



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



In the matter of:)	
)	
-----)	ISCR Case No. 07-14738
SSN: -----)	
)	
Applicant for Security Clearance)	

Appearances

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

July 31, 2008

Decision

ABLARD, Charles D., Administrative Judge:

Applicant failed to mitigate security concerns regarding Guideline F (Financial Considerations).

Statement of the Case

Applicant submitted his Security Clearance Application (SF 86), on December 13, 2006. On January 30, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns for Applicant under Guidelines F (Financial). 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 March 4, 2008, and requested a hearing before an Administrative Judge. Department Counsel was prepared to proceed on March 25, 2008, and I received the case assignment on April 4, 2008. DOHA issued a notice of hearing on April 22, 2008, for a hearing on May 29, 2008. I convened the hearing as scheduled.

At the hearing, the government offered five exhibits (Exh.) which were admitted in evidence without objection. Applicant submitted eight exhibits which had been attached to his answer. They were admitted without objection. He testified on his own behalf. DOHA received the transcript of the hearing (Tr.) on June 16, 2008. I granted Applicant's request to keep the record open until June 30, 2008, to submit additional evidence. A set of documents was received on that date and an extension of time was requested to submit additional documents. An extension of time was granted to Applicant until July 14, 2008. Another set of documents was received and admitted without objection. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

Findings of Fact

In his Answer to the SOR, Applicant admitted eight of the ten allegations in the SOR relating to approximately \$25,000 in delinquent debts.

Applicant is a 28-year-old employee of a government contractor working as a mobility technician since November 2006. He served on active duty in the Air Force for three years and eight months. He left the Air Force voluntarily after having received one Article 15 when he discovered he was about to be charged with another and would lose a rank in grade if convicted. He received an honorable discharge. He held a security clearance while on active duty but does not have one now. He desires a clearance so that he could do a higher level of work for his employer.

Applicant has never been married but has three sons by three different women. The first two are six years of age for whom he pays child support. He lives with the third one with whom he has a continuing relationship. All three women were in the military. The present one with whom he lives is in the process of being assigned to Japan. He maintains good relations with all three children and their mothers.

Applicant has received credit counseling resulting in the consolidation of three of his larger debts for which he makes combined monthly payments of \$240 (Exh. H).

Applicant's annual salary from his principal employment is approximately \$35,000 to \$40,000 depending on hours worked. Since May 2007 he has held a second job on weekends for which he receives between \$200 and \$450 every two weeks (Exh. J). He took the second job in an effort to pay the delinquent debts at issue. He is well regarded by both employers for his work (Exhs. K and L).

The delinquent debts arose from various causes. A summary of the debts and their status based on testimony reveals the following:

1. SOR ¶ 1.a. This is for a telephone bill of \$390 which has been paid and is duplicated at SOR ¶ 1.i. (Exh. F).
2. SOR ¶ 1.b. This debt of \$4,965 is for cancellation of a multi-year lease on an apartment by Applicant from which he moved after a few months. He disputes the amount and is in negotiation with the creditor (Exhs. I and N).
3. SOR ¶ 1.c. This debt for \$3,141 to the Defense Finance and Accounting Service arose when Applicant left the Air Force and had been paid in excess of what he should have been. It was originally \$4,000 and has now been reduced to \$2,200 through payroll withdrawals. It should be paid in full by January 2009 (Exhs. A and B).
4. SOR ¶ 1.d. Telephone bill paid in full in October 2007 (Exh. C).
5. SOR ¶ 1.e. Delinquent child support monthly payment to state agency of \$382 for one child.
6. SOR ¶ 1.f. Delinquent child support monthly payment to state agency of \$264 for second child. The two child support payments are delinquent in the amount of approximately \$9,000. He is now making the payments with an additional \$100 a month for each child to resolve the delinquencies. Documentation in support of these obligations was promised by Applicant but not provided even after the close of the record.
7. SOR ¶ 1.g. Auto loan of \$2,666. This debt and those listed below at 1.h. and 1.j. below have been consolidated by credit counselor in May 2008. Applicant is making payments of \$240 per month. The debts will be resolved in three years at the current payment schedule (Exhs. G and H.).
8. SOR ¶ 1.h. Debt to Military Star for credit card debt of \$5,000.
9. SOR ¶ 1.i. Duplicate of SOR ¶ 1.a.
10. SOR ¶ 1.j. Citibank credit card for \$1,231.

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 *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. Applicant accumulated the delinquent debts cited in the SOR and was 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. No evidence was offered to show these mitigating conditions.

Under AG ¶ 20(b), the security concern also may be mitigating where 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. No evidence has been offered to show that such facts are applicable.

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 is not necessary for mitigation to apply that all of the delinquent debts be resolved, it is necessary that a significant portion of the debts be settled or paid. While seven of the ten debts have been partially or fully resolved, a large amount of debt is still unresolved in the remaining three. Thus, I believe this test has not been met despite Applicant’s efforts to resolve the issues.

Applicant is fully employed with a combined income from two jobs of over \$50,000 per annum the past year. While several of the debts in the SOR have been paid and others are being paid in an orderly fashion through withholding and consolidation, two of the larger debts are not resolved. They are the delinquent child support debts for which no evidence was submitted as to status and amount, and the rental debt which, although disputed, is still outstanding. Thus, even when the debts that are paid or consolidated with regular payments are mitigated, approximately \$14,000 remains unresolved and not fully explained. That amount is over half of the total debts alleged and established of \$25,000.

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.

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 young person and is acting responsibly to make certain that he provides support to his three children through child support by working two jobs. However, he has incurred significant debts over the past years and it is only in the past year that he has taken steps to resolve them. If he keeps on the track he has set for himself, this should resolve the issues within the next two to three years. However, at this time it is premature to grant him a clearance.

Applicant has not mitigated the security concerns arising from these 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:

Paragraph 1, Guideline F: AGAINST APPLICANT

- Subparagraph 1.a.: For Applicant
- Subparagraph 1.b.: Against Applicant
- Subparagraph 1.c.: For Applicant
- Subparagraph 1.d.: For Applicant
- Subparagraph 1.e.: Against Applicant
- Subparagraph 1.f.: Against Applicant
- Subparagraph 1.g.: For Applicant
- Subparagraph 1.h.: For Applicant
- Subparagraph 1.i.: For Applicant
- Subparagraph 1.j.: 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. Access to classified information is denied.

CHARLES D. ABLARD
Administrative Judge