



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

In the matter of:)	
)	
)	ISCR Case No. 07-14756
)	
Applicant for Security Clearance)	

Appearances

For Government: Stephanie C. Hess, Esquire, Department Counsel
For Applicant: *Pro Se*

February 19, 2009

Decision

ANTHONY, Joan Caton, Administrative Judge:

After a thorough review of the case file, pleadings, and exhibits, I conclude that Applicant failed to rebut or mitigate the Government's security concerns under Guideline F, Financial Considerations. His eligibility for a security clearance is denied.

Applicant completed and certified an Electronic Questionnaire for Investigations Processing (e-QIP) on October 4, 2005. On June 10, 2008, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing the 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's written Answer to the SOR was received by DOHA on July 21, 2008. He requested a decision on the record in lieu of a hearing. The Government compiled its File of Relevant Material (FORM) on November 4, 2008. The FORM contained documents identified as Items 1 through 7. By letter dated November 13, 2008, DOHA forwarded a copy of the FORM to Applicant, with instructions to submit any additional information and/or objections within 30 days of receipt. Applicant received the file on December 9, 2008. His response was due on January 8, 2009. He did not file additional information within the required time period. On February 10, 2009, the case was assigned to me for a decision.

Findings of Fact

The SOR contains seven allegations of financial delinquency under AG F, Financial Considerations (SOR ¶¶ 1.a. through 1.g.). In his Answer to the SOR, Applicant admitted five of the Guideline F allegations of financial delinquency (¶¶ 1.a., 1.b., 1.d., 1.e., and 1.f.) He denied two Guideline F allegations (¶¶ 1.c and 1.g.). Applicant's admissions are entered herein as findings of fact. (Item 1; Item 3.)

Applicant is 35 years old and employed as a lead supply technician by a government contractor. He was married in 1999 and divorced in 2003. He is the father of one child. He lives and works abroad. He pays no U.S. taxes while employed overseas. (Item 4; Item 6.)

In August 2007, Applicant was interviewed by an authorized investigator from the U.S. Office of Personnel Management (OPM). In his OPM interview, he reported a gross and net monthly income of \$7,200. He identified \$2,750 in fixed living expenses, as follows: rent (\$850); food (\$400); clothing (\$300); utilities (\$300); car expenses (\$100); insurance (\$250); child support (\$350); and miscellaneous (\$200). He also reported the following monthly debt payments: home mortgage (\$800); car payment (\$600); and credit card debt (\$400). Applicant reported a monthly net remainder of \$2,650. (Item 6.)

Applicant's assets include \$100,000 in real estate, \$5,000 in savings, \$8,000 in an automobile, and \$8,000 in household goods. (Item 6.)

The delinquent debts alleged on the SOR total approximately \$25,236. The debts admitted by Applicant total approximately \$23,200. (Item 1; Item 3.)

On December 20, 2007, in response to interrogatories from DOHA, Applicant listed as delinquent the debts alleged at SOR ¶¶ 1.a, 1.b., 1.e., and 1.f. He also stated an intent to begin consumer credit counseling. (Item 5.)

In his statement to the OPM investigator, Applicant identified the delinquent debt alleged at SOR ¶ 1.c as a personal loan he had paid off. He provided no documentation to corroborate his assertion of payment. In his OPM interview, he also asserted his belief that the delinquent debt alleged at SOR ¶ 1.d. duplicated the delinquent debt alleged at SOR ¶ 1.b. However, he provided no documentation to corroborate his statement. (Item 6.)

Applicant's responses to DOHA interrogatories and his credit report of March 4, 2008, show that most of his delinquent debts were incurred between 2000 and 2004. He provided no documentation to show that he had made payments on his debts or arranged payment plans for any of the debts he admitted. He denied the debt alleged at SOR ¶ 1.g., and the Government failed to provide evidence to support its allegation that he was responsible for the debt. Accordingly, SOR ¶ 1.g. is concluded for Applicant. (Item 5; Item 6; Item 7.)

Policies

When evaluating an Applicant's suitability for a security clearance, an 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, the administrative judge applies these 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 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 *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. Between 2000 and 2004, Applicant accumulated substantial delinquent debt and did not pay his creditors. This evidence is sufficient to raise these potentially disqualifying conditions.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Several Guideline F mitigating conditions could apply to the security concerns raised by Applicant’s financial delinquencies. Unresolved financial delinquency might be mitigated if it 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. (AG ¶ 20(a)). Additionally, unresolved financial delinquency might be mitigated if the conditions that resulted in the financial problem were largely beyond the person’s control, such as loss of employment, a business downturn, unexpected medical

emergency, or a death, divorce, or separation, and the individual acted responsibly under the circumstances. (AG ¶ 20(b)). Still other mitigating circumstances that might be applicable include evidence 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 (AG ¶ 20(c) or the individual has initiated a good-faith effort to repay overdue creditors or otherwise resolve debts. (AG ¶ 20 (d)).

Applicant has a history of financial delinquencies that dates to at least the period of 2000 to 2004. Moreover, the delinquencies remain unpaid and have occurred under circumstances that are likely to recur.

Applicant has an income sufficient to pay or settle his delinquent debts, and he has failed to do so. The record does not reflect that the circumstances that gave rise to his delinquencies were beyond his control. Applicant expressed his intent to seek consumer credit counseling in the future. However, in determining an individual's security worthiness, the Government cannot rely on the possibility that an applicant might resolve his or her outstanding debts at some future date. ISCR Case No. 98-0614 at 5 (App. Bd. Jul. 12, 1999). I conclude that AG ¶¶ 20(a), 20(b), 20(c), and 20(d) do not mitigate the facts of Applicant's case.

Whole Person Concept

Under the whole person concept, an administrative judge must evaluate an Applicant's eligibility for a security clearance by considering the totality of an 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 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. Applicant is a mature adult. He earns a good salary and reports a net remainder each month of \$2,650. He has over \$100,000 in personal assets. Despite these financial strengths, Applicant has failed to satisfy over \$20,000 in delinquent debts. His failure to satisfy his creditors even when

he had sufficient funds to do so raises security concerns about his judgment and reliability.

Overall, the record evidence leaves me with questions and doubts at the present time as to Applicant's eligibility and suitability for a security clearance. For these reasons, I conclude Applicant failed to mitigate the security concerns arising from his financial delinquencies.

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. through 1.f.:	Against Applicant
Subparagraph 1.g.:	For 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. Eligibility for access to classified information is denied.

Joan Caton Anthony
Administrative Judge