



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



In the matter of:

ISCR Case No. 07-08398

Applicant for Security Clearance

Appearances

For Government: D. Michael Lyles, Esq., Department Counsel

For Applicant: *Pro Se*

March 12, 2008

Decision

LOUGHRAN, Edward W., Administrative Judge:

Applicant failed to mitigate the security concerns raised by his financial history. Eligibility for access to classified information is denied.

On November 21, 2007, the Defense Office of Hearings and Appeals (DOHA) issued 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 answered the SOR in writing on December 18, 2007, and requested a hearing before an Administrative Judge. The case was assigned to another Administrative Judge on January 17, 2008, and reassigned to me on February 4, 2008. DOHA issued a notice of hearing on January 28, 2008. I convened the hearing as

scheduled on February 21, 2008. The government offered Exhibits (GE) 1 through 3, which were received without objection. Applicant testified on his own behalf and submitted Exhibits (AE) A through I, without objection. DOHA received the transcript of the hearing (Tr.) on March 7, 2008.

Procedural and Evidentiary Rulings

I advised Applicant of his right under ¶ E3.1.8 of the Directive to 15 days notice before the hearing. Applicant affirmatively waived his right to 15 days notice.

Findings of Fact

In his Answer to the SOR, dated December 18, 2007, Applicant admitted all the factual allegations in the SOR, with explanations. He also provided additional information to support his request for eligibility for a security clearance.

Applicant is a 30-year-old employee of a defense contractor. He is a high school graduate and is attending classes toward an associate degree. He served in the U.S. military from 1997 to 2001, and was honorably discharged. He is married and has two stepchildren, ages 12 and 13.¹

Applicant joined the military when he was 19 years old. He was unsophisticated about finances and the ways of the world. He met his future wife who was also in the military. She had two children, and as he stated, “she was 23 and from the City.” They moved in together by the end of 1997. Applicant started accepting credit offers and became overextended. His future wife left the military in 1998 and did not work. She went to school and some bills went unpaid. She handled the finances and told him, “it’s okay to miss a couple of payments until she got a job.” They married in 1999. She finished her education, but her employment was sporadic. Applicant was discharged from the military in 2001. He did not seek reenlistment because he felt he could earn more in the civilian world. He could not. They moved a number of times over the next several years. They lived with her mother, and then with his parents, but they both continued to have employment problems. She went for lengthy periods between jobs. She went back into the military in about 2002, but only stayed on active duty for about six to eight months. They separated and reconciled a few times.²

Applicant realized his marriage was not working out and separated from his wife in 2006. He moved home to live with his parents. He obtained his job with his current employer in November 2006. Applicant filed for divorce. He testified it should be final within about two weeks of the hearing date.³

¹ Tr. at 29, 30; GE 1; AE A, D, I.

² Tr. at 16-17; Applicant’s Answer to SOR; GE 1.

³ Tr. at 17; Applicant’s Answer to SOR; AE F.

The SOR alleges 18 delinquent debts totaling approximately \$33,509. Applicant admitted owing all the listed debts, and none of the 18 debts have been paid. He completed mandatory credit counseling on November 6, 2007, in anticipation of a bankruptcy. He filed Chapter 7 bankruptcy on November 30, 2007. His bankruptcy petition reflects three repossessed cars. Applicant testified that he believed there were four voluntarily repossessed cars. His debts have not yet been discharged.⁴

Applicant submitted letters from two supervisors. He is described as an exemplary employee who has always received good evaluations. They state he is ethical, a team player with a great attitude, and an asset to their organization. He has worked many hours of overtime without complaint.⁵

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, Administrative Judges apply 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. . . ." The Applicant has the ultimate burden of persuasion as to obtaining a favorable security decision.

⁴ Tr. at 17-18, 31-32; Applicant's Answer to SOR; AE B, E.

⁵ AE C, G, H.

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. Two are potentially applicable in this case:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant accumulated a number of delinquent debts and was unable to pay his obligations for a period of time. The evidence is sufficient to raise the above potentially disqualifying conditions.

Five Financial Considerations Mitigating Conditions under AG ¶¶ 20(a)-(e) are potentially applicable:

(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;

(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;

(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;

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and

(e) 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.

Applicant has 18 delinquent debts totaling more than \$33,000. While a young and impressionable member of the military, he met and eventually married another service member with two children. She is older than Applicant, but far from mature. They both left the military and went through a number of years of sporadic employment. Their employment issues are conditions that were largely beyond his control. However, he permitted at least three cars to be repossessed, and there is no evidence that he made an effort to pay any of his debts, even the small debts, since he started working for his current employer in November 2006. I am unable to make a finding that Applicant acted responsibly under the circumstances. FC MC 20(b) is partially applicable.

Applicant will soon be divorced from his wife and his debts will be discharged in bankruptcy. He appears to be on the right track. He is living with his parents and is working overtime for a company that values his work. He received mandatory financial counseling as part of his bankruptcy and there are indications that the problem is being resolved and is under control. However, it is too soon for a determination that the problems are unlikely to recur and do not cast doubt on his current reliability, trustworthiness, or good judgment. Applicant satisfied the first prong of FC MC 20(c). The second prong is partially applicable. No other mitigating condition is completely applicable.

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 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. Applicant was young and unsophisticated when he became involved with another service member with two children. They lived together and then married. He left the military with an Honorable Discharge to seek a more lucrative job, but he failed to find one. She did not work for extended periods and debts became delinquent. He is attempting to resolve all his issues. His divorce is imminent, and barring something unforeseen, his debts should be discharged in bankruptcy. He now has a good job where he is highly regarded. He lives at home, attends college, and works overtime. Applicant is still too early in the process for a determination that his finances are in order. One year from now, his financial problems may be a thing of the past. At this instant they remain a concern.

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 his financial issues.

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
Subparagraphs 1.a-1r:	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.

Edward W. Loughran
Administrative Judge