



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



In the matter of:)	
)	
-----)	ISCR Case No. 07-02756
SSN: ---- -)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Richard A. Stevens, Esquire, Department Counsel
For Applicant: *Pro Se*

January 17, 2008

Decision

CURRY, Marc E., Administrative Judge:

On July 17, 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guidelines F, E, and J. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1990), 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 August 30, 2007, and requested a hearing before an Administrative Judge. DOHA received the request on August 31, 2007. Department Counsel was prepared to proceed on October 30, 2007, and I received the case assignment on November 15, 2007 after the case was transferred from another administrative judge. DOHA issued a notice of hearing on November 21, 2007, and I convened the hearing as scheduled on December 11, 2007. During the

hearing, I received nine government exhibits, 22 Applicant exhibits,¹ and Applicant's testimony. DOHA received the transcript of the hearing (Tr.) on December 19, 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 except SOR subparagraphs 1.i through 1.m.

Applicant is a 55-year-old man with two adult children. He has been married for more than 30 years. He has a high school education. Since 1973, he has worked as a security guard.

Throughout Applicant's marriage, his wife has struggled with disabling health problems that have prevented her from working (Tr. 49). Her condition worsened in 2001. Over the next three years, she was hospitalized for ten months. Before then, she had primary responsibility for managing the family finances. Afterwards, Applicant managed them, and gradually lost control.

At or about the time Applicant's wife's health worsened, his sick, elderly brother moved in with them (Tr. 51). Insurance covered most of the wife's medical expenses, and the brother's retirement pension covered his medical expenses (Tr. 73). As Applicant grew increasingly preoccupied with caring for his family members, his debts increasingly fell behind.

By 2007, he had accrued approximately \$24,000 of delinquent debt. SOR subparagraphs 1.a through 1.g, 1.i, and 1.k through 1.m are credit card delinquencies. SOR subparagraph 1.h is a delinquent loan, and SOR subparagraph 1.j is a delinquent medical bill.

Applicant satisfied SOR subparagraphs 1.j (Exhibit G) and 1.m (Exhibit S, Tr. 43). He has not satisfied the remainder. At the hearing, he denied all of the remaining debt, alleging that his brother and/or his wife had incurred them (Tr. 67). He offered no evidence supporting this contention.

Applicant failed to disclose his delinquent debt in response to security clearance application Questions 38² and 39.³ When asked about these omissions at the hearing, he reiterated the debts were not his responsibility.

¹Applicant submitted 25 exhibits. He later withdrew three (Exhibits Q, W, and Y).

²In the last 7 years, have you ever been over 180 days delinquent on any debt(s)?

³Are you currently over 90 days delinquent on any debt(s)?

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.

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. 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

The security concern relating to this guideline 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 includes several potentially disqualifying conditions. Here, the applicable ones are 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.

The guideline also includes several potentially mitigating conditions, addressing issues such as, among other things, the cause of the indebtedness, efforts toward debt resolution, whether the applicant has enrolled in debt management counseling, and the applicant's current financial status (*see generally*, AG ¶ 20). Here, Applicant's financial problems are ongoing, rendering AG ¶ 20(a)⁴ inapplicable. He has only satisfied two delinquent debts, collectively less than \$600. He has neither established a good-faith basis supporting his dispute of the debts, sought financial counseling, nor developed a payment plan. AG ¶¶ 20(c)⁵, 20(d)⁶, or 20(e)⁷ do not apply. Although his financial problems were caused by his preoccupation with his family members' serious health problems, his failure to act responsibly under the circumstances renders AG ¶ 20(b)⁸ inapplicable.

⁴The 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.

⁵The 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.

⁶The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

⁷The individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problems and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

⁸The 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.

Guideline E, Personal Conduct

Under this guideline, “conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual’s reliability, trustworthiness and ability to protect classified information” (AG ¶ 15). Also, “[o]f special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process” (*Id.*).

Applicant’s omission of relevant financial information from his SF 86 triggers the issue of whether AG ¶ 16(a)⁹ applies. His credibility was irrevocably undermined when at the hearing, he recanted, without explanation, his SOR admissions. I conclude Applicant falsified his SF 86 by omitting relevant financial information. AG ¶ 16(a) applies without mitigation.

Guideline J, Criminal Conduct

“Criminal activity creates doubt about a person’s judgment, reliability, and trustworthiness” (AG ¶ 30). Moreover, “[b]y its very nature, it calls into question a person’s ability or willingness to comply with laws, rules and regulations” (*Id.*).

Applicant’s SF 86 falsification constitutes a crime under 18 U.S.C. § 1001. AG ¶ 31 (a)¹⁰ applies. I have considered the mitigating conditions and conclude none apply.

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.

⁹Deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form use to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities.

¹⁰A single serious crime or multiple lesser offenses.

Applicant accrued \$24,000 of delinquent debt between 2001 and 2007. Although they were caused, in part, by his inability to manage his finances after his wife's health worsened in 2001, he has made minimal efforts at satisfying or otherwise resolving them. Instead, he chose to omit them from his security clearance application. Evaluating this case in the context of the whole person concept, I conclude Applicant remains a security risk.

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.i:	Against Applicant
Subparagraph 1.j:	For Applicant
Subparagraphs 1.k - 1.l:	Against Applicant
Subparagraphs 1.m:	For Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraphs 2.a - 2.m:	Against Applicant
Paragraph 3, Guideline J:	AGAINST APPLICANT
Subparagraph 3.a:	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.

MARC E. CURRY
Administrative Judge