



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



In the matter of:)
)
-----) ISCR Case No. 07-07669
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Stephanie C. Hess, Esquire, Department Counsel
For Applicant: *Pro Se*

April 17, 2008

Decision

CURRY, Marc E., Administrative Judge:

On October 28, 2007, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) detailing the security concern under Guidelines 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.

DOHA received Applicant's answer, requesting a hearing, on November 27, 2008. I received the case assignment on December 20, 2007. DOHA issued a notice of hearing on January 24, 2008, and I convened the hearing as scheduled on February 7, 2008. During the hearing, I received three government exhibits, three Applicant exhibits, and the testimony of two Applicant witnesses. Applicant attempted to move a fourth exhibit, a 43-page document, into the record. Department counsel objected because she had not seen it before the hearing. I identified it as Exhibit D, reserving judgment on

its admissibility until department counsel had an opportunity to review it after the hearing. At the hearing's conclusion, I left the record open to allow Applicant the opportunity to submit additional exhibits. After the hearing, department counsel reviewed Exhibit D and withdrew her objection, whereupon I received it. Also, Applicant submitted two additional exhibits within the time allotted, which I incorporated into the record. I received the transcript on February 27, 2008. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

Findings of Fact

Applicant is a 48-year-old, married man with one adult child. Both he and his wife are professional truck drivers. He has an eighth grade education (Tr. 34).

In 1997, Applicant and his wife started a trucking business. They financed the purchase of two eighteen-wheelers for approximately \$230,000. Typically, they drove one together, and either leased the other or hired employees to drive it (Tr. 46, 49).

The business struggled. Applicant and his wife had trouble finding competent employees, and they underestimated the vehicles' maintenance costs (Tr. 46). When his wife experienced a serious medical crisis in 2001, everything "snowballed" (Tr. 25). Because they had no medical insurance, they incurred tremendous out-of-pocket health care expenses and grew increasingly unable to pay their business expenses.

In October 2000, Applicant and his wife filed for Chapter 7 bankruptcy protection (Exhibit D). The court discharged approximately \$290,000 of business and personal debt (Exhibit D at 11).

Although Applicant and his wife had to return one of the trucks to the creditor as part of the bankruptcy process, they were able to continue operating the business. They failed, however, to set aside funds in an escrow account to pay their federal income taxes (Tr. 50). In 2002, they were unable to pay them when due (*Id.*). With the help of their accountant, Applicant and his wife arranged an installment plan and paid an average of \$200 per month (Tr. 49-51, 64).

Applicant and his wife were again unable to pay their federal income taxes in 2003 and 2004. They arranged installment plans for those years also (Tr. 50). In 2003, Applicant and his wife "saved up and splurged" on two Caribbean vacations (Tr. 42, Exhibit 1).

When Applicant and his wife were unable to pay their federal income taxes in 2004, their accountant advised them that the Internal Revenue Service (IRS) did not allow taxpayers to arrange installment plans for more than three consecutive years (Tr. 51). They then did not file their 2004 income tax return (Tr. 56).

Applicant's wife experienced another major medical problem in 2005 (Tr. 70). In early 2006, they filed their 2004 and 2005 income tax returns. At that time, they had paid approximately \$2,735 toward the 2002 and 2003 delinquencies through the installment plans (Exhibit E). Through their accountant, they then began negotiating an offer and compromise (Tr. 57).

The accountant worked on a settlement with the IRS for approximately a year before quitting abruptly (Tr. 57). In December 2007, the IRS froze Applicant and his wife's bank account, obtained a lien against their property for \$61,838, and began garnishing Applicant's wages (Exhibit C, Tr. 29). Currently, he has paid approximately \$970 through the garnishment (Exhibit B). The bank account remains frozen (Tr. 29, 33).

Over the years, Applicant incurred three delinquent medical expenses, collectively less than \$800, related to on-the job injuries (SOR subparagraphs 1.b through 1.d). He satisfied the delinquency listed in SOR subparagraph 1.b (Exhibit F). SOR subparagraph 1.c remains unpaid and SOR subparagraph 1.d is in dispute.

Applicant and his wife have retained another accounting firm to help resolve the tax delinquencies (Exhibit A). Their goal is to satisfy the tax delinquencies, then "move on to a plan that will pay the medical [bills]" (Tr. 25).

Applicant has not sought money management counseling. Recently, he read a self-help book by a prominent money management expert, and has been incorporating the book's lessons into their daily financial plan (Tr. 35). Applicant and his wife estimate their delinquencies will be satisfied in three years.

Applicant and his wife ended their business in 2005. Since then Applicant has been working for the same company.

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 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. 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

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.*).

Applicant’s history of financial problems, and failure to file his 2004 federal income taxes on time triggers the application of AG ¶¶ 19(a), “inability or unwillingness to satisfy debts,” 19(c), “a history of not meeting financial obligations,” 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,” and 19(g), “failure to file Federal, state, or local income tax returns as required.” I have considered all of the mitigating conditions and conclude none apply. Applicant’s financial problems were originally caused by his struggling business and his wife’s illness. When they became overwhelming, he filed for Chapter 7 bankruptcy protection in 2000. Shortly after the court discharged his debts, however, his financial problems recurred. In 2003, as he was increasingly losing control of his finances again, he spent money on two Caribbean vacations. Consequently, although Applicant’s problems were originally caused by circumstances beyond his control, he did not deal with them responsibly.

Applicant acknowledges that his financial problems recurred because of irresponsibility. He has outlined a debt repayment plan, and has retained an accounting firm for assistance. However, the plan is sketchy at best, and the only payments he has made thus far have been through a wage garnishment. I conclude Applicant’s finances remain a 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's struggling business and his spouse's major medical problems contributed to his financial problems. His limited education was also a factor. His financial problems recurred after a Chapter 7 bankruptcy discharge. Although he has taken steps to get his finances under control, it is too soon to conclude they no longer pose a security concern in light of the remaining amount of the delinquencies and their recurrent nature. Evaluating this case in the context of the whole person, I conclude Applicant's financial problems remain a security concern. 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:

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|---------------------------|-------------------|
| Paragraph 1, Guideline F: | AGAINST APPLICANT |
| Subparagraph 1.a: | Against Applicant |
| Subparagraph 1.b: | For Applicant |
| Subparagraphs 1.c - 1.e: | 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