



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



In the matter of:)	
)	
)	ISCR Case No. 07-17920
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Eric Borgstrom, Esquire, Department Counsel
For Applicant: *Pro Se*

July 28, 2008

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant has failed to mitigate the government’s security concerns under Guideline F, Financial Considerations. Applicant’s eligibility for a security clearance is denied.

On March 16, 2008, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F. 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 April 7, 2008, and elected to have his case decided on the written record. Department Counsel submitted the government’s file of relevant material (FORM) on May 1, 2008. The FORM was mailed to Applicant on

May 7, 2008, and it was received on May 19, 200. Applicant was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant did not object to the FORM and did not submit additional information. The case was assigned to me on July 7, 2008.

Findings of Fact

Applicant admitted all of the allegations in the SOR. They are incorporated herein. In addition, after a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 59 years old and served as a police officer for 20 years attaining the rank of Detective. He retired in 1993 and has held various jobs since then. He experienced periods of unemployment from May 1999 to September 1999 and May 2006 to December 2006. He has been employed as a contract investigator with a Department of Defense contractor since December 2006. Applicant was married from 1970 to 2003. He has three adult children.

Applicant has a judgment against him in favor of his ex-wife in the approximate amount of \$23,348. He admitted he owes this debt and it has been delinquent since 2004. It is a debt for alimony pursuant to a divorce decree. Applicant's response regarding the debt is as follows:

The monies in question were the result of a default judgment found against me while I lived in [Place A]. She was and has been receiving 47 percent of my law enforcement pension and I was to receive 47 percent of her teaching pension when she retired which to date has not happened. I had been under the assumption that any monies owed would be resolved at that time. These money equations were to be worked out by our corresponding attorneys.¹

No explanation was provided for why Applicant has not resolved this debt when he is aware he owes it.

Applicant admits the debt owed in SOR ¶ 1.b and claimed it was in the process of being paid off by monthly payments when they were halted due to the default judgment that froze his funds and payments. Applicant offered no other explanation for why he has not resolved this debt. No documentation was provided to support his assertion.

The debt in SOR ¶ 1.c is for telephone services. Applicant claimed this debt was the result of an ongoing dispute he had with the telephone company because of "improper services I received from them, improper equipment I received and a lack of

¹ Item 2.

concern on their part over the quality of service I was receiving from them.”² Applicant offered no explanation for why he has not resolved this debt or any action he has taken to formally dispute the debt.

Applicant stated he had no knowledge about the debt listed in SOR ¶ 1.d. He claimed his account records indicate his prompt payment to this creditor until he moved and closed the account. He failed to provide any documentation to support his assertion or any action he has taken to resolve or dispute the debt.

Applicant did not offer any documents to support any of his assertions nor any corroborating evidence.

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.

² *Id.*

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. I have considered all of them, especially AG ¶ 19(a) (“inability or unwillingness to satisfy debts”) and (c) (“a history of not meeting financial obligations”). Applicant has a default judgment against him that despite being aware of it and its effect on his other debts he has not resolved. The default judgment is four years old. He also has other debts that he apparently disputes, but has done nothing to resolve them. I find both disqualifying conditions apply.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. I have considered all of the mitigating conditions. I especially considered AG ¶ 20(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 is aware that he has a legally binding default judgment entered against him for approximately \$23,348. He is aware of his responsibility toward paying this judgment. He apparently believes that somehow this dispute will be resolved at a later date by the attorneys who were involved in his divorce proceedings. He has offered no evidence to show he has made an attempt to discuss the issue with his attorney, pay the judgment or resolve it. He claimed that because of the judgment somehow his payments on another debt were frozen. Again he offered nothing to show he was paying this debt and why he is not paying this delinquent debt. He admitted the debts in his Answer to the SOR, but does not offer any evidence to show he is resolving them. He has not provided any documents to support he paid his debts or is formally disputing them. He merely discounts his obligations toward his creditors. Applicant is unwilling to resolve his delinquent debts. I find none of the mitigating conditions 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 acknowledged and admitted his delinquent debts, but offered no evidence of efforts he has made to resolve or pay the debts. Overall the record evidence leaves me with serious questions and doubts as to Applicant’s eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the security concerns arising from 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-1.d:	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. Eligibility for access to classified information is denied.

Carol G. Ricciardello
Administrative Judge