



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



In the matter of:)
)
) ISCR Case No. 07-18818
)
)
Applicant for Security Clearance)

Appearances

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

October 30, 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 June 20, 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 July 15, 2008. The answer did not state whether Applicant wanted a hearing or to have the case decided on the written record in lieu of a hearing. Department Counsel clarified the issue with Applicant and determined that he wanted a hearing. Department Counsel's memo is marked Hearing

Exhibit (HE) II. The case was assigned to me on August 22, 2008. DOHA issued a notice of hearing on August 29, 2008, scheduling the hearing for September 17, 2008. On September 8, 2008, Applicant sent via facsimile a request to reschedule the time of the hearing to later in the day. The request is marked HE I. On September 11, 2008, the hearing was cancelled because of the threat of severe weather. Another notice of hearing was issued on September 25, 2008. I convened the hearing as scheduled on October 7, 2008. The Government offered Exhibits (GE) 1 through 4, which were received without objections. Applicant testified on his own behalf but did not submit any documentary evidence. DOHA received the transcript of the hearing (Tr.) on October 16, 2008.

Findings of Fact

Applicant is a 37-year-old employee of a defense contractor. He attended college for a period but did not earn a degree. He is married with three children, ages seven, three, and one.¹

Applicant had steady employment with a company from about 1994 through December 2003, when he was laid off. He then went through a period of unemployment, underemployment, and low-paying jobs. He started working for a defense contractor in September 2006. He has continued to work for that company or a successor contractor since then. Applicant is now earning about the same as he earned when he was laid off his job in 2003. His wife earns slightly more than him.²

The SOR alleges 16 debts totaling approximately \$37,072. Applicant admitted owing all the debts in the SOR. Applicant has not made any payments on any of the debts. He attributed his financial difficulties to his employment problems.³

Applicant stated that he intends to pay his delinquent debts. He participated in a repayment program for about six months between about May 2005 and February 2006, but was unable to maintain the payments and discontinued the program. He consulted the same credit counseling company about three weeks before the hearing. They have arrived at an estimated monthly payment plan of \$662 per month. He had not entered into a contract with the company as of the date of the hearing, but had a meeting with the company scheduled for October 23, 2008.⁴

¹ Tr. at 16; GE 1.

² Tr. at 15-23; Applicant's response to SOR; GE 1, 2.

³ Tr. at 14-17; Applicant's response to SOR; GE 2.

⁴ Tr. at 23-28; Applicant's response to SOR; GE 2.

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.

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 the above disqualifying conditions.

Four Financial Considerations Mitigating Conditions under AG ¶¶ 20(a)-(d) 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; and
- (d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant has not made payments on any of the debts alleged in the SOR. AG ¶ 20(a) is not applicable. He attributed his financial problems to unemployment, underemployment, and low-paying jobs after being laid off a good job in 2003. 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 has not made any effort to pay any of his delinquent debts since February 2006, even though he has had steady employment since September 2006. There is insufficient information for a finding that he has acted responsibly under the circumstances. AG ¶ 20(b) is partially applicable.

Applicant has received some financial counseling under his debt repayment program in 2005 and 2006, and he intends on re-enrolling in the program. He has not made any payments on his delinquent debts in more than two years. There are not clear indications that the problem is being resolved or is under control. AG ¶ 20(c) is partially applicable. AG ¶ 20(d) is not applicable.

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 lost a good paying job in 2003. He worked low-paying jobs for several years until he started working for a defense contractor in about September 2006. He states that he intends to pay his delinquent debts and that he will start a repayment program. That is a promising start, but he has done virtually nothing since September 2006 to address his delinquent debts. His finances remain a security concern.

