



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



In the matter of:)	
)	
)	ISCR Case No. 07-16881
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Nichole Noel, Esq., Department Counsel
For Applicant: *Pro Se*

August 29, 2008

Decision

LOUGHRAN, Edward W., Administrative Judge:

Applicant failed to mitigate the security concerns raised by his financial issues. Eligibility for access to classified information is denied.

On April 15, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant, 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 answered the SOR in writing on May 5, 2008, and requested a hearing before an Administrative Judge. The case was assigned to another Administrative Judge on June 16, 2008, and reassigned to me on July 2, 2008. DOHA issued a notice of hearing on July 17, 2008. I convened the hearing as scheduled on August 13, 2008.

The Government offered Exhibits (GE) 1 through 4, which were received without objection. Applicant testified on his own behalf and submitted Exhibits (AE) A through F, which were received without objection. I granted Applicant's request to keep the record open until August 22, 2008, to submit additional matters. Applicant submitted three documents marked AE G through I, and admitted without objection. Department Counsel's memo is marked Hearing Exhibit (HE) I. DOHA received the transcript of the hearing (Tr.) on August 21, 2008.

Findings of Fact

Applicant is a 36-year-old employee of a defense contractor. He has worked for his current employer since September 2006. He attended college for a period but did not obtain a degree. He served in the U.S. Navy on active duty from 1993 to 1994. He received an Honorable Discharge for disability. He received severance pay of \$3,733 but elected not to submit a claim for disability as he feels that he is capable of working. He is currently married and was married twice previously to other women. His first marriage ended in divorce. His second marriage was void because he married his second spouse before his divorce was final. He has four children between the ages 15 and 10. The four children live with their mothers. He pays child support for the two oldest children. The mother of the youngest two children has not requested child support on their behalf.¹

The SOR lists 31 debts totaling approximately \$26,049. Applicant admitted to owing all the debts in the SOR with the exception of ¶ 1. ee, which he denied; 1. z, which he neither denied nor admitted; ¶¶ 1. l and 1. y, which he stated were the same debts as listed in ¶ 1. c; ¶ 1. aa, which he stated was the same debt as listed in ¶ 1. e; and ¶¶ 1. f and 1. m, which he admitted to the debts but stated they were being paid by garnishment.

Applicant attributed his financial problems to recurrent medical issues, not having medical insurance, and not earning enough money. He was unemployed for about three months in 2004. His wife is disabled and has been unable to work since about April 2008.²

SOR ¶ 1. b lists a debt of \$263 to a collection company on behalf of a telephone services company. Applicant submitted a bill dated April 9, 2008, from another collection company showing the balance owed on the account as \$382. He stated that the company has agreed to accept \$105 in settlement of the debt, but he has not paid it yet.³

¹ Tr. at 27, 35; GE 1; AE I.

² Tr. at 17-18, 20-21, 26-27; GE 1.

³ Tr. at 17; Applicant's response to SOR; AE B.

Applicant admitted owing the debt of \$680 as alleged in SOR ¶ 1.c for a student loan. SOR ¶¶ 1.l and 1.y are duplicates of this debt.⁴

A financial institution obtained a judgment of \$5,939 against Applicant in July 2004. The judgment is alleged in SOR ¶ 1.f. The judgment is being paid by garnishment. The amount garnished varies depending on how much Applicant earns in a given pay period. His March 2008 pay statement showed that \$44 was garnished for the two-week pay period, and \$799 year-to-date. He was unable to state how much he still owes on the judgment.⁵

SOR ¶ 1.m alleges that as of October 26, 2006, Applicant was \$8,669 in arrears on his child support as enforced by the county. The credit report of October 24, 2006, shows this debt as past due in the amount of \$8,669, with a balance of \$8,997. Applicant admitted to this debt but stated it was being paid by garnishment. He submitted documentation that his pay is being garnished \$189 every two weeks. He stated that \$328 is taken out for current support and the rest for his arrears. He also stated that his income tax refunds have been seized to pay this debt. He submitted documentation that \$915 was taken out of his income tax refund on June 6, 2008, and paid to this debt. He stated that about \$3,500 was seized from his income tax refund in 2006. He submitted documentation from his income tax preparer that he was due a refund of \$3,572 in 2006. The document indicated a refund anticipation loan check of \$3,249 would be available from his income tax preparer within one to two days. Applicant did not submit documentation that the refund was taken for his back child support. He was unable to state how much he still owes for the arrears.⁶

SOR ¶ 1.z alleges a debt of \$201. Applicant failed to admit or deny this debt in his response to the SOR. Applicant specifically named this debt on his Questionnaire for National Security Positions certified as true on October 3, 2006. It is also listed on the credit report of October 24, 2006, but states that it was assigned to a collection agency. The debt is not listed on the credit report of February 1, 2008. Applicant testified that he was unfamiliar with the creditor but it was likely a medical debt and he was willing to admit that he owed it.⁷

Applicant admitted owing the debt of \$296 to a telephone service company, as alleged in SOR ¶ 1.aa, but stated it was a duplicate of SOR ¶ 1.e, which alleged a debt of \$149 to a company collecting on behalf of that same telephone service company. After reviewing the evidence, I further find that the debt of \$371 to a collection company, as alleged in SOR ¶ 1.x is also a duplicate of this debt.⁸

⁴ Tr. at 18-19, 23; Applicant's response to SOR; GE 3, 4.

⁵ Tr. at 19-20; Applicant's response to the SOR; GE 2.

⁶ Tr. at 14-17; Applicant's response to the SOR; GE 1-3; AE G, H.

⁷ Tr. at 24; GE 1, 3, 4.

⁸ Tr. at 18-19, 23; Applicant's response to SOR; GE 3, 4.

Applicant denied owing the debt of \$426 to a financial institution, as alleged in SOR ¶ 1.ee. This debt is listed on the credit report of October 24, 2006, but is not listed on the credit report of February 1, 2008. Applicant wrote “this one don’t know about.” This is the only debt that Applicant totally denied being his responsibility. I find he is not accountable for this debt.⁹

Applicant has not paid any of the other debts listed in the SOR. He indicated that with the garnishments for the judgment and his back child support, he cannot afford to pay the other debts. Many of the debts are for medical expenses. Applicant consulted with a debt management company in February 2008. He was financially unable to utilize their program as shortly thereafter his wife had to stop working. He has not received financial counseling.¹⁰

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 to be used 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, Administrative Judges apply the 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 the applicant or proven by Department Counsel.” The applicant has the ultimate burden of persuasion as to obtaining a favorable security decision.

⁹ Tr. at 24; GE 1, 3, 4.

¹⁰ Tr. at 25-32.

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 adverse 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. Two are potentially applicable in this case:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant accumulated a number of delinquent debts and was unable to pay his obligations for a period of time. The evidence is sufficient to raise both of these potentially disqualifying conditions.

Five Financial Considerations Mitigating Conditions under AG ¶¶ 20(a)-(e) are potentially applicable:

- (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; and

(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.

Applicant still owes most of the debts alleged in the SOR. AG ¶ 20(a) is not applicable. He attributed his financial problems to recurrent medical issues, not having medical insurance, and not earning enough money. He was also unemployed for about three months in 2004, and his wife is disabled and has been unable to work since about April 2008. These are conditions that were largely beyond his control. To be fully applicable, AG ¶ 20(b) also requires that the individual act responsibly under the circumstances. Applicant did not submit sufficient information for a finding that he has acted responsibly under the circumstances. AG ¶ 20(b) is partially applicable.

Applicant has not received financial counseling. There are not clear indications that the problem is being resolved or is under control. AG ¶ 20(c) is not applicable. The only debts that are being paid are being done involuntarily through garnishment or attachment of Applicant's income tax refunds. That is insufficient to warrant full application of AG ¶ 20(d). Applicant is given credit under AG ¶ 20(e) for those debts he disputed, as addressed in the Findings of Fact.

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. I considered Applicant's military service to our country and that he is a disabled veteran. However, his finances have been in bad shape for a number of years with no sign of improvement in the foreseeable future. They remain a security concern.

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

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-1.k:	Against Applicant
Subparagraph 1.l:	For Applicant
Subparagraphs 1.m-1.w:	Against Applicant
Subparagraphs 1.x-1.y:	For Applicant
Subparagraph 1.z:	Against Applicant
Subparagraph 1.aa:	For Applicant
Subparagraphs 1.bb-1.dd:	Against Applicant
Subparagraph 1.ee:	For Applicant

Conclusion

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

Edward W. Loughran
Administrative Judge