



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



In the matter of:)	
)	
-----)	ISCR Case No. 07-14093
SSN: -----)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Richard A. Stevens, Esquire, Department Counsel
For Applicant: Pro se

March 27, 2008

Decision

ABLARD, Charles D., Administrative Judge:

Applicant failed to mitigate security concerns regarding Guideline F (Financial).
Clearance is denied.

Statement of the Case

Applicant submitted his Security Clearance Application (SF 86), on May 12, 2007. On November 29, 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guidelines F (Financial) 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 answered the SOR in writing on December 12, 2007, and requested a hearing before an Administrative Judge. Department Counsel was prepared to proceed on December 31, 2007, and I received the case assignment on January 2, 2008. DOHA

issued a notice of hearing on January 14, 2008, for a hearing on January 31, 2008, and I convened the hearing as scheduled.

At the hearing, the government offered five exhibits (Exh.) which were admitted in evidence without objection. Applicant submitted twelve exhibits which were admitted without objection. He and one witness testified on his behalf. DOHA received the transcript of the hearing (Tr.) on February 13, 2008. I granted Applicant's request to keep the record open until March 3, 2008, to submit additional evidence. No additional information was submitted. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

Procedural and Evidentiary Rulings

Notice

The hearing notice was dated 15 days before the hearing date. 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 the 15 days notice and indicated he was ready to proceed (Tr. 10).

Findings of Fact

In his Answer to the SOR, Applicant denied all 15 allegations in the SOR relating to approximately \$30,000 in delinquent debts. He contends that all are the responsibility of his former wife.

Applicant is a 50-year-old employee of a government engineering contractor working as senior logistics analyst since April 2006. He works with flight simulators for high performance aircraft. He has held a security clearance for many years but it was suspended pending the outcome of this proceeding. His employer also does some unclassified work. He served on active duty with the Navy for 21 years and served aboard ship for 11 of those years as a fire control technician. He retired in 1999 as an E-6. He receives retired pay from the Navy and a payment from the VA for a military disability. He was married for the third time in 1993 and separated in 2004. The delinquent debts arose primarily between 1998 and 2002 when his wife was managing the household accounts while he was traveling 70-80% of the time (Tr. 41). Two debts are from judgments filed in 2003 for credit card debts of over \$4,339 (SOR ¶ 1. a.) and \$3,531 (SOR ¶ 1. b.) (Exh. 5 and Tr. 45-46). Others are from credit cards used for household and auto expenses, purchase of a boat, and a computer (Tr. 48-50). The amounts range from \$5,400 on a one credit card to \$146 for a telephone bill. None have been paid.

When Applicant separated in 2004, he gave his wife some real property with the understanding that she was to pay the debts that had accumulated. A final judgment of dissolution of the marriage was obtained on July 16, 2007 (Exh. 2). A Marital Separation Agreement was referenced in the judgment but was not attached and did not provide for

a division of financial responsibilities (Tr. 61). The court retained jurisdiction to determine other matters such as allocation of financial responsibilities.

Applicant attempted to use arbitration in 2006 to resolve the financial issues but it has not been successful. Applicant had difficulty with the arbitration process because of delays and the expenses of his lawyer to find his wife in an effort to resolve the dispute (Tr. 23-26).

Applicant is well regarded by his present employer and his two former employers since 1999 for his skill, work ethic, and dedication (Exhs. G, J, K, and L, and Tr. 52-59). He was given numerous awards and commendations for outstanding service while on active duty with the Navy (Exhs. A–F). He also has several excellent character references from people who know him well (Exhs. H, and I). He has one son from his second marriage who is 20 years old who lives with his mother. He is close to his father and visits him in the summer.

Applicant is regarded as a good citizen in his community. He volunteers for civic activities works with a boy scout troop to help scouts achieve eagle rank which he holds (Tr. 57). He is also a skilled entertainer and performs whenever requested. He currently lives with a girlfriend and her ten year old son to whom he has an emotional bond.

Applicant's financial situation is now stable and he is current on his expenses. However, the extensive delinquent debts at issue are still unpaid and he is responsible for them. A division of responsibility decided by a court or some agreement reached with his wife that she accepts responsibility for them would be helpful but does not end his responsibility to repay the creditors. The creditors also would have to agree to release Applicant from responsibility for the debts, and this outcome does not automatically result from his wife's acceptance of responsibility for the debts.

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 ¶ 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 *a/so* 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), Aa history of not meeting financial obligations@ may raise security concerns. Applicant and his wife accumulated the delinquent debts cited in the SOR during their ten year marriage and Applicant has been unable or unwilling to pay the

obligations for several years. Thus, the evidence clearly raises these potentially disqualifying conditions.

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. Most of Applicant's financial problems arose in the past ten years. He now has a well paying job. It seems likely that he could resolve the debts over time even if he is unable to effectively resolve the issue of responsibility with his ex-wife. However, all of them, some with significant amounts and others with small amounts, remain unsatisfied. While he has excellent references and the support of his employer, the delinquent debts raise security concerns under the Guideline F.

Under AG & 20(b), the security concern may be mitigating where the conditions that resulted in the financial problem were largely beyond the person's control including divorce or separation, and the individual acted responsibly under the circumstances. Thus, this condition is partially applicable because of the contribution the separation and divorce had to his financial problems.

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 a potentially mitigating under AG & 20(c). Similarly, AG & 20(d) applies where the evidence shows the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts. While it not necessary for mitigation to apply that all of the delinquent debts be resolved, it is necessary that a significant portion of this many debts be in a payment plan, settled, or paid. Even this test has not been met. Not a single debt listed in the SOR qualifies and he accepts no responsibility for any of them. Thus, I conclude that the mitigating conditions do not apply.

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.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant has a superior record in the Navy and is highly regarded in his present employment. He acknowledges that the debts alleged in the SOR do exist insofar as he is aware, but believes his wife has responsibility for them. No proof was offered to establish this contention. The efforts at arbitration failed and he has minimal contact with his former wife. He acknowledges that it may be difficult to get her to the table in any proceeding to resolve the dispute. Even if she accepts responsibility for the debts, the creditor's concurrence with this arrangement would need to be obtained to relieve him of responsibility for the debts. Overall, the record evidence leaves me with questions or doubts as to Applicant's eligibility and suitability for a security clearance at this time. I conclude Applicant has not mitigated the security concerns arising from these financial considerations and that it is premature at this time to grant a security clearance.

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
Subparagraph 1.k.: Against Applicant
Subparagraph 1.l.: Against Applicant
Subparagraph 1.m.: Against Applicant
Subparagraph 1.n.: Against Applicant
Subparagraph 1.o.: 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. Access to classified information is denied.

Charles D. Ablard
Administrative Judge