



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



In the matter of:)
)
-----) ISCR Case No. 07-14535
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Jeff A. Nagel, Esquire, Department Counsel

For Applicant: *Pro se*

January 9, 2009

DECISION

ROSS, Wilford H., Administrative Judge:

Applicant submitted his Questionnaire for Sensitive Positions (SF 86), on approximately April 4, 2007 (Government Exhibit 1). On April 21, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guidelines F and J concerning the 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 President Bush on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant submitted an Answer to the SOR on April 29, 2008. Pursuant to paragraph E3.1.7 of the Directive, the Government requested a hearing before an Administrative Judge. Department Counsel was prepared to proceed on May 15, 2008. I received the case assignment on July 10, 2008. DOHA issued a notice of hearing on July 10, 2008, and I convened the hearing as scheduled on August 12, 2008. The

Government offered Government Exhibits 1 through 8, which were received without objection. Applicant testified on his own behalf. DOHA received the transcript of the hearing on August 19, 2008. The record closed on August 19, 2008. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

Findings of Fact

The Applicant is 29 and single. He is employed by a defense contractor and seeks to obtain a security clearance in connection with his employment.

Guideline F, Financial Considerations

The Government alleges in this paragraph that the Applicant is ineligible for clearance because he is financially overextended and therefore at risk of having to engage in illegal acts to generate funds. The Applicant admits all of the allegations in this paragraph of the SOR. The Applicant submits that the majority of his financial problems began when he was fired by a prior employer in 2003 for repeatedly showing up late for work. (Government Exhibit 1 at question 22; Government Exhibit 3 at 1; Transcript at 29-30, 44-45.) Since February 2005 the Applicant has been employed by his current employer. The Applicant states that his intention is to pay all of his past due indebtedness while staying current with his other debts. He wants to pay his largest debts first, then pay the smaller ones.

1.a. The Applicant admits that he is indebted to NCO Fin/99 in the amount of \$100.00, for an account placed for collection by Sprint PCS. The Applicant has made no payments on this debt and has no current intention to make payments on this debt. (Government Exhibit 7 at 1; Transcript at 26.)

1.b. The Applicant admits that he is indebted to Arrow Ser in the amount of \$1,198.00, for an account placed for collection by AFS Assig. The Applicant has made no payments on this debt and has no current intention to make payments on this debt. (Government Exhibit 8 at 2; Transcript at 26.)

1.c. The Applicant admits that he is indebted to HSBC Bank in the amount of \$306.00. The Applicant has made no payments on this debt and has no current intention to make payments on this debt. (Government Exhibit 5 at 6, Transcript at 26.)

1.d. The Applicant admits that he is indebted to Lvnv Fundg in the amount of \$1,572.00. The Applicant has made no payments on this debt and has no current intention to make payments on this debt. (Government Exhibit 8 at 4; Transcript at 26.)

1.i. The Applicant admits that he is indebted to Discover in the amount of \$6,783.00. The Applicant has made no payments on this debt and has no current intention to make payments on this debt. (Government Exhibit 8 at 2; Transcript at 26.)

1.e., 1.f., 1.g., 1.h., 1.j. and 1.k. The Applicant admits that he owed USA Funds \$21,886.00 for six student loans. These loans were all consolidated and transferred to Sallie Mae in approximately May or June of 2008. According to the Applicant, the amount owed has been reduced to approximately \$14,000.00. He has made one payment of \$131.00 to Sallie Mae since the consolidation took place. Before that he had not made any payments for several years. (Government Exhibit 7 at 4; Government Exhibit 8 at 4; Transcript at 26-30, 40-43.)

Guideline J, Criminal Conduct

The Government alleges in this paragraph that the Applicant is ineligible for clearance because he has engaged in criminal conduct. The Applicant admits all of the allegations under this paragraph of the SOR.

2.a. The Applicant was cited in August 2006 for taking a lobster out of season. He knew at the time he did it that it was not lobster season and that taking the lobster was illegal. He was fined \$420.00 for this offense. (Government Exhibit 3 at 3; Transcript at 32-33, 35.)

2.b. The Applicant was arrested in December 2005 after assaulting his younger sister and charged with Assault With a Deadly Weapon. The Applicant, in describing this event, states, "I laid my hand on her." (Transcript at 30.) He admitted that he had pushed his teenage sister down on the ground and backhanded her across the face in a dispute over a car stereo speaker. (Government Exhibit 3 at 2-3; Transcript at 30-32, 36-38.)

He plead guilty and admitted that he, "Unlawfully committed an assault upon the person of another by means likely to produce great bodily injury." (Government Exhibit 4 at 19.) His sentence included formal probation for a period of three years, a jail term, which was stayed pending successful completion of probation, community service and a fine. His probation is due to expire in March 2009. (Government Exhibit 4 at 15.)

2.c. The Applicant was arrested in 2001 for being involved in a drag race. He was granted three years summary probation and fined \$502.00. (Government Exhibit 3 at 1-2; Transcript at 35-36.)

Policies

Security clearance decisions are not made in a vacuum. 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. In addition, the Administrative Judge may also rely on his own common sense, as well as his knowledge of the law, human nature, and the ways of the world, in making a reasoned 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. Security clearance decisions include, by necessity, consideration of the possible risk that 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.

Finally, as emphasized by President Eisenhower in Section 7 of Executive Order 10865, "Any determination under this order . . . shall be a determination 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. The Applicant, by his own admission, has over \$23,959.00 in past due debts, all of which have been due and owing for several years. 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 difficulties arose primarily between about 2001 and 2003. However, it took him until 2008 to begin to pay off any of the past due indebtedness. In addition, he has only made one payment of \$131.00 towards his student loans as of the date of the hearing. This mitigating condition is not applicable to this case.

AG ¶ 20(b) states that the disqualifying conditions may be mitigated where "the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn . . .), and the individual acted responsibly under the circumstances." The Applicant was fired from his job because he was consistently tardy. I cannot find, under these particular circumstances, that the Applicant has acted responsibly under the circumstances.

The Applicant has not initiated a good-faith effort to pay off his creditors. Accordingly, AG ¶ 20(d) is not applicable. Finally, given the fact that he is \$23,000.00 in debt, I cannot find that "there are clear indications that the problem is being resolved or is under control," as required by AG ¶ 20(c).

Guideline J, Criminal Conduct

The security concern relating to the guideline for Criminal Conduct is set out in AG ¶ 30:

Criminal activity creates doubts about a person's judgment, reliability, and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules and regulations.

The Applicant was involved in a major criminal incident in 2005, which resulted in the victim (his own younger sister) being seriously injured. The Applicant has attempted to minimize the incident by saying he "put my hands on her." But, as reflected by his guilty plea to a felony concerning his committing Substantial Bodily Harm, the act was more than that. The other two offenses of drag racing and taking a lobster out of season may seem to be minor in nature, but do reflect a pattern. AG ¶ 31(a) applies to this case, stating that a disqualifying condition is "a single serious crime or multiple lesser offenses."

AG ¶ 31(d) states that it can be disqualifying if the "individual is currently on parole or probation." The Applicant's probation is not due to expire until March 2009. This disqualifying condition also applies to this case.

I have considered all of the mitigating conditions and conclude that none of them apply. As of the time of the hearing, it had not yet been three years since the incident and he remains on probation. I find little, if any, remorse or understanding of what he did to his sister and why it is wrong. Under the particular circumstances of this case, at this point in time, using the clearly consistent standard, I must find this allegation against the Applicant.

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. Under AG ¶ 2(a)(3), all of the

Applicant's conduct, financial and criminal, is recent. Based on the state of the record, I cannot find that there have been permanent behavioral changes under AG ¶ 2(a)(6). Accordingly, at the present time, I cannot find that there is little to no potential for pressure, coercion, exploitation, or duress (AG ¶ 2(a)8)), or that the likelihood of recurrence is close to nil (AG ¶ 2(a)9)).

Overall, the record evidence leaves me with questions and/or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude the Applicant has not mitigated the security concerns arising from his financial considerations and his criminal conduct.

On balance, it is concluded that the Applicant has not successfully overcome the Government's case opposing his request for a DoD security clearance. Accordingly, the evidence supports a finding against the Applicant as to the factual and conclusionary allegations expressed in Paragraphs 1 and 2 of the Government's Statement of Reasons.

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 THE APPLICANT
Subparagraphs 1.a through 1.k.:	Against the Applicant
Paragraph 2, Guideline J:	AGAINST THE APPLICANT
Subparagraphs 2.a. through 2.c.:	Against the 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.

WILFORD H. ROSS
Administrative Judge