



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



In the matter of:

SSN: -----

Applicant for Security Clearance

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ISCR Case No. 07-06879

Appearances

For Government: Eric H. Borgstrom, Esquire, Department Counsel

For Applicant: *Pro Se*

January 26, 2009

Decision

HOWE, Philip S., Administrative Judge:

On December 15, 2006, Applicant submitted his electronic Security Clearance Application (SF 86). On May 13, 2008, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing the security concerns under Guideline F (Financial Considerations). 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's written answer to the SOR is dated July 24, 2008. On September 18, 2008, he requested his case be decided on the written record in lieu of a hearing.

On September 18, 2008, Department Counsel submitted the Department's written case. A complete copy of the file of relevant material (FORM) was provided to the Applicant on September 23, 2008. He was given the opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant received the file on October 15, 2008. Applicant did not file a response to the FORM within the 30 day time allowed that would have expired on November 14, 2008. I received the case assignment on December 12, 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 July 24, 2008, Applicant admitted all the factual allegations of the SOR, except in ¶ 1.d, and offered explanations for his admissions and denial.

Applicant is 36 years old, married, has one child, and works for a defense contractor. He served 11 years on active Navy duty. He worked for defense contractors after his Navy service, but was unemployed from June 2004 until August 2004 and then again from November 2004 until May 2005. (Item 4)

Applicant filed a Chapter 13 bankruptcy in September 2004. His delinquent debts, secured and unsecured, listed in that bankruptcy totaled \$1219,171. Some debts dated from 1993. In May 2005, the Bankruptcy Court dismissed Applicant's petition because he failed to make the payments according to the bankruptcy plan, which would have required Applicant to make 60 payments of \$535 monthly, for a total of \$32,100. (Items 2, 16-20)

Next, Applicant filed a Chapter 13 bankruptcy in September 2005. His total liabilities came to \$154,261. The creditors included payday loan companies, credit card debts, signature loans, and debts for returned checks based insufficient funds in Applicant's checking account, among other liabilities. The bankruptcy payment plan required Applicant to pay \$325 for four months, then \$443 for 56 months, totaling \$26,108. On May 24, 2007, the trustee moved to dismiss Applicant's Chapter 13 bankruptcy action because Applicant failed to make these all the payments. This action was postponed, but finally it was dismissed in July 2008 for failure to make the bankruptcy payments. Applicant paid only \$12,154 under that plan until dismissal occurred. The 14 delinquent debts in the plan were again due after dismissal, and those debts totaled \$122,361. (Items 2, 11-15)

Applicant owes a wireless telephone service \$1,591. This debt has not been paid. (Items 2, 7, 8)

Applicant owes \$51 to a telephone company. While Applicant denies this debt, it does appear on his September 17, 2008, credit report. It was placed for collection in September 2007. The debt has not been repaid. (Items 2, 7, 8)

A medical account debt of \$225 remains unpaid. Applicant admitted this debt. It was first placed for collection in 2005. His September 17, 2008, credit report shows the debt as unresolved. (Items 2, 7-9)

Applicant admitted his \$275 delinquent debt to a cable television service provider. This debt was first placed for collection in September 2004. The September 17, 2008, credit report shows the debt as unpaid. (Items 2, 7, 12, 19)

The \$6,111 debt is a student loan which Applicant admits owing. Applicant claims the debt is "rescinded" and he is paying \$120 to a collection agency for this debt. The documents he supplied with his Answer show a \$120 payment in July 2008. This payment was made with Applicant's debit card. There is no evidence of any payments before July 2008, or of any after. (Items 2, 7)

The five delinquent debts listed in the SOR, without the inclusion of any debts listed in the two attempts to complete Chapter 13 bankruptcy actions, total \$8,967. The total of debts from the 2005 bankruptcy and the five specific debts alleged total \$131,326, none of which have been paid or resolved.

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, the administrative judge applies the guidelines 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 and 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 conditions that could raise security concerns. Under AG ¶ 19(a), an "inability or unwillingness to satisfy debts" is potentially disqualifying. Similarly under AG ¶ 19(c), "a history of not meeting financial obligations" may raise security concerns. Applicant accumulated substantial delinquent debt since 1993 that he has not resolved. Finally, 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," applies because Applicant's total indebtedness is \$131,326. The evidence is sufficient to raise these potentially disqualifying conditions.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Under AG ¶ 20(b), it may be mitigating where “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.” There is no evidence to support the application of this condition. AG ¶ 20 (d), “the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts,” might apply if Applicant paid either of his Chapter 13 bankruptcy actions according to the plan, but he failed to accomplish those tasks. He has not paid them, and offers no reasonable, good-faith explanation as to why he has not paid these debts listed in the SOR, or was unable to complete his two Chapter 13 bankruptcy filings. The burden of proof is on him to show that the mitigating conditions should apply to him. He failed in this burden. I do not find these two potentially mitigating conditions are a factor for consideration in this case. There are no other mitigating conditions raised by the evidence.

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 considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. It is unclear from Applicant’s answers when and how his financial problems arose, and what were the bases for these debts which are now delinquent. (See AG ¶ 2(a)(4).) Applicant does not explain in any detail how his debts occurred, what efforts he made to repay them, except for his incomplete Chapter 13 actions and the one payment on his student loans, or how he intends to avoid such problems in the future. (See AG ¶ 2(a)(2).) Applicant provided no information concerning behavioral changes to remedy the situation. Applicant owes

\$131,326 and has not demonstrated any efforts to repay these debts, including a \$51 phone bill. (See AG ¶ 2(a)(6).) The potential for coercion, exploitation or duress exists because of the size of the debt, which will affect his credit ratings, could cause him to take advantage of any method to extricate himself from this predicament, including coercive methods by other persons. (See AG ¶ 2(a)(8).) Applicant voluntarily incurred these debts, and it is likely he will continue in his inability to repay them based on the evidence in this file. (See AG ¶ 2(a)(5) and (9).)

Overall, the record evidence leaves me with questions and substantial doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant did not mitigate the security concerns arising from his 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
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	Against Applicant
Subparagraph 1.f:	Against Applicant
Subparagraph 1.g:	Against Applicant

Conclusion

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

PHILIP S. HOWE
Administrative Judge