



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



In the matter of:)
)
) ISCR Case No. 07-18757
)
)
Applicant for Security Clearance)

Appearances

For Government: Kathryn D. MacKinnon, Esquire, Department Counsel
For Applicant: *Pro Se*

April 16, 2009

Decision

RIVERA, Juan J., Administrative Judge:

Applicant failed to mitigate the financial considerations security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On May 2, 2007, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP).¹ On December 16, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to him, pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as modified and revised.² The SOR alleges security concerns

¹ FORM Item 5.

² On Aug. 30, 2006, the Under Secretary of Defense (Intelligence) published a memorandum directing application of revised Adjudicative Guideline to all adjudications and other determinations made

under Guideline F (Financial Considerations). The SOR detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for him, and recommended referral to an administrative judge to determine whether a clearance should be granted, denied or revoked.

On January 3, 2009, Applicant responded to the SOR allegations, and elected to have his case decided on the written record in lieu of a hearing. A complete copy of the file of relevant material (FORM), dated January 12, 2009, was provided to him by letter dated January 13, 2009. Applicant signed the receipt for the DOHA transmittal letter on January 20, 2009. He was afforded a period of 30 days to file objections and submit material in refutation, extenuation, or mitigation. He failed to submit any materials, comments, or objections in response to the FORM. The case was assigned to me on March 24, 2009.

Findings of Fact

Applicant admitted all the factual allegations in the SOR, with explanations. His admissions are incorporated herein as findings of fact. After a thorough review of the evidence of record, I make the following additional findings of fact.

Applicant is a 43-year-old copier operator and mailroom clerk working for a defense contractor.³ He was born in the Philippines, and became a naturalized U.S. citizen in 2002. He married his wife in 1995, and they have a 10-year-old son. He did not serve in the U.S. military. He has worked for the same employer, a government contractor, since February 2007.

His work history is summarized as follows: from September 1997 to July 2006, he was employed as a copier operator; he was unemployed from July 2006 to September 2006; employed from September 2006 to January 2007 as an inkjet copier operator; and since February 2007, he has been consistently employed by a government contractor as a copier operator/mailroom clerk (Item 5). Concerning his 2006 three-month period of unemployment, Applicant explained he was unfairly accused of timesheet fraud and removed from his job.

In his security clearance application, Applicant disclosed he had three foreclosed properties and other financial problems. His background investigation addressed his financial problems, and included the review of December 2008 and July 2007 credit bureau reports (CBR). The SOR alleges 11 delinquent/charged off accounts totaling approximately \$872,000. Apparently, \$835,000 of the delinquent debt originated from Applicant's three repossessed real estate properties.

under the Directive and Department of Defense (DoD) Regulation 5200.2-R, *Personnel Security Program* (Regulation), dated Jan. 1987, as amended, in which the SOR was issued on or after Sep. 1, 2006.

³ Item 5 (2007 e-QIP) is the source for the facts in this paragraph, unless stated otherwise.

In his answer to the SOR, Applicant explained his financial problems were the result of him losing his job, not finding a permanent job, and the adverse effects of the ongoing world financial crisis. Because of the loss of income, he was forced to use his credit cards to pay for his family's day-to-day living expenses. Later, he was unable to make payments on his credit cards and other financial obligations. He initially used his savings and withdrew his retirement funds to pay his debts, but ultimately these were not sufficient and he stopped making payments. Applicant's 2007 CBR shows that prior to July 2007, he did not have a history of financial problems.

Applicant purchased several real estate investment properties by taking an equity loan on his primary residence. He was unsuccessful selling the properties because of the financial market turndown. His home and the investment properties were foreclosed. Applicant claimed he and his wife are in the process of working with each of his creditors seeking the settlement or resolution of his debts. His goal is to be debt free.

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 controlling 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.

In the decision-making process, the Government has the initial burden of establishing controverted facts alleged in the SOR by "substantial evidence,"⁴

⁴ See Directive ¶ E3.1.14. "Substantial evidence [is] such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the contrary evidence in the record." ISCR Case No. 04-11463 at 2 (App. Bd. Aug. 4, 2006) (citing Directive ¶ E3.1.32.1). "Substantial

demonstrating, in accordance with the Directive, that it is not clearly consistent with the national interest to grant or continue an applicant's access to classified information. Once the Government has produced substantial evidence of a disqualifying condition, the burden shifts to Applicant to produce evidence "to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel, and [applicant] has the ultimate burden of persuasion as to obtaining a favorable clearance decision." Directive ¶ E3.1.15. The burden of disproving a mitigating condition never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).⁵

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 Executive Order 12968 (Aug. 2, 1995), Section 3.

Analysis

Guideline F, Financial Considerations

Under Guideline F, the security concern is that an Applicant's 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. AG ¶ 18.

The SOR alleges 11 delinquent/charged off accounts totaling approximately \$872,000. Applicant presented no evidence of efforts to pay or resolve his financial obligations. He claimed he and his wife were contacting creditors to resolve his delinquent obligations. However, he presented no evidence, other than his statement, to

evidence" is "more than a scintilla but less than a preponderance." See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994).

⁵ "The administrative judge [considers] the record evidence as a whole, both favorable and unfavorable, evaluate[s] Applicant's past and current circumstances in light of pertinent provisions of the Directive, and decide[s] whether applicant ha[s] met his burden of persuasion under Directive ¶ E3.1.15." ISCR Case No. 04-10340 at 2 (App. Bd. July 6, 2006).

support his claims. Considering the record evidence, I find that all of Applicant's delinquent debts remain outstanding.

Applicant also stated he did not have the financial means to pay his legal obligations, delinquent debts, and his day-to-day living expenses. AG ¶ 19(a): inability or unwillingness to satisfy debts; and, AG ¶ 19(c): a history of not meeting financial obligations, apply in this case.

AG ¶ 20 lists six conditions that could mitigate the financial considerations security concerns:

(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;

(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; and

(f) the affluence resulted from a legal source of income.

Applicant's sparse favorable evidence fails to raise the applicability of any mitigating condition. His financial problems are ongoing and his evidence fails to show they occurred under such circumstances that they are unlikely to recur and do not cast doubt on Applicant's current reliability, trustworthiness, or good judgment. AG ¶ 20(a) does not apply.

Applicant presented some evidence that established circumstances beyond his control contributing to his inability to pay his debts, i.e., he was unemployed for three months and the adverse effects of the global financial problems. AG ¶ 20(b) applies, but only partially. Applicant's sparse evidence is insufficient to show he acted responsibly under the circumstances. It is not clear whether Applicant was fired from his job due to

his own misconduct. He failed to document the adverse financial impact he suffered as a result of his 2006 three month unemployment period.

Moreover, he failed to establish whether the number and extent of his real estate investments were reasonable in light of his income, financial stability, and overall financial practices. Other than his statement in his answer to the SOR, he presented no evidence of effort to contact creditors or to resolve his debts by entering into settlement agreements and payment plans. He has been consistently employed since July 2007. He presented no corroborated evidence of efforts to resolve his delinquent debts from 2007 to the day he received the FORM.

AG ¶ 20(c) does not apply because, there are no clear indications that his financial problem is being resolved or is under control. His inability to pay his debts shows he was financially overextended. Considering the totality of the circumstances, Applicant's uncorroborated statements fail to establish good-faith efforts to resolve his debts. He also failed to present any evidence that he received financial counseling, and that his financial problems are not likely to recur. The remaining mitigating conditions are not reasonably raised by the facts in this case.

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.

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. AG ¶ 2(c).

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant seems to be a mature, well trained man, and a good father and husband. He has been successful working for a defense contractor since 2007. There is no evidence of any security violation, or that he is not a good, reliable and competent worker. These factors show some responsibility and mitigation.

On the other hand, Applicant failed to establish that he is financially responsible, that he is not financially overextended and that he displays good judgment. For all these reasons, I conclude Applicant failed to mitigate the security concerns arising from his financial considerations. Overall, the record evidence fails to convince me of Applicant's eligibility and suitability for a security clearance.

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

Conclusion

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

JUAN J. RIVERA
Administrative Judge