been resolved since the creditor acknowledged that it was caused by identity theft. Thus, only the mortgage issue remains to be resolved and Applicant has shown a series of actions taken by him over the past two years to illustrate how the debt occurred and his efforts to resolve the debt. While the actions he has taken may not have been as prompt as they might have been or as successful as he hoped, I find that the he has taken sufficient action to warrant the application of the above mitigating conditions in this matter. Because the actions occurred in another state far removed from Applicant's home and he was unaware of it for some time, he has had difficulty getting to the

bottom of the fraudulent activity. However, since he became aware of the problem at the end of December 2005, he has taken many steps to resolve it.

Identity theft and the fraudulent financial activity that often ensues is well known to be a complicated issue to resolve in a timely matter often involving not only time but also money. While Applicant's actions in giving a power of attorney to another, even a relative, was not a prudent decision, he was not a sophisticated investor and thought he could trust his close relative. He realizes the mistakes he made and is quite unlikely to repeat them again.

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 has a responsible position in the defense industry where he has been employed for the past ten years. He has had no legal difficulties during that period and the current problems arising from the failed real estate efforts are the first difficulties he has had of a financial nature. He has presented evidence in this matter to show the history of the problem and the efforts he has made to resolve them to my satisfaction. He successfully persuaded the creditor in his automobile repossession allegation to drop the matter after showing them some of the same evidence he has produced in this matter. The real estate transaction is more complex than the auto repossession and has taken longer to resolve.

I find that the facts surrounding the allegations are not likely to recur, were not the Applicant's fault, and he had not only no motivation for any misconduct, but knew nothing about it until December 2004. He has motivation to resolve the issue and have his credit rating restored so that he might be able to transact business without the burden of an adverse credit rating.

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: FOR APPLICANT

Subparagraph 1.a.: For Applicant

Subparagraph 1.b.: For Applicant

Subparagraph 1.c.: For Applicant

Conclusion

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

CHARLES D. ABLARD
Administrative Judge