



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



In the matter of:)	
)	
-----)	ISCR Case No. 08-00435
SSN: -----)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Gregg Cervi, Esquire, Department Counsel
For Applicant: Louise Kearns, Representative

October 28, 2008

Decision

LYNCH, Noreen A., Administrative Judge:

Applicant submitted his Security Clearance Application (SF 86), on June 7, 2007. On April 29, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline F for Applicant. 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 requested a hearing before an Administrative Judge. I received the case assignment on August 21, 2008. DOHA issued a notice of hearing on September 3, 2008, and I convened the hearing as scheduled on September 22, 2008. The Government offered Exhibits (GE 1-4), which were received without objection. Applicant testified in his own behalf. He submitted Exhibits (AE A-D), without objection. DOHA

received the transcript on September 30, 2008. Based upon a review of the record, eligibility for access to classified information is denied.

Findings of Fact

In his Answer to the SOR, dated May 13, 2008, Applicant denied the factual allegations in ¶¶ 1.b, 1.g, and 1.i, of the SOR because the debts were paid or he had no knowledge of them. He admitted the other allegations in the SOR. He provided additional information to support his request for eligibility for a security clearance.

Applicant is a 51-year-old employee of a defense contractor. He graduated from high school in 1974, and attended college for two years. He married in 1990, and has three children from his marriage. Applicant and his wife separated in 1999, but are not divorced. He served in the U.S. Air Force from 1978 until 1979. He has been employed with his current employer doing general maintenance since April 2007 (GE 1).

Prior to his current employment, Applicant worked for the same company from 1999 until 2007, earning a low hourly wage for many years. He was making \$15 an hour when he left for a better position. As a single dad for nine years, he provides for his son who still lives with him. He admits that he was not always as organized with his finances as he could have been (Tr. 35).

In 1996, applicant fell at work. He ruptured a disk in his neck. As a result of the work-related accident, he received a monetary settlement of approximately \$85,000 in 1999. He used \$30,000 of that amount for a down payment for a home. He also bought a truck because he needed a reliable vehicle (Tr. 43).

Applicant explained that his finances became an issue because he did not have a good filing system. He would pay bills that he thought were due and owing. He also admitted being financially irresponsible (Tr. 36). He put bills in a box and when he moved he forgot about them.

The SOR alleges twelve delinquent debts including, a 2002 bankruptcy, one judgment, and ten collection accounts. The total amount of the delinquent debt is approximately \$40,000.

SOR ¶ 1.a is for a bankruptcy filed in July 2002 and discharged in October 2002. At the hearing, Applicant acknowledged he filed bankruptcy because he purchased a home in 1999 and then he and his wife separated. He could not afford the payments. He also had some medical expenses from emergency room visits because he had no health insurance. Applicant had some high interest loans and car loans included in the bankruptcy (Tr. 39). The amount discharged was approximately \$90,000.

SOR ¶ 1.b is for judgment entered against him in the amount of \$12,039. He denied this because the amount is not correct. He acknowledges that this is the result of a car loan that was in default. He had been paying an involuntary garnishment through

his previous employer since 2006. He is now paying a collection agency directly. The balance is \$7,263 (Tr. 31).

SOR ¶ 1.c is a collection account in the amount of \$463. Applicant admitted this debt in his answer to the SOR. Applicant is now disputing the amount. He wants a detailed billing because he believes \$200 of this amount is for an early disconnection fee that he does not owe (Tr. 25).

SOR ¶ 1.d is for a charged-off account in the amount of \$2,016. Applicant believed this amount stems from moving out early from a rental apartment. He plans to include this in a debt management plan (Tr. 26)

SOR ¶ 1.e is for a collection account in the amount of \$368. Applicant intends to include this in a debt management plan (AE C).

SOR ¶ 1.f is for a collection account in 2004 for the amount of \$44. Applicant admits this bill. He paid the account in 2008 (AE A).

SOR ¶ 1.g is for a collection account (medical) in the amount of \$581. He denied this bill. Applicant does not have any knowledge of this account (Tr.). He called the credit collection company, but he does not have any documentation that he disputed the amount (Tr.91).

SOR ¶ 1.h. is another collection account in the amount of \$146. Applicant paid the account in May 2008.

SOR ¶ 1.i is a collection account in the amount of \$1,618. Applicant admits this account, but believes that his medical insurance was responsible for paying it (Tr. 28). He will include this in a debt management plan if the insurance does not pay the amount (Tr. 28).

SOR ¶ 1.j is a collection account in the amount of \$286 for a utility account. Applicant paid this bill through the use of another credit card in May 2008 (Tr. 52).

SOR ¶ 1.k is a collection account in the amount of \$1,192. Applicant admits this debt and plans to include it in his debt management plan.

SOR ¶ 1.l is a collection account in the amount of \$290. Applicant paid this recently by using another credit card (Tr. 52).

Applicant has four personal loans from 2008 totaling approximately \$1,500 (Tr. 58). He pays a total of \$447 on those loans each month (Tr. 59). Applicant stated he ran short of money and used the loans to help him with his expenses. He also helps his 22-year-old son and his friends. His son does not work at this time. His daughter's boyfriend came to live with him because he needed a place to live. He acknowledges that he helps a lot of people often at his own expense (Tr. 64).

Applicant's current monthly net income is \$3,250. After monthly expenses and debt payments, he has approximately \$2 net remainder. He is currently making minimum payments on other credit cards for a total of \$457 (AE C). He is current with his two car payments. He has no bank savings. He is also paying on back taxes to the IRS (\$1,800) (Tr. 71).

Applicant received financial counseling on September 18, 2008. He met with a credit counselor to review his debts and credit issues. He set up a household budget. He is in the process of contacting his creditors to establish a debt repayment plan. Prior to September, he went to a debt consolidation group. He paid a high fee and no money was being applied to his creditors. He stopped working with them (Tr. 76). He is working a part-time job and plans to use the extra income to increase the amount that can be allocated for each debt (AE C).

Applicant is recommended for his dependability and work ethic. He is trustworthy and committed to every project on which he works. He is very responsible. He volunteers for community and service activities. He is conscientious and is recommended for a security clearance by his long time associates (AE D).

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, 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^o is potentially disqualifying. Similarly under AG & 19(c), Aa history of not meeting financial obligations^o may raise security concerns. Applicant filed for bankruptcy in 2002 and has current delinquent debts and a judgment from 2006. Despite paying debts with a settlement in 1999 and having \$90,000 in debts discharged in bankruptcy, he can not meet his financial obligations. The evidence is sufficient to raise these potentially disqualifying conditions, requiring a closer examination.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Under AG ¶ 20(a), the disqualifying conditions may be mitigated where Athe 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. Applicant's financial worries continue. He has personal loans from 2008 in addition to the delinquent debts. This potentially mitigating condition does not apply.

Under AG & 20(b), it 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, his financial problems may have begun with his separation, but the inquiry does not end there. He eliminated debts in 2002 through bankruptcy. However, he has incurred more unpaid debts. Applicant did not act responsibly in identifying and resolving these debts. He did not take a stance until he learned about the security clearance process. I find this potentially mitigating condition does not apply.

Evidence that 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 is potentially mitigating under AG & 20(c). Applicant did receive financial counseling. He established a budget and has plans for a debt management plan. He has paid several small debts. However, he used another credit card to pay for one of those debts. He took out four small personal loans in 2008 to cover his expenses and debt. This mitigating condition partially applies.

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 problems were caused by an admitted inattention to his financial affairs. He did not actively pursue any of the credit collection accounts until the security clearance process started. I conclude this potentially mitigating condition does not apply.

AG ¶ 20(e) applies where the evidence shows "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." In this case, Applicant stated that the alleged debt in the SOR concerning a medical account and a collection account for an early departure from a rental are disputed. However, he did not produce any documentation to support this belief. I conclude this potentially mitigating condition does not 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 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 and conclude that under the whole person, there is not sufficient mitigation to overcome the government’s case.

Applicant is a hard worker. He has supported his family for many years. His son is not working and is living at home. Applicant supports him and his friends. Applicant made a low hourly wage for many years. He bought a house, but had to file for bankruptcy in 2002 because he could not make the payments on the house and had other loans. The marital separation was a contributing factor to his inability to pay his expenses. However, he received a settlement in 1999 and could only account for part of the \$85,000.

Applicant admitted that he has been financially irresponsible. He has only recently sought financial counseling. He has continued to take out small personal loans at a high interest rate to make ends meet. He owes the IRS in back taxes. He is still paying on a judgment from 2006. He does have a budget, but has no real net monthly remainder. The debt management or repayment plan has not started, and it is not clear that Applicant has the financial ability to maintain such a plan. He has not produced sufficient mitigation to overcome the government’s case.

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 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:	For Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	Against Applicant
Subparagraph 1.f:	For Applicant
Subparagraph 1.g:	Against Applicant
Subparagraph 1.h:	For Applicant

Subparagraph 1.i:	Against Applicant
Subparagraph 1.j:	For Applicant
Subparagraph 1.k:	Against Applicant
Subparagraph 1.l:	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. Eligibility for access to classified information is denied.

NOREEN A. LYNCH
Administrative Judge