



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



In the matter of:)	
)	
-----)	ISCR Case No. 08-00351
SSN: -----)	
)	
Applicant for Security Clearance)	

Appearances

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

July 30, 2008

Decision

ABLARD, Charles D., Administrative Judge:

Applicant failed to mitigate security concerns regarding Guideline F (Financial Considerations). He mitigated security concerns regarding Guideline (Personal Conduct). Clearance is denied.

Statement of the Case

Applicant submitted his Security Clearance Application (SF 86), on June 19, 2007. On March 27, 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) and E (Personal Conduct). 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 23, 2008, and requested a hearing before an Administrative Judge. Department Counsel was prepared to proceed on May 1, 2008, and I received the case assignment on May 5, 2008. DOHA issued a notice of hearing on May 7, 2008, for a hearing on May 30, 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 17 exhibits which were admitted without objection. He testified on his own behalf. DOHA received the transcript of the hearing (Tr.) on June 11, 2008. I granted Applicant's request to keep the record open until June 30, 2008, to submit additional evidence. One additional document 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 all but one (SOR ¶ 1.r) of the 22 allegations in the SOR relating to approximately \$60,000 in delinquent debts. He denied the one personal conduct allegation (SOR ¶ 2.a.).

Applicant is a 45-year-old employee of a government contractor working as an avionics technician since May 2006. He did similar work while on active duty as an E 6 in the Air Force for 14 years and for other defense contractors. He is married with two children, a son who is 20 and enlisting in the Marines and a daughter who is 18 living at home.

Applicant filed for Chapter 7 bankruptcy in November 2000 and it was discharged in February 2001 (SOR ¶ 1.u. and v.). Most of the debts which were discharged arose from unsuccessful real estate investments.

The principal sources of the delinquent debts alleged were from three auto repossessions totaling \$45,000 (SOR ¶¶ 1.l., 1.m., 1.o., and 1.p.), and medical bills for his daughter totaling \$7,000 (SOR ¶¶ 1.a-i.). There was an additional \$2,000 of medical bills not alleged in the SOR which were paid. The remaining debts in the SOR were from a variety of sources such as cell phones and other consumer services. Although Applicant admitted all but one of the debts in his answer, at the hearing he questioned the validity of some and believed that one for insurance (SOR ¶ 1.s.) had been paid. He offered no supporting evidence.

Applicant believes that one of the four auto repossession allegations were subsumed in one of the others and that the total owed is approximately \$35,000. He entered into an agreement with a law firm to pay \$250 per month on the repossessions but failed to continue the payments after \$600 was paid (Tr. 32). Other than this effort very little contact has been made with the creditors after he determined that creditors were demanding large payments which he could not make (Tr. 51 and 52). None of the alleged debts have been paid in full including several of the medical debts below \$100.

One allegation concerns a state tax lien for \$629 (SOR ¶ 1.t.). That debt is also the subject of the allegation under Guideline B relating to failure to reveal it on his SF 86 in answer to Question 27. He denied knowing about the lien (Exh. Q) until he received the SOR. He has been in negotiation with the state tax authorities who have withheld payment of his tax refund for 2007 of \$250 to apply against the lien. The matter has not been fully resolved (Tr. 72).

Applicant acknowledged that he and his wife were not living within their means when many of the debts occurred, and that they had acted irresponsibly (Tr. 56). However, their problems were compounded when their daughter was assaulted while a hospitalized medical patient. They reacted to this event by leaving their home and employment in the south and moving to the northwest for a year where he had no significant employment. Two auto repossessions occurred when they left for the northwest leaving the cars to be repossessed by the creditors. A third auto repossession occurred when they left the northwest a year later to return to the south because the death of his father-in-law and assistance required of them for his mother-in-law. He was re-employed in his former job upon their return.

At the time of the hearing, Applicant had not sought credit counseling as he did not think they could help him. He had thought about filing a second Chapter 7 bankruptcy petition but was concerned that to do so would further jeopardize his security clearance (Tr. 58). He had no plan to resolve his financial problems. After the hearing he did seek credit counseling and so advised me in his post-hearing submission. The service declined to work with him as they did not feel they could help him.

Applicant's annual salary from his employment is approximately \$60,000. His wife is a nurse whose income last year was approximately \$45,000 when she was working in another state. She is again employed in their home state. They hope to begin paying their debts but recognize that it will take substantial time with the limited funds that they have after paying their expenses as revealed in their budget analysis.

Applicant lives within the family income. They have two smaller autos for which they pay a total of \$650 per month in payments. They have no credit cards. When they left for the northwest, their home was foreclosed so they now rent a home for \$1,500 per month (Tr. 47-50).

Applicant is well regarded in his work by his supervisors (Exhs. E - G, and L - P) and has received several awards from his company (Exhs. H - J). He has shown steady growth in the company and is on a steady rise in his evaluations.

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.” Most of Applicant’s financial problems arose in the past four years when he had medical expenses for his daughter and precipitously left his job and home to move to another state leaving property and debts.

Applicant and his wife are now employed with a combined income of over \$100,000 per annum the past year. Yet no action has been taken to resolve even the smallest of the delinquent debts. While several of the alleged debts in the SOR appear to be duplicative or erroneous, even when those are mitigated, significant debts remain that are unresolved with no plan to pay them other than a hope to do so.

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.” As noted above, some of the financial problems arose from his medical problems and periods of reduced income. However, his actions since the debts arose cannot be deemed responsible as he has admitted. He has paid only two debts totaling less than \$2,000 and these were not on the SOR.

AG ¶ 20(d) applies where the evidence shows the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts. Applicant’s contacts with creditors has been minimal. 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 this many debts be settled or paid. I believe this test has not been met. He should have taken steps earlier to resolve some of the debts. He has only recently attempted to obtain credit counseling. While he was rejected for the credit counseling service, had he sought it earlier, a different result might have been obtained. Thus, the mitigating conditions do not apply.

Guideline E, Personal Conduct

The security concern relating to the guideline for Personal Conduct is set out in AG ¶ 15:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

AG ¶ 16 describes the condition that could raise a security concern and may be disqualifying in this case:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities; and,

Applicant is alleged to have failed to report the state tax lien for \$629 (SOR ¶ 1. t.). At the hearing he testified credibly that he was unaware of the lien until he received the SOR.

The requirement in the guideline is that the omission be deliberate, I find that the omission alleged was not deliberate. Security concerns pertaining to personal conduct are mitigated.

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 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 has incurred expenses growing out of the medical problems of his daughter but the actions he has taken in leaving his job and abandoning property to be repossessed seems somewhat irrational and not illustrative of the best judgment. Since his return to his old job and his place of residence, he has been well employed as was his wife. However, none of the debts alleged in the SOR have been resolved. Even smaller ones which would seem to have been easily paid were not. He has no real plan to resolve them that would lead me to conclude that such will be done.

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.: Against Applicant
Subparagraph 1.b.: Against Applicant
Subparagraph 1.c.: Against Applicant
Subparagraph 1.d.: Against Applicant
Subparagraph 1.e.: Against Applicant
Subparagraph 1.f.: Against Applicant
Subparagraph 1.g.: Against Applicant
Subparagraph 1.h.: Against Applicant
Subparagraph 1.i.: Against Applicant
Subparagraph 1.j.: Against Applicant
Subparagraph 1.k.: Against Applicant
Subparagraph 1.l.: Against Applicant
Subparagraph 1.m.: For Applicant
Subparagraph 1.n.: Against Applicant
Subparagraph 1.o.: For Applicant
Subparagraph 1.p.: Against Applicant
Subparagraph 1.q.: Against Applicant
Subparagraph 1.r.: For Applicant
Subparagraph 1.s.: For Applicant
Subparagraph 1.t.: Against Applicant
Subparagraph 1.u.: Against Applicant
Subparagraph 1.v.: Against Applicant

Paragraph 2, Guideline E: FOR APPLICANT

Subparagraph 2.a.: 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