



**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. 07-07415

Appearances

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

January 9, 2008

Decision

CURRY, Marc E., Administrative Judge:

Applicant submitted his Security Clearance Application (SF 86), on September 12, 2006. On September 26, 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, 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 October 15, 2007, and requested a hearing before an Administrative Judge. DOHA received the request on October 22, 2007. Department Counsel was prepared to proceed on November 16, 2007, and I received the case assignment on November 19, 2007. DOHA issued a notice of hearing on November 21, 2007, and I convened the hearing as scheduled on December 12, 2007. The government offered Exhibits (Ex.) 1 through 5, which were received without

objection. Applicant testified on his own behalf and submitted Exhibits A through J, without objection. 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 granted.

Findings of Fact

In his Answer Applicant admitted the factual allegations in SOR subparagraphs 1.a and 1.b. He denied the factual allegations in SOR subparagraphs 1.c and 1.d. He also provided additional information to support his request for eligibility for a security clearance.

Applicant is a 33-year-old married man with one child, age five. He is an electrical engineer who has been working for his current employer for two years. He earned a bachelor's degree in 1998. His employer granted him an outstanding performance award for 2007 (Exhibit G).

Between 2001 and 2006, Applicant accrued approximately \$40,000 of delinquent debt. Before this period, he had no trouble paying his bills. In mid-2001, however, he was laid off (Exhibit 1 at 5). For the next five years, he was either unemployed, or underemployed (*see generally*, Exhibit 1 at 4, Tr. 41). Unable to make ends meet, he became overly reliant upon credit cards.

In approximately 2005, Applicant decided to increase his job prospects by enrolling in graduate school. In September 2006, he graduated, earning a master's degree in electrical engineering. Shortly thereafter, his current employer hired him.

Once Applicant's finances began to stabilize, he began confronting his delinquencies. In October 2007, he contacted the creditor listed in SOR subparagraph 1.a, and negotiated a settlement agreement (Exhibit A). Under the agreement, he will pay the creditor \$6,540 in increments consisting of a \$1,500 initial payment followed by successive \$250 monthly payments (*Id.*). He has made the first three payments, as agreed (Exhibits H and I).

SOR subparagraphs 1.b and 1.d constitute the same delinquency. It was assigned to the collection agent listed in SOR subparagraph 1.d and later transferred to the collection agent listed in subparagraph 1.b (Exhibits C and E). Through a settlement agreement, Applicant paid the creditor \$1,000 in October 2007, and \$250 the next month (Exhibit J). He will continue to make \$250 monthly payments until the debt is satisfied.

In approximately September 2007, Applicant contacted the creditor listed in SOR subparagraph 1.c. In response, a representative of the creditor informed him the account was no longer in its possession (Exhibit B). Using the forwarding information provided by the representative, Applicant contacted the new collection agent. It did not have any information about the debt (Tr. 30).

Applicant currently earns \$68,000 per year (Tr. 38). During the three previous years, he earned, on average, \$25,000 per year (Tr. 42). Since finishing graduate school, Applicant has moved to a smaller, less expensive home. In doing so, he decreased his monthly expenses by \$200. Also, his wife took a part-time job in an effort to assist with the family finances. He has \$500 remaining each month after expenses have been paid (Tr. 39).

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 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 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 notes 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 lists several potentially mitigating conditions, addressing among other things, the cause of the indebtedness, any efforts toward debt resolution, and the applicant's current financial status. Here, Applicant's financial problems did not begin until he was laid off in 2001. After years of unemployment or underemployed, he enhanced his job prospects by obtaining a graduate degree, and successfully obtained a new job. As his finances stabilized, he began contacting creditors. Of his three remaining delinquencies, he has been satisfying two with monthly payments for the past two months. Also, although he has not yet confirmed the identity of the third creditor, he has made good-faith efforts to do so. He has ample monthly income to implement another payment plan.

This favorable information triggers the application of AG ¶ 20(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,” 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,” AG ¶ 20(c), “the 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,”and AG ¶ 20(d), the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

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’s delinquencies were not caused by a history of irresponsible spending. Instead, they accrued from his inability to support his family after being laid off in 2001. He then made the prudent decision to enhance his job prospects by earning a master’s degree, which led to a stable, well-paying job, as anticipated. He reduced his expenses by moving into a smaller, cheaper apartment, and contacted creditors to initiate payment plans. His financial situation appears to be well in control. Evaluating this case in light of the whole person concept, I conclude that Applicant has mitigated the security concern. Clearance is granted.

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

Subparagraphs 1.a - 1.d:

For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

MARC E. CURRY
Administrative Judge