



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



In the matter of:)
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-----) ISCR Case No. 07-08326
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Julie R. Edmunds, Esquire, Department Counsel
For Applicant: *Pro Se*

February 28, 2008

Decision

CURRY, Marc E., Administrative Judge:

On October 10, 2007, 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 October 30, 2007, and requested a hearing before an Administrative Judge. I received the case assignment on December 6, 2007. DOHA issued a notice of hearing on January 11, 2008, and I convened the hearing as scheduled on January 30, 2008. During the hearing, I received four Government exhibits, five Applicant exhibits, and Applicant's testimony. DOHA received the hearing transcript (Tr.) on February 13, 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, Applicant admitted all of the SOR allegations except subparagraphs 1.b through 1.d, 1.h, 1.m, and 1.p.

Applicant is a 37-year-old man with a common-law wife and one child, age 12. He has a high school education. For the past six years, he has works for a defense contractor as a security guard (Tr. 12). Currently, he supervises 24 employees.

Applicant is highly respected on his job. Coworkers describe him as a man of "good character and integrity" (Exhibit D) who is loyal, honest, and hardworking (Exhibits E and F).

Since 1999, Applicant has struggled with managing his finances. That year, he failed to file his federal and state income tax returns, leading to a \$597 Internal Revenue Service (IRS) delinquency and a \$1,156 state income tax delinquency. Both the IRS and the state taxing authority garnished his wages (Answer to SOR, subparagraphs 1.a and 1.b). By 2001, he had satisfied the IRS garnishment leading to its release (Tr. 17). The state garnishment was released after he satisfied it in 2006 (Exhibit B).

In February 2001, Applicant's car insurance payments grew delinquent (SOR subparagraph 1.f), and in June 2001, an installment account grew delinquent (Exhibit 2 at 20, as listed in SOR subparagraph 1.d). Currently, the insurance payment equals \$113, and the installment account equals \$11,726. Both remain outstanding.

In October 2001, Applicant's mobile home, his personal belongings inside the home, and one of his cars was destroyed in a fire. His wife, whose income contributed to the family's debt management, was hospitalized for a month. At the time, he and his wife owed money to the creditor from whom they had purchased the car, and a creditor from whom they had purchased a television and a stereo. They never filed an insurance claims for these items after their destruction, and the accounts remain outstanding. Subsequently, the creditors placed them for collection (Tr. 29, 46). Currently, Applicant owes the automobile creditor approximately \$8,200 (Exhibit 3 at 2, as listed in SOR subparagraph 1.m), and the stereo and television creditor approximately \$1,255 (Exhibit 4 at 2, as listed in SOR subparagraph 1.p).

Applicant was displaced for approximately three months after the fire, and lost track of several bills (Exhibit 2 at 6). Subsequently, he lost another car through repossession (SOR subparagraph 1.q - there is no record evidence of the balance due). Also, he grew delinquent on a personal loan (Exhibit 4 at 7, as listed in SOR subparagraph 1.n). Currently, approximately \$434 is outstanding (Exhibit 4 at 10).

In early 2002, Applicant purchased another mobile home, and moved back to the trailer home park (Tr. 23). Approximately two years later, he got behind on payments to the creditor that financed the purchase of the new mobile home. In March 2005, it was

foreclosed (Exhibit 2 at 37 as listed in SOR subparagraph 1.c). Currently, Applicant owes a deficiency of approximately \$35,300 (Exhibit 4 at 11).

Approximately nine months after moving into the new mobile home, Applicant purchased a television (Exhibit 4 at 8, as listed in SOR subparagraph 1.l). Three months later, his payments grew delinquent. Currently, he owes approximately \$294 (*Id.*).

Applicant owes approximately \$2,000 to miscellaneous creditors including a check cashing company (SOR subparagraph 1.i), a car insurance company (SOR subparagraphs 1.e and 1.g), a credit card company (SOR subparagraph 1.h), a phone company (SOR subparagraphs 1.j. and 1.k), and a lender (SOR subparagraph 1.o). Collectively, he owes approximately \$60,000 of delinquent debt.

In July 2007, the government propounded interrogatories to Applicant. He was asked about the nature of his efforts to satisfy them and their current status (See *generally*, Exhibit 2). In response, Applicant, among other things, stated he was “in the process of trying to clean” his credit (*Id.* at 3).

Five months later, Applicant retained a credit repair agency (Exhibit G). With the help of the agent, Applicant is contacting creditors and attempting to negotiate settlement amounts. All except the tax deficiencies remain outstanding.

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.” 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

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 problems trigger the applicability 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’s history of delinquencies span more than seven years, and all remain outstanding. 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,” does not apply.

Although Applicant’s financial indebtedness was exacerbated by the loss of his first mobile home and several personal belongings in a fire, and the subsequent

incapacitation of his wife which temporarily rendered her unable to work, 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. Both income tax delinquencies in addition to two other delinquencies were accrued before the fire. Moreover, he continued to accrue delinquencies and did not seek a credit repair agent until nearly six years after the fire.

Although Applicant’s retention of a credit repair agency to help him resolve his delinquencies triggers the application of AG ¶ 20(d), “the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts,” it does not trigger the application of AG ¶ 20(c), “the person has received or is receiving counseling, and/or there are clear indications that the problem is being resolved or is under control.” None of the record evidence indicates that the credit agent will actually provide money management counseling. Absent such counseling, I cannot conclude that the problem is under control. 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) 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.

Between 1999 and 2007, Applicant accrued approximately \$60,000 of delinquencies. Although the mobile home fire exacerbated his financial problems, it has limited probative value (see discussion in Financial Considerations section, *supra*).

Nearly all of Applicant’s delinquencies remain outstanding. Although he retained a credit agent to assist him in repairing his credit, he did so approximately five months after the government sent him interrogatories placing him on notice about its concern with his finances. Consequently, it is too soon to conclude his financial problems are under control. Evaluating this case in light of the whole person concept, I conclude he has not mitigated the financial considerations 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:

Paragraph 1, Guideline F:	AGAINST APPLICANT
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Subparagraphs 1.a - 1.k:	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