



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



In the matter of:)
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-----) ISCR Case No. 07-06498
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: James F. Duffy, Esquire, Department Counsel
For Applicant: *Pro se*

July 31, 2008

Decision

CURRY, Marc E., Administrative Judge:

On January 15, 2008, 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 March 4, 2008, and requested an administrative determination. On March 25, 2008, the government prepared a File of Relevant Materials (FORM), and provided it to Applicant for a reply if he so wished. Applicant did not reply. The case was assigned to me on July 7, 2008. Based upon a review of the FORM, eligibility for access to classified information is denied.

Findings of Fact

Applicant admitted all of the SOR allegations. He is a 45-year-old married man with two children, ages 17 and 14. He earned a bachelor of science degree in 1984, and works for a contractor as a flight test engineer.

Applicant has six delinquent debts (SOR subparagraphs 1.a through 1.f) totalling approximately \$13,000. SOR subparagraph 1.a is a utility bill, SOR subparagraph 1.c is a credit card account, and SOR subparagraph 1.f is a mortgage on a home purchased in 2000 (Item 11 at 5). There is no record evidence identifying the nature of the remaining SOR delinquencies.

Applicant attributes his financial problems to poor financial management, and his wife's loss of income resulting from back surgery (Item 6 at 2). Also, he overextended his finances on the 2000 home purchase, and he cannot balance its mortgage payments with his other living expenses (*Id.*).

Applicant has paid some of his debts sporadically over the past two years (Item 6 at 7 through 14). In January 2008, he was charged for overdrawing his bank account more than 15 times (Item 7 at 26). Some time that month, he retained a financial advisor (*Id.* at 36). With the assistance of the counselor, he prepared a budget that lists all of his debts and his expenses (*Id.* at 36 through 40) It does not include a debt payment plan.

Since February 2008, Applicant has been attempting to sell his home (Item 8). Currently, he is "entering a contract on the property in the amount of \$130,000 (Answer; Settlement Statement, as listed in Item 7 at 17.). He anticipates that the sale of the property will generate income to satisfy his remaining debts. He owes approximately \$167,000 on the mortgage (Item 6 at 4).

Applicant has \$41,000 in his 401k plan. He has borrowed against this account to satisfy debts in the past. He is precluded from borrowing any further from the account (Item 6 at 4).

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. According to AG ¶ 2(c), the entire process is a 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.

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.

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 struggles trigger the application 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.”

Applicant contends his finances were strained by his wife’s income loss resulting from a major surgery, but he did not provide any specific details such as when the surgery occurred, and the length of time it disabled his wife. 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,” does not apply.

Applicant’s consultation with a financial counselor in January 2008 triggers the application of AG ¶ 20(c), “the person has received or is receiving counseling for the problem . . .” Its applicability, however, has limited probative value because he provided no evidence of its nature and extent or whether he actually followed the counselor’s advice.

Similarly, AG ¶ 20(d), “the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts,” applies, but has limited probative value. Anticipating that the sale of his home will generate income to alleviate his financial burden, Applicant has diligently been marketing his home, and a buyer has contracted to purchase it. Settlement has not occurred, however. Until the real estate deal is finalized, any profit Applicant may earn is merely speculative. Moreover, a promise to satisfy a debt in the future is not indicative of the reform and rehabilitation required to

mitigate a financial considerations security concern (ISCR Case No. 01-08410 (May 8, 2002).

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) the 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 have considered the whole person concept factors in the financial considerations section above, and that analysis does not support a favorable decision. Clearance is denied.

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
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Subparagraph 1.a - 1.f:	Against Applicant
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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