



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



In the matter of:)	
)	
-----)	ISCR Case No. 07-11828
SSN: -----)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Caroline H. Jeffreys, Esquire, Department Counsel
For Applicant: *Pro Se*

June 30, 2008

Decision

CURRY, Marc E., Administrative Judge:

On December 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 January 30, 2008, and requested an administrative determination. He then filed a Supplemental Answer on February 29, 2008. On March 24, 2008, the government prepared a File of Relevant Materials (FORM). Applicant received it on March 27, 2008, did not reply, and the case was assigned to me on May 27, 2008. Based upon a review of the FORM, eligibility for access to classified information is denied.

Preliminary Rulings

Department Counsel moved to amend SOR subparagraph 1.c to read as follows:

You are indebted for a judgement entered against you on or about July 2006, in the approximate amount of \$367. As of November 28, 2007, this debt has not been paid.

Applicant did not file an objection, therefore, I granted the motion. The allegation, as amended, however, is vague. Although SOR allegations need not be drafted as precisely as criminal pleadings, they must, at minimum, be drafted with enough specificity for the applicant to prepare a response. SOR subparagraph 1.c does not meet this threshold, therefore, I have resolved it in Applicant's favor, and will not address it further in the Decision.

Findings of Fact

Applicant is a 35-year-old man with three children. One is age 17, and the age of the other two is not listed in the record. He recently divorced his wife to whom he had been married for approximately ten years. Applicant served in the U.S. Marines from 1998 through 2002. He was honorably discharged. Since 2005, he has worked as a security guard. He has a high school education.

In October 1996, Applicant filed for Chapter 7 bankruptcy. The SOR alleges that "the bankruptcy was discharged" in approximately January 1997 (subparagraph 1.a). Although Applicant admits to this allegation, it is unclear from the record whether Applicant's unsecured debt was discharged or whether the court dismissed the bankruptcy petition before granting a discharge.

Currently, Applicant has approximately \$16,000 of delinquent debt. SOR subparagraph 1.b is a judgment against him for delinquent payments on a trailer home. Applicant's ex-wife is paying this debt as part of their separation agreement (Answer at 3 through 9).

SOR subparagraphs 1.d through 1.l are medical expenses incurred in 2005 when Applicant's son injured himself playing high school football (Answer at 13). Applicant contends the school should pay them (Answer at 4). He provided no evidence that he has officially disputed these bills.

SOR subparagraphs 1.m and 1.n are student loans. Applicant has been paying these through a federal income tax garnishment (Answer at 17-18). As of January 30, 2008, he owes \$5,576 (Answer at 15).

SOR subparagraphs 1.o and 1.p are duplicate bills representing the deficiency remaining from a 2001 automobile repossession. Applicant fell behind on the car note when his then-wife was hospitalized and unable to work. It remains outstanding.

SOR subparagraph 1.q is a delinquent electric bill. Applicant alleges he paid it in July 2007 (Answer at 5). He provided no supporting evidence.

Applicant had another vehicle repossessed in November 2006 (Answer to SOR subparagraph 1.r). It is unknown from the record whether he owes any deficiency.

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.

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

Guideline F, Financial Considerations

Applicant successfully demonstrated that SOR subparagraph 1.b is no longer his responsibility. I resolve it in his favor.

The remaining delinquencies raise security concerns under Guideline F, financial considerations, because "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 delinquencies spans 12 years and includes two automobile repossessions that occurred after a Chapter 7 bankruptcy filing. 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," apply.

I have considered the mitigating conditions and conclude none apply. Applicant provided scant evidence that his delinquencies are being resolved or are under control. Also, he provided no documented proof to substantiate the basis of the disputed delinquencies, and the record does not indicate he has undergone financial counseling. I conclude the negative security inferences generated by the repetitive and ongoing nature of his financial delinquencies outweigh any positive inference generated by the fact that some of the delinquencies may have been caused by circumstances beyond his 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.

Evaluating this case using the whole person factors, particularly, the seriousness of the problem, and its recurrent nature, I conclude that it is not clearly consistent with the national interest to grant Applicant access to classified information. 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
Subparagraph 1.a:	Against Applicant
Subparagraphs 1.b - 1.c:	For Applicant
Subparagraphs 1.d -1.o:	Against Applicant
Subparagraph 1.p:	For Applicant
Subparagraphs 1.q - 1.r:	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.

MARC E. CURRY
Administrative Judge