



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



In the matter of:)	
)	
-----)	ISCR Case No. 07-02411
SSN:-----)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Richard A. Stevens, Esquire, Department Counsel
For Applicant: Annie Traylor Briscoe, Esquire

January 18, 2008

Decision

CURRY, Marc E., Administrative Judge:

On July 11, 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline F. 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 on September 22, 2007, and requested a hearing before an Administrative Judge. I received the case on November 15, 2007. DOHA issued a notice of hearing on November 21, 2007, and I convened the hearing as scheduled on December 14, 2007. During the hearing, I received five government exhibits, and the testimony of two Applicant witnesses. DOHA received the hearing transcript (Tr.) on December 20, 2007. 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, Applicant admitted all of the SOR allegations. He is a 43-year-old married man with one child, age 18. He and his wife have been married since 1994. His first marriage ended in divorce in 1993.

Applicant is a high school graduate who has taken some college courses over the years. He is a veteran of the U.S. Air Force, having served from 1991 through his honorable discharge in 2004 (Exhibit 5). His decision to leave the Air Force was prompted by a 2003 driving under the influence of alcohol (DUI) conviction.¹

Shortly after leaving the Air Force, Applicant began struggling financially. By late 2006, he had accrued approximately \$40,000 of delinquent debt, including among other things, \$1,300 in delinquent court fines stemming from the 2003 DUI (SOR subparagraphs 1.c and 1.l), \$3,700 in delinquent child support payments (SOR subparagraph 1.j), \$3,500 in eviction and miscellaneous property rental dispute fees (SOR subparagraphs 1.i and 1.s), \$25,000 on two delinquent car notes (SOR subparagraphs 1.g and 1.h), and \$2,100 in delinquencies related to a time-share property purchased before he left the Air Force (SOR subparagraphs 1.m and 1.n).

In May 2007, the government propounded interrogatories to Applicant concerning the status of his delinquencies (Exhibit 2). In response, he stated he had either arranged payment plans or had begun making payments. He provided no documentation to support these contentions. At the hearing, he repeated these contentions and again provided no documentation. He has never attended debt counseling. All of the delinquencies remain outstanding.

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 overarching 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.

¹Although his decision to leave was voluntary, he characterized the DUI as a "career-killer" (Tr. 82).

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.”

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 an 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

Under this guideline, “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” (AG ¶ 18). Moreover, “an individual who is financially overextended is at risk of having to engage in illegal acts to generate funds” (*Id.*).

Here, Applicant’s financial problems trigger the applicability of AG ¶ 19(a), “an inability or unwillingness to satisfy debts,” AG ¶ 19(c), “a history of not meeting financial obligations,” and AG ¶ 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.”

I have considered all of the mitigating conditions and conclude none apply. He has neither satisfied any delinquencies, executed any payment plans, or entered a debt counseling program. Although the difficult transition from military to civilian life

contributed to his financial difficulties, and could conceivably trigger the application of AG ¶ 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,” he left the military after a DUI conviction. This does not constitute a circumstance beyond his control. Moreover, he has not acted responsibly under the circumstances. Applicant has not mitigated the financial considerations security concern.

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 longstanding delinquent financial indebtedness. I was particularly troubled by the delinquent court-ordered debts, and his repeated failure to provide documentation that he is satisfying some of his debts. Without a concrete debt repayment plan, the likelihood of recurrence remains unacceptably high. Evaluating this case in light of the whole person concept, I conclude Applicant remains a security concern.

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
Subparagraphs 1.a - 1.s:	Against 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.

MARC E. CURRY
Administrative Judge