



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



In the matter of:)
)
) ISCR Case No. 07-11179
)
)
Applicant for Security Clearance)

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

January 23, 2008

Decision

DAM, Shari, Administrative Judge:

Applicant failed to rebut or mitigate the Government's security concerns raised under Guideline F, Financial Considerations. His eligibility for a security clearance is denied.

On January 8, 2007, Applicant submitted his Security Clearance Application (SF 86). On August 31, 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 August 31, 2007. He answered the SOR in writing and elected to have the case decided on the written record in lieu of

a hearing. On October 22, 2007, Department Counsel prepared a File of Relevant Material (FORM), containing seven Items, and mailed Applicant a complete copy on October 26, 2007. Applicant received the FORM on November 1, 2007, and had 30 days from its receipt to file objections and submit additional information. On December 14, 2007, Applicant submitted a letter that I marked Applicant Exhibit (AE 1) and admitted into the record without objection from Department Counsel. On December 21, 2007, I received the case assignment.

Findings of Fact

In his Answer to the SOR, Applicant admitted the factual allegations in ¶¶ 1.a, 1.c, 1.d, 1.e, 1.g, and 1.k of the SOR. He denied the factual allegations in ¶¶ 1.b, 1.f, 1.h, 1.i, 1.j, and 1.l of the SOR. He also provided additional information to support his request for eligibility for a security clearance.

Applicant is 56 years old and divorced. Since November 1977, he has worked for a federal contractor. He is a logistics research and requirements analyst. He received a secret security clearance in February 1997. (Item 4).

The SOR alleges security concerns based on financial considerations. In his letter, dated December 14, 2007, Applicant indicated that he did not want to file a December 2003 bankruptcy, but did on his lawyer's advice. (SOR ¶ 1.a). The bankruptcy was later dismissed in January 2004. (Item 6). He attributed his financial difficulties at the time of the bankruptcy to his father's death and related expenses. He anticipated resolving his outstanding debts by March 2007. (AE 1).

Applicant admitted that he owed five delinquent debts listed in the SOR, totaling \$21,569. He denied the debts listed in ¶¶ 1.b, 1.h, 1.i, and 1. j, totaling \$21,133. He disputes the \$870 debt noted in ¶ 1.f, and asserted he paid the \$6,906 mortgage debt listed in ¶ 1.l. He did not submit any evidence documenting that he paid any debts, that he has a repayment plan for them, or that he formally disputed or investigated them. The amount alleged in the SOR is approximately \$52,479. According to the January 2007 and August 2007 credit bureau reports (CBR), the delinquent debts date back to 2001. (Items 5 & 6).

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(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 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 a significant amount of delinquent debt that he has been unable to pay for a period of time. 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 around 2001 and continue into 2007. Hence, they are ongoing and this condition cannot 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.” Applicant noted that some of his debts arose as a result of his father’s death. However, he did not present evidence indicating what he took steps to manage them during that time frame. I find this potentially mitigating condition is not a factor for consideration 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 did not present any evidence of credit counseling or documentation of efforts to resolve the delinquent debts, either by payment or settlement. He did not submit any evidence that he is financially sound and able to manage his debt. I conclude these potentially mitigating conditions do 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 commonsense 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 is a 56 year old man, sufficiently mature to be fully responsible for managing his finances and incurring debt. He has a long work history with his current employer and has held a security clearance for a number of years. While he is not required to be debt free, he is expected to manage his finances in such a way as to meet his obligations. In this case, Applicant did not present any evidence that he has taken steps to resolve and responsibly manage his finances and debts, despite being on notice of the problem for some time. Without an established budget and a track record of consistent financial management demonstrating reliability and good judgment, I am concerned that his financial problems will recontinue.

Overall, the record evidence leaves me with questions or doubts as to Applicant’s eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant did not mitigate the security concerns arising from his 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
Subparagraphs 1.a through 1.i:	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.

SHARI DAM
Administrative Judge