



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



In the matter of:)	
)	
)	ISCR Case No. 07-11909
SSN:)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Candace L. Le'i, Esquire, Department Counsel
For Applicant: Pro Se

June 17, 2008

Decision

HENRY, Mary E., Administrative Judge:

Based upon a review of the case file, pleadings, exhibits, and testimony, I conclude that Applicant's eligibility for access to classified information must be denied.

Applicant submitted his Security Clearance Application (SF 86), on October 19, 2006. On January 22, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guidelines F and E 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 January 30, 2008. He answered the SOR in writing on February 15, 2008, and requested a hearing before an

administrative judge. DOHA received the request on February 19, 2008. Department Counsel was prepared to proceed on February 27, 2008, and I received the case assignment on February 28, 2008. DOHA issued a notice of hearing on March 24, 2008, and I convened the hearing as scheduled on April 29, 2008. The government offered five exhibits (GE) 1 through 5, which were received and admitted into evidence without objection. Applicant and one witness testified on his behalf. He submitted two exhibits (AE) A and B, which were received and admitted into evidence without objection. DOHA received the transcript of the hearing (Tr.) on May 9, 2008. I held the record open until May 16, 2008, for Applicant to submit additional matters. He did not submitted any additional evidence. The record closed on May 16, 2008.

Findings of Fact

In his Answer to the SOR, dated February 15, 2008, Applicant admitted the factual allegations in ¶¶ 1.a through 1.j, 2.a and part of 2.b of the SOR. He denied the remaining factual allegation in ¶ 2.b of the SOR and that his financial problems were a security concern and that he was dishonest or untrustworthy.

Applicant, who is 50 years old, works for a Department of defense contractor as an engineering equipment mechanic. He began his employment with his current employer on October 1, 2005. He submitted his security clearance application one year later.¹

Applicant is married and has two children, ages 20 and 18. His oldest child is a college student, who works part-time. Applicant holds a bachelor degree in metallurgy.²

In 1987, Applicant began working in the aerospace industry. When his company merged with another, the new company decided to downsize and laid him off from his job. For the next several years, he worked sporadically, moving twice in the summer of 1995 and twice in the first six months of 1996. He started working for a gold mining company in 1997 in a rural area of the State. The company ceased operations and laid off its workforce, including Applicant, in November 2004. He returned to work in April 2005 and has worked steadily since.³

In 1998, Applicant's wife sustained an on-the-job injury. She returned to work part-time in 2002 and worked until 2004. In August 2005, she obtained a full-time job, paying \$10 an hour. Six months later, she sustained an on-the-job injury. Her employer terminated her in February 2006. She currently works full-time, earning a base salary of \$12.78 an hour plus shift differential pay.⁴

¹GE 1 (Applicant's security clearance application, dated October 19, 2006) at 2, 7; Tr. 29, 76.

²Tr. 29-30.

³*Id.* at 21-23, 26-27; GE 1, *supra* note 1, at 4-10.

⁴Tr. 72, 79-82.

Applicant earns approximately \$40,000 a year. He earned \$68,000 a year in 2004. His net monthly income is approximately \$2,200 and his wife's net monthly income is approximately \$1,800 a month for a total household net monthly income of \$4,000. Their estimated monthly living expenses, including rent, food, utilities, car expenses, and other household expenses, is \$4,385. Applicant does not have enough income each month to pay his household expenses based on his estimate. At the hearing, his wife indicated they are paying their monthly expenses, but do not have any money to pay creditors.⁵

Applicant and his family lived in a very rural area of the state when he worked for the gold mining company. They purchased a home near his place of employment. He received no severance pay when his employer laid him off in 2004, and his wife was not working at the time. He lacked funds to pay his monthly mortgage and the second mortgage on the house. He tried to sell the house, but, because of the rural location, he was unable to sell the house. The mortgagor foreclosed on his house. As a result of the foreclosure, Applicant still owes approximately \$17,000 on his primary mortgage, a fact he realized during the hearing. He also owes more than \$22,000 on his second mortgage. He has not paid these debts.⁶

In 2002, Applicant's son severely injured his arm. He and his wife took their son to the nearest walk-in emergency medical center. The emergency medical center referred them to a hospital, which Applicant later determined was not a participant in their health care plan. The medical insurer and the hospital argued over payment of the bill. His employer's human resource office told him not to pay any bills until the matter was resolved. At the time his employer terminated him, the payment issue had not been resolved. He acknowledges that he owes the medical bills listed in SOR ¶¶ 1.a through 1.c. He made payments on some of these medical bills for a period of time, but has not made any payments since September 2007 because of his wife's car accident and injury in August 2007. Some of the medical bills remain outstanding.⁷

Applicant's wife believed the debt listed in SOR ¶ 1.d had been paid, but Applicant did not provide proof of payment. He acknowledges the debt listed in SOR ¶ 1.j. He has a current and timely paid account with this creditor. He has asked the creditor to place the outstanding amount on his current bill and he would pay a small part of the bill each month. The creditor declined to do so. The bill remains unpaid.⁸

⁵GE 2 (Financial interrogatories and Applicant's response with attachments) at 9-13; Tr. 24, 100-101.

⁶GE 2, *supra* note 1, at 17, 19; GE 3 (Credit report, dated November 21, 2006) at 4, 6; GE 4 (Credit report, dated September 21, 2007) at 1-2; GE 5 (Credit report, dated April 23, 2008) at 2; Tr. 41-49, 91, 110, 114-121.

⁷GE 2, *supra* note 1, at 14-16, 18; GE 3, *supra* note 6, at 4, 6, 8; GE 4, *supra* note 6, at 1; GE 5, *supra* note 6, at 1-2; Tr. 31-36, 39-40, 69, 83.

⁸Tr. 40-41, 54.

Applicant admitted owing the debts listed in SOR ¶¶ 1.g through 1.i in his response to the SOR. He is no longer sure he owes these debts as the counseling service he recently contacted cannot identify the debts. Applicant has spoken with two separate credit counseling services about paying his debt. The recent counseling services recommended that he consider filing bankruptcy. He has spoken to an attorney about filing bankruptcy, but has not retained the services of an attorney. At the hearing, Applicant advised that he is considering filing for bankruptcy. He is overwhelmed by his debts.⁹

Applicant has a 401(k) account valued at \$28,000. He has not used this money to pay his debts because of the penalties he would incur if he accessed the money at this time. He has a piece of land in a very rural area valued at \$28,000, which he might sell, although he does not think it would sell because of its location. His motor vehicles are very old, of limited value, and without debt.¹⁰

When he completed his security clearance application, Applicant answered “no” to the following questions:

Section 27: Your Financial Record b. In the last 7 years, have you had your wages garnished or had any property repossessed for any reason?

Section 28: Your Financial Delinquencies a. In the last 7 years, have you been over 180 days delinquent on any debt(s)? [and] b. Are you currently over 90 days delinquent on any debt(s)?

Applicant admits that he has old, unpaid debts and his house was repossessed, but denies any wage garnishment. When he read wage garnishment, he answered no without reading the question further. He did not pay careful attention to the questions and his answers. He denies deliberately falsifying his answers.

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 ¶

⁹GE 2, *supra* note 1, attachments; AE B (Documents from credit counseling service); Tr. 61-63, 84-88, 140.

¹⁰Tr. 42, 145-147.

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 significant delinquent debt subsequent to his job termination in 2004. He has been unable to repay his past due obligations. 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 have been ongoing for several years and are not resolved. However, his unpaid medical bills are a result of misdirection by a medical service and a dispute with the medical insurance carrier. It is unlikely that he will encounter a similar problem concerning his medical bills. This potentially mitigating condition has some applicability.

Under AG ¶ 20(b), mitigation can occur when “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 because of a dispute with his medical insurer. His major financial difficulties occurred following the loss of his job in 2004 and his inability to sell his house because of its rural location. In addition, his wife was not employed at the time of his job termination. Because his debts remain unpaid, I find this potentially mitigating condition is partially applicable.

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). Applicant twice contacted credit counselors in an effort to resolve his debts. For a period of time in 2007, he made payment to one credit collector. This mitigating condition is only partially applicable because there are not clear indications that his finances are under control.

Similarly, AG ¶ 20(d) applies where the evidence shows “the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.” In this case, Applicant has made some effort to pay his outstanding medical bills. He, however, has not made any effort to resolve his major debts, one of which he did not realize he owed until the hearing. This mitigating condition is not applicable. The remaining mitigating conditions in this guideline do not apply.

Guideline E, Personal Conduct

AG ¶ 15 expresses the security concern pertaining to personal conduct::

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

AG ¶ 16(a) describes conditions that could raise a security concern and may be disqualifying:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities;

The government established that Applicant omitted material facts from his SF-86 when he answered “no” to Question b in Section 27 and Questions a and b in Section 28 about his financial delinquencies. This information is material to the evaluation of Applicant’s trustworthiness to hold a security clearance and to his honesty. For this guideline to apply, Applicant’s omission must be deliberate. He denies, however, that he deliberately falsified his answer to these questions. When a falsification allegation is controverted, the government has the burden of proving it. Proof of an omission, standing alone, does not establish or prove an applicant’s intent or state of mind when the omission occurred. An administrative judge must consider the record evidence as a whole to determine whether there is direct or circumstantial evidence concerning an applicant’s intent or state of mind at the time the omission occurred.¹¹ For DC ¶ 16 (a) to apply, the government must establish that Applicant’s omission, concealment or falsification in his answer was deliberate.

At the time he completed his SF-86, Applicant knew he had financial problems from the past. He credibly testified that he read garnishment and answered “no” without reading the question in its entirety. Although Section 28 clearly asks for information about past unpaid debts and he knew he had old, unpaid debts, Applicant’s presentation at the hearing showed me that he had little understanding about the extent of his debts current or past. His wife has a much better understanding of the family’s finances. He did not deliberately falsify his answer to this question. The government has not established its case under guideline E.

¹¹See ISCR Case No. 03-09483 at 4 (App. Bd. Nov. 17, 2004)(explaining holding in ISCR Case No. 02-23133 at 5 (App. Bd. Jun. 9, 2004)).

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 surrounding 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's initial financial problems began when he lost his job in the aerospace industry in 1994. With the income earned at the gold mining company, he paid his bills. The loss of this job caused serious financial problems for him, particularly since his wife was not working. He could not pay his mortgage nor could he sell his house. As a result, the mortgagor foreclosed on this house. Although he has worked steadily for the last three years, his income is significantly lower than the income he earned working for the mining company. The household income barely pays his family's monthly expenses. He has no additional funds to repay his old debts. He is considering filing for bankruptcy. Applicant needs more time to improve his financial situation. Although I do not believe he can be coerced, pressured or exploited because of his debt problems, he has not gained control over his finances. He is overwhelmed by his financial problems, and thus, the potential exists for his debt problems to reoccur or increase. He has not mitigated the government's security concerns. (See AG ¶ 2(a)(1).)

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 has not mitigated the security concerns arising from his financial considerations and personal conduct.

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
Subparagraph 1.g:	Against Applicant
Subparagraph 1.h:	Against Applicant
Subparagraph 1.i:	Against Applicant
Subparagraph 1.j:	Against Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraph 2.a:	For Applicant
Subparagraph 2.b:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

MARY E. HENRY
Administrative Judge