



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



In the matter of:)
)
) ISCR Case No. 07-13030
)
)
Applicant for Security Clearance)

Appearances

For Government: Alison O’Connell, Esquire, Department Counsel
For Applicant: *Pro Se*

April 14, 2009

Decision

RIVERA, Juan J., Administrative Judge:

Applicant’s available information is not sufficient to mitigate the security concerns arising from financial considerations. Eligibility for access to classified information is denied.

Statement of the Case

On October 20, 2006, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP).¹ On November 7, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to him, pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive),

¹ FORM Item 5.

dated January 2, 1992, as amended, modified and revised.² The SOR alleges security concerns under Guideline F (Financial Considerations). The SOR detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for him, and recommended referral to an administrative judge to determine whether a clearance should be denied or revoked.

On November 19, 2008, Applicant responded to the SOR allegations, and elected to have his case decided on the written record in lieu of a hearing (Item 4). A complete copy of the file of relevant material (FORM), dated January 8, 2009, was provided to him by letter dated January 13, 2009. Applicant signed the receipt for the DOHA transmittal letter on January 19, 2009. He was afforded a period of 30 days to file objections and submit material in refutation, extenuation, or mitigation. He failed to submit any materials, comments, or objections in response to the FORM. The case was assigned to me on March 24, 2009.

Findings of Fact

Applicant admitted the factual allegations in SOR ¶¶ 1.b, 1.d, 1.e, 1.g-1.m, and 1.o, with explanations. He denied SOR ¶¶ 1.a, 1.c, 1.f, and 1.n. His admissions are incorporated herein as findings of fact. After a thorough review of the evidence of record, I make the following additional findings of fact.

Applicant is a 46-year-old senior engineer working for a defense contractor.³ He served on active duty in the U.S. Army from March 1986 to July 1992. He was a member of a Special Forces unit and participated in combat operations in Panama. He achieved the rank of staff sergeant, and his service was characterized as honorable. After his discharge, he joined his state National Guard unit where he served until August 1995. While on active duty, Applicant had access to classified information at the secret level. There is no evidence that he ever compromised or caused others to compromise classified information.

From August 1992 to December 1998, he attended college and received a master's degree in mechanical engineering (Item 5). He married his wife in May 1998, and they have a daughter, apparently of this marriage. Applicant failed to disclose any children in his security clearance application. However, in his response to DOHA interrogatories, he stated that one of his delinquent accounts could have been opened by his daughter. He disclosed no felony convictions and no use of illegal drugs in the last seven years.

² On Aug. 30, 2006, the Under Secretary of Defense (Intelligence) published a memorandum directing application of revised Adjudicative Guideline to all adjudications and other determinations made under the Directive and Department of Defense (DoD) Regulation 5200.2-R, *Personnel Security Program* (Regulation), dated Jan. 1987, as amended, in which the SOR was issued on or after Sep. 1, 2006.

³ Item 5 (2006 e-QIP) is the source for the facts in this paragraph, unless stated otherwise.

His work history is summarized as follows (Item 5): he was employed from December 1998 to March 2001; unemployed from March 2001 to May 2001; he was employed from May 2001 to November 2002; unemployed from November 2002 to January 2003; and from January 2003 to the present, he has been consistently employed. In August 2006, he started working for his current employer, a government contractor, as a senior engineer (Item 5). Applicant provided no explanations about his 2001 three month period of unemployment, or his 2003 two month period of unemployment. It is not apparent why he was unemployed or whether these periods of unemployment (the last one over five years ago) impacted his current financial situation.

In his October 2006, security clearance application, Applicant disclosed having an April 2006 unpaid judgment that had been charged off, and that he was over 90 days delinquent on a secured loan. His background investigation addressed his financial problems, and included the review of three sets of answers to DOHA interrogatories (Items 6, 7, and 8), and three credit bureau reports (CBR) from 2008 (Item 9), 2007 (Item 10), and 2006 (Item 11).

The SOR alleges 15 delinquent/charged off accounts totaling approximately \$35,945. He admitted 11 SOR allegations totaling approximately \$32,749. Applicant denied SOR ¶ 1.a. He admitted, however, filing for Chapter 7 bankruptcy protection in 1997, and that he was discharged in 1998 of approximately \$20,000 of delinquent debt (Item 6). While in college he opened numerous credit card accounts and used them to pay for his college education. He did not have the income to pay for his debts and became financially overextended. He filed for bankruptcy to get a fresh start (Item 6).

He denied SOR ¶ 1.c, because he believed it was the same debt alleged under SOR ¶ 1.b (Item 4). I find SOR ¶ 1.c alleged the same debt alleged in SOR ¶ 1.b. He denied SOR ¶ 1.f, because he believed the creditor (a power company) secured a garnishment of wages against him in 2007. His evidence failed to establish that he paid the debt through this garnishment of wages or otherwise. He denied SOR ¶ 1.n (a traffic ticket from another state), because he was told he could have the ticket dismissed if he showed he was from out of state. He presented no evidence showing that either the ticket or the debt were dismissed or paid. I find this debt unresolved.

In his answer to the SOR, and to the three DOHA interrogatories, Applicant explained his financial problems were the result of his two periods of unemployment and his wife and daughter opening numerous credit card accounts without his knowledge. Some of the alleged debts he failed to pay because either he did not receive the bill after he moved, or he forgot about them.

Applicant claimed that prior to the start of his background investigation he and his wife had contacted some of their creditors and established payment plans. However, they were not able to follow through with their payment plans. In January 2007, he again promised to contact his creditors to settle or resolve his delinquent debts (Item 6). In December 2007, he explained he was unable to contact his creditors because he was in a "dire" financial situation as a result of a recent Internal Revenue System (IRS) audit

(Item 7). His plans are to pay the IRS debt first before addressing any other delinquent debts. As of January 2007, Applicant's gross monthly salary was \$6,916, his monthly expenses totaled \$4,880, and after other deductions he had a monthly net remainder of \$380 (Item 6).

According to Applicant's June 2008 IRS monthly statement (Item 8), he owes a total of \$22,695 to the IRS (\$4,667 for tax year 2004, \$8,957 for tax year 2005, and \$9,071 for tax year 2006). He is paying the IRS \$100 a month pursuant to a payment plan he established in 2008 (SOR ¶ 1.o).

In the adjudication of his security clearance, Applicant requested the administrative judge consider not only his financial problems, but also his past behavior and circumstances. He indicated his wife contributed to his current financial problems. Moreover, he asked that his patriotism, candor, and selflessness be considered in the security clearance decision making process (Item 4). He highlighted his years of selfless service to the nation while in the U.S. Army, which included a one-year tour in a combat zone.

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 controlling 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.

In the decision-making process, the Government has the initial burden of establishing controverted facts alleged in the SOR by “substantial evidence,”⁴ demonstrating, in accordance with the Directive, that it is not clearly consistent with the national interest to grant or continue an applicant’s access to classified information. Once the Government has produced substantial evidence of a disqualifying condition, the burden shifts to Applicant to produce evidence “to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel, and [applicant] has the ultimate burden of persuasion as to obtaining a favorable clearance decision.” Directive ¶ E3.1.15. The burden of disproving a mitigating condition never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).⁵

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* Executive Order 12968 (Aug. 2, 1995), Section 3.

Analysis

Guideline F, Financial Considerations

Under Guideline F, the security concern is that an Applicant’s 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. AG ¶ 18.

⁴ See Directive ¶ E3.1.14. “Substantial evidence [is] such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the contrary evidence in the record.” ISCR Case No. 04-11463 at 2 (App. Bd. Aug. 4, 2006) (citing Directive ¶ E3.1.32.1). “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994).

⁵ “The administrative judge [considers] the record evidence as a whole, both favorable and unfavorable, evaluate[s] Applicant’s past and current circumstances in light of pertinent provisions of the Directive, and decide[s] whether applicant ha[s] met his burden of persuasion under Directive ¶ E3.1.15.” ISCR Case No. 04-10340 at 2 (App. Bd. July 6, 2006).

In 1997, Applicant filed for Chapter 7 bankruptcy protection and was discharged of approximately \$20,000 in bad debts. Thereafter, he accumulated 12 delinquent/charged off accounts totaling approximately \$11,697 (not counting SOR ¶¶ 1.c and 1.o), which have been outstanding for a number of years. Outside of his payment plan with the IRS, he presented no evidence (other than his uncorroborated statement) of efforts to pay or resolve his financial obligations. He also claimed that he and his wife were in the process of contacting creditors to resolve his delinquent obligations. However, he presented no corroborating evidence to support his claim.

Applicant stated he did not have the financial means to pay his family's day-to-day living expenses and his IRS debt and at the same time pay his delinquent debts. AG ¶ 19(a): inability or unwillingness to satisfy debts and, AG ¶ 19(c): a history of not meeting financial obligations, apply in this case.

AG ¶ 20 lists six conditions that could mitigate the financial considerations security concerns:

(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;

(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 sparse favorable evidence fails to fully raise the applicability of any mitigating condition. His financial problems are ongoing and his evidence fails to show they occurred under such circumstances that they are unlikely to recur and do not cast doubt on Applicant's current reliability, trustworthiness, or good judgment. AG ¶ 20(a) does not apply.

Applicant presented some evidence that established circumstances beyond his control contributing to his inability to pay his debts, i.e., he was unemployed for three months in 2001 and two months in 2003. AG ¶ 20(b) applies, but only partially. Applicant's evidence is not sufficient to show: 1) why was he unemployed; 2) how these two periods of unemployment (the last one in 2003) affected his current financial situation; 3) whether he acted responsibly and with judgment under the circumstances.

Other than his statements in his answers to the SOR and DOHA interrogatories, he presented no evidence of effort to contact creditors, or to resolve his debts by entering into settlement agreements, or payment plans with any creditors, except the IRS. Other than the above mentioned periods of unemployment, he has been consistently employed since July 2003. He presented no corroborated evidence of efforts to resolve any of his delinquent debts from 2003 to the day he received the FORM.

AG ¶ 20(c) does not apply because, there are no clear indications that his financial problem is being resolved or is under control. His inability to pay his debts shows he is financially overextended. He also failed to present any evidence that he received financial counseling, and that his financial problems are not likely to recur. The remaining mitigating conditions are not reasonably raised by the facts in this case.

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.

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. AG ¶ 2(c).

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant seems to be a mature, well educated man and a good father and husband. He has been successful working for a defense contractor since August 2006. Applicant receives substantial credit for his six

years of service on active duty in a U.S. Army Special Forces unit and for his participation in combat operations. His honorable service shows loyalty and patriotism to the United States. After his release from active duty, he joined his state National Guard unit for four years. There is no evidence of any security violation, or that he ever compromised classified information. Applicant appears to be a good, reliable and competent professional. These factors show some responsibility and mitigation.

Notwithstanding Applicant's military service, security concerns remain about Applicant's current financial responsibility, reliability, and judgment. The sparse record evidence fails to convince me of 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 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:

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|------------------------------------|-------------------|
| Paragraph 1, Guideline F: | AGAINST APPLICANT |
| Subparagraphs 1.a, 1.b, 1.d - 1.n: | Against Applicant |
| Subparagraphs 1.c and 1.o: | For Applicant |

Conclusion

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

JUAN J. RIVERA
Administrative Judge