



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



In the matter of:)
)
) ISCR Case No. 07-12663
)
)
Applicant for Security Clearance)

Appearances

For Government: Tom Coale, Esq., Department Counsel
For Applicant: *Pro Se*

April 30, 2009

Decision

LOUGHRAN, Edward W., Administrative Judge:

Applicant has not mitigated the Financial Considerations security concerns. Eligibility for access to classified information is denied.

On October 3, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing 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 on November 3, 2008, and requested a hearing before an administrative judge. The case was assigned to another administrative judge on March 4, 2009, and reassigned to me on March 11, 2009. DOHA issued a notice of hearing on March 17, 2009, and the hearing was convened as scheduled on April 8, 2009. The Government offered Exhibits (GE) 1 through 7, which were received without

objection. Applicant testified on his own behalf, and submitted Exhibits (AE) A and B, which were received without objection. The record was held open until April 17, 2009, if Applicant wanted to submit additional information. He did not submit any additional evidence. DOHA received the transcript of the hearing (Tr.) on April 15, 2009.

Procedural 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

Applicant is a 37-year-old part-time employee of a defense contractor. He is applying for his first security clearance in order to work at his part-time job. His full-time employment does not require a security clearance. He is a high school graduate with a certification attained for his full-time job. He is married with three children, ages 13, 9, and 7.¹

Applicant has struggled financially for a number of years. He worked from 1993 to 2005, as an employee of a small city that is located close to a much larger metropolitan area. He left the job in March 2005. He was unemployed for about three months. He testified that the job and work environment had become unbearable. He was miserable and it was affecting his relationship with his family. He wrote in response to DOHA interrogatories that he quit his job and part-time jobs to spend time with his family because they had grown apart and needed to reconnect. Debts became delinquent during his unemployment and for some time thereafter. When he started working again about three months later, it was at a lower salary than at his previous job.²

The SOR alleges 16 delinquent debts. In his Answer to the SOR, Applicant admitted to all the debts, but he stated that the debts alleged in SOR ¶¶ 1.l and 1.m had been paid.

SOR ¶¶ 1.a to 1.d, 1.f, 1.j, and 1.p allege medical debts totaling about \$1,208. Applicant admitted to owing all the debts in his response to the SOR. None of the debts have been paid, but he stated that SOR ¶¶ 1.c, 1.d, and 1.f have been deleted from his credit report because they were his wife's medical bills. The debts are listed on the most recent credit report in evidence. Applicant did not submit any documentation supporting his statement that the debts have been deleted from his credit report.³

¹ Tr. at 25-26, 49-51; GE 1.

² Tr. at 34-38, 48-49.

³ Tr. at 25, 27, 38, 40; Applicant's response to SOR; GE 2-7.

Applicant admitted to owing the delinquent debt of \$11,963, as alleged in SOR ¶ 1.h. This debt resulted from the deficiency owed on a car loan after the car was repossessed in 2005. He has not made any payments on this debt since the car was repossessed.⁴

Applicant lost his home to foreclosure in 2005. He owed about \$101,500 on the mortgage when the property was foreclosed. This is alleged in SOR ¶ 1.k. Applicant stated that he thought he had a fixed rate mortgage and did not understand, and the mortgage company would not tell him, why the monthly payments kept going up. He indicated that he could not afford to pay the mortgage when it went from \$800 to almost \$1,500 per month. It is unclear what, if any, deficiency is still owed on the mortgage. Applicant stated that since the foreclosure, he has not heard from the mortgage company seeking any additional money.⁵

SOR ¶ 1.l alleges a delinquent debt of \$211. Applicant settled this debt in full for \$105 on December 4, 2008. He testified that he paid the delinquent debt of \$95 to a jeweler, as alleged in SOR ¶ 1.m, in January 2009. The credit reports in evidence reflect that he was making payments on this account and that \$95 was what remained on an installment contract. I accept Applicant's testimony and find that this debt has been paid.⁶

Applicant does not dispute that he owes any of the remaining five debts, which total \$5,906. He has not made payments on any of the five debts, but stated that he intends to pay all his delinquent debts. He hopes to be able to pay the debts with the income earned from his second job. He has not received financial counseling, but he indicated that his wife plans on enrolling in a financial course.⁷

Applicant's performance evaluation for his full-time job reflects that he is a valuable employee whose performance is commendable.⁸

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 to be used in evaluating an applicant's eligibility for access to classified information.

⁴ Tr. at 30-34; Applicant's response to SOR; GE 2-7.

⁵ Tr. at 28-30, 43-44; Applicant's response to SOR; GE 1-7.

⁶ Tr. at 39, 41; Applicant's response to SOR; GE 1-7; AE A.

⁷ Tr. at 39, 43-47; Applicant's response to SOR; GE 2-7.

⁸ AE B.

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 the 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 adverse 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 or unwilling to pay his obligations for a period of time. The evidence is sufficient to raise the above disqualifying conditions.

Five Financial Considerations Mitigating Conditions under AG ¶ 20 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 still owes most of the debts alleged in the SOR. His financial issues are ongoing. AG ¶ 20(a) is not applicable. His financial problems are related to his unemployment for three months in 2005. However, he voluntarily left that position. His unemployment was not a condition that was outside his control. AG ¶ 20(b) is not applicable. The minimal payments he made on his debts are insufficient to qualify as a

good-faith effort to repay all his overdue creditors. AG ¶ 20(d) is not applicable. He has not received financial counseling; and I do not find clear indications that his financial problems are being resolved or are under control. AG ¶ 20(c) is not applicable.

Applicant stated that three of the medical debts were incurred by his wife and they were deleted from his credit report. He did not submit documented proof to substantiate the basis of the dispute. His testimony is some evidence of actions to resolve the issue. AG ¶ 20(e) is applicable to the debts alleged in SOR ¶¶ 1.c, 1.d, and 1.f.

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. I have incorporated my comments under Guideline F in my whole person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment. Applicant's performance evaluation for his full-time job shows that he is a valuable employee. He is looking for a security clearance for his part-time job, so that he can pay his debts and better provide for his family. His financial problems can be traced to his unemployment in 2005. However, he made a conscious decision to leave that job. The job may have become very unpleasant, and it may have helped him become closer to his family to have the time off work, but he still has been unable to climb out of the financial hole that he put himself in. His ongoing financial issues constitute a security 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 Financial Considerations security concerns.

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-1.b:	Against Applicant
Subparagraphs 1.c-1.d:	For Applicant
Subparagraph 1.e:	Against Applicant
Subparagraph 1.f:	For Applicant
Subparagraphs 1.g-1.k:	Against Applicant
Subparagraphs 1.l-1.m:	For Applicant
Subparagraphs 1.n-1.p:	Against 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.

Edward W. Loughran
Administrative Judge