



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



In the matter of:)
)
) ISCR Case No. 07-12693
)
)
Applicant for Security Clearance)

Appearances

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

October 31, 2008

Decision

DAM, Shari, Administrative Judge:

Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

On January 8, 2007, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP). On February 25, 2008, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR), detailing security concerns under Guidelines 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.

On May 27, 2008, Applicant answered the SOR in writing and elected to have the case decided on the written record in lieu of a hearing. On June 3, 2008, Department

Counsel prepared a File of Relevant Material (FORM) containing eight Items, and mailed Applicant a complete copy on June 17, 2008. Applicant received the FORM on October 2, 2008, and had 30 days from its receipt to file objections and submit additional information. On October 16, 2008, Applicant submitted a letter that I marked as Applicant Exhibit (AE) A. On October 21, 2008, DOHA assigned the case to me. After reviewing AE A, I admitted it into the record over Department Counsel's objection.

Procedural Matters

In the FORM, Department Counsel requested withdrawal of SOR ¶ 1.b because the \$81 debt was paid prior to the issuance of the SOR. Said request is granted.

Findings of Fact

In his Answer to the SOR, Applicant admitted the factual allegations contained in SOR ¶¶ 1.c, and 1.d, and offered explanations. He denied the allegation contained in SOR ¶ 1.a.

Applicant is 46 years old. He divorced in May 2005 and has two children. Since 1983, he has worked as a lab technician for a federal contractor. In that same year he was investigated for a Secret security clearance. (Item 5). When he completed the e-QIP in January 2007, he disclosed financial delinquencies, a foreclosure and a garnishment for his wife's hospital bills. (*Id.* at 18-19).

Prior to the issuance of the SOR, Applicant completed a set of Financial Interrogatories related to his finances. He indicated that he spoke to someone about the pending foreclosure and was told that it could take up to ten years for any final action to be completed. He noted he could withdraw monies from his 401(k) to satisfy the debt, if necessary. His wife was responsible for the \$1,054 debt owed to a credit card company. No information was requested or given about the \$1,980 debt owed to the same company. (Item 6 at 3-4).

Based on credit bureau reports (CBR) dated February 8, 2007, and October 31, 2007, the SOR alleges three delinquent debts, totaling \$25,977. All three were joint accounts, held by Applicant and his wife, which started to become delinquent in mid-2002. These debts remain unpaid or unresolved.

1. SOR ¶ 1.a lists a \$23,015 mortgage account balance that was past due as of July 2002. Subsequently, a foreclosure proceeding began in May 2003 per the e-QIP.
2. SOR ¶ 1.c lists a \$1,054 balance owed to a credit card company, as of December 2002.
3. SOR ¶ 1.d lists a \$1,908 balance owed to the above credit card company, as of December 2002.

In his Answer to the SOR, Applicant stated that his wife was responsible for paying the household bills during the marriage. After separating, he became aware of the financial problems. Upon their divorce in 2005, he learned that she had taken \$10,000 of his money. He also thought she was responsible for paying the credit card company according to the divorce agreement. Again, he indicated that he could pay the mortgage balance with funds in his 401(k). (Item 4 at 4).

In responding to the FORM, Applicant noted that after he and his wife separated he could no longer afford the mortgage on his income. He tried to negotiate a resolution with the mortgagor, but was unable. He also tried to contact the credit card company but could not locate them. He considered filing bankruptcy and decided against it. Other than those three debts, he is otherwise in good financial shape. (AE A).

According to his budget, Applicant has a net monthly income of \$2,200 and expenses of \$885, leaving \$1,135. His assets included \$115,000 in a 401(k). (Item 4 at 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, 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 commonsense 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. According to 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 and has the ultimate burden of persuasion to obtain 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 that an 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 adverse to an applicant 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* Executive Order 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 of them are potentially disqualifying:

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

Based on two CBRs and his admissions, Applicant has been unable or unwilling to satisfy debts that began accruing in July 2002. The evidence is sufficient to raise these two disqualifying conditions.

After the Government raised potential disqualifications, the burden shifted to Applicant to rebut and prove mitigation of the resulting security concerns. The guideline includes six examples of conditions that could mitigate security concerns arising from financial difficulties under AG ¶ 20:

(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; and

(f) the affluence resulted from a legal source of income.

Applicant's financial delinquencies have been ongoing since 2002. Hence, AG ¶ 2 (a) does not apply. Some of Applicant's financial difficulties are attributable to his divorce and a reduction of his income, which was a circumstance beyond his control. However, there is no evidence in the record indicating that he responsibly managed his finances during those difficult periods, which is necessary for full application of this mitigating condition. Thus, AG ¶ 20(b) has limited application. Applicant did not present any evidence that he received credit counseling, or that the three delinquent debts are resolved or under control, as required under AG ¶ 20(c). Applicant has not initiated repayment of the three debts; hence, AG ¶ 20(d) does not apply. There is no evidence indicating that he disputed any of the debts, which is required under AG ¶ 20(e). The record does not support the application of AG ¶ 20(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). They include the following:

- (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.

According to 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 46 years old and has worked for a federal contractor for more than thirty. When he completed his e-QIP in January 2007, he disclosed a foreclosure that began in May 2003. Although he learned of the Government's concerns about his finances in November 2007, he did not take any action to resolve the concerns. In February 2008, he again received notice of the concerns and did not take steps or submit information that the matters were resolved. Without such proof, there is insufficient information in the record to mitigate the financial concerns. His failure to address the issues over the past couple years, raises questions about his judgment.

Overall, the record evidence leaves me with doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate 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
Subparagraph 1.a:	Against Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	Against Applicant

Conclusion

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

SHARI DAM
Administrative Judge