



**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. 07-08385

Appearances

For Government: Alison O'Connell, Esquire, Department Counsel
For Applicant: *Pro Se*

February 6, 2008

Decision

LYNCH, Noreen A., Administrative Judge:

Applicant submitted his Security Clearance Application (SF 86), on January 25, 2005. On September 21, 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, 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 acknowledged receipt of the SOR on October 9, 2007, and elected to have his case decided on the record in lieu of a hearing. Department Counsel submitted the Government's written case on October 31, 2007. Applicant received a complete file of relevant material (FORM) on November 12, 2007, and was provided the opportunity to file objections and submit material to refute, extenuate, or mitigate the Government's

case.¹ Applicant did not submit additional information. The case was assigned to me on January 28, 2007. Based upon a review of the case file, eligibility for access to classified information is denied.

Findings of Fact

In his Answer to the SOR, dated October 19, 2007, Applicant admitted the factual allegations in ¶¶ 1.a-1.e, of the SOR, with explanations. He denied the factual allegation in ¶ 1.f of the SOR.²

Applicant is a 45-year-old employee of a defense contractor. He attended college continuing education classes in 1996 and 1997. He worked as a senior engineer from 1991 until 2002. He is divorced and has no children. He has worked for his current employer since June 2004.³

In January 2001, Applicant began treatment for a Bipolar disorder. At the same time, his father was very ill with cancer and emphysema. Applicant left his high stress employment and returned home to be with his father. When his father died in July 2002, Applicant had no financial difficulties.⁴

Unfortunately, Applicant experienced difficulty finding employment in his home state. He was unemployed from October 2002 until March 2003. In 2003, he found a lower paying job as a salesman. He was again unemployed from April 2003 until August 2004. As a result of the unemployment, he depleted his savings. He then fell behind on his payments and bills. His vehicle was repossessed and several credit cards were charged off or in collection.⁵

The debts alleged in the SOR total approximately \$36,000. Applicant admits the debts in ¶¶ 1.a through 1.e. He claims that he made payments in 2007 on four of the accounts. However, he provided no evidence or documentation. He has not paid on the fifth debt. The debt in 1.f is not his. He reports that the \$239 is not his debt, but rather was his father's medical bill.

Applicant's current employment is stable and provides a steady income. Since 2004 he has been gainfully employed. He notes that he is trying to pay back his creditors while providing for his future. He purchased several pieces of property for

¹The Government submitted seven items in support of its contentions.

²Item 3 (Applicant's answer to SOR).

³Item 4 (Security Clearance Questionnaire, dated January 2005).

⁴*Id.*

⁵*Id.*

investment purposes. He pays a total of \$1,167 per month for those investment properties. He also has a monthly car payment of \$430 for his 2004 vehicle.

Applicant has not received any financial counseling according to his answer to the SOR. He did not contact his creditors to arrange any settlements or even small payments on any of the delinquent accounts. He is now cognizant of credit card use and pays cash for goods.

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 over-arching adjudicative goal is a fair, impartial and common sense decision. According to AG ¶ 2, 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 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 delinquent debt and was unable to pay some obligations for a period of time. His credit reports confirm that he has not paid the charged off collection accounts. The activity for the delinquent debts ranges from 2002 until the present. The evidence is sufficient to raise these potentially disqualifying conditions, requiring a closer examination.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Under AG ¶ 20(a), the disqualifying condition may be mitigated where “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.” Applicant’s financial worries arose between about 2002 and 2003. He accumulated some delinquent debt due to unemployment and low salary. While the unemployment may have precipitated the debt, the inquiry does not end at that point. The Applicant’s problems have been ongoing and he has not resolved the debts. His inaction after being employed raise concerns about his current reliability, trustworthiness, or good judgment. This potentially mitigating condition does not apply.

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.” As noted above, some of the financial problems arose from his unemployment and lower income. However, he did not act responsibly in identifying and resolving his delinquent debts. I find this potentially mitigating condition does not fully apply in this case.

Evidence that “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” is potentially mitigating under AG ¶ 20(c). Similarly, AG ¶ 20(d) applies where the evidence shows “the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.” Applicant has not received counseling and has not resolved the delinquent debts, either by payment or settlement. He presented no evidence or documentation to support payment on any of his debts. He is now financially sound and prepared for future contingencies. He even has investment properties that he pays on monthly. I conclude these potentially mitigating conditions do not apply.

AG ¶ 20(e) applies where the evidence shows “the individual has a reasonable basis to dispute the legitimacy of the past due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.” In this case, Applicant disputed the sixth debt of \$239. He did not produce any documentation to support this claim. I conclude this potentially mitigating condition does not apply.

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 common sense 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. When these problems first began, Applicant was under great stress and caring for his father. He accumulated debt due to circumstances largely beyond his control, including unemployment and low income. However, he did not act responsibly under the circumstances because once he had stable employment he did not start paying his delinquent debt. He still has the delinquent debt. He provided no documentation to support his claim that he is paying on some of the debts. He is, however, paying more than \$1,000 a month on his investment

properties. He has been gainfully employed with his current employer since 2004. However, he has not taken affirmative action to pay or resolve most of the delinquent debts raising concerns about his good judgment. Of course, the issue is not simply whether all his debts are paid—it is whether his financial circumstances raise concerns about his fitness to hold a security clearance. Applicant has not shown sufficient effort to resolve his delinquent debts. He has not met his burden of proof in this case to overcome the government's case.

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated the security concerns arising from 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

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.

NOREEN A. LYNCH
Administrative Judge