



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



In the matter of:)	
)	
-----)	ISCR Case No. 08-01125
SSN: -----)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Daniel F. Crowley, Esquire, Department Counsel
For Applicant: Monte Alan Rich, Esq.

February 9, 2009

Decision

ABLARD, Charles D., Administrative Judge:

Applicant failed to mitigate security concerns regarding Guideline F (Financial Considerations). Eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted his Security Clearance Application (SF 86), on April 3, 2007. On June 18, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns for Applicant 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 21, 2008 and requested a hearing before an Administrative Judge. I received the case assignment on October 20, 2008. DOHA issued a notice of hearing on November 7, 2008, for a hearing on November 21, 2008. I convened the hearing as scheduled.

At the hearing, the government offered five exhibits (Exhs 1-5) that were admitted in evidence without objection. Applicant submitted one exhibit (Exh. A) that was admitted without objection. He testified on his own behalf. DOHA received the transcript of the hearing (Tr.) on December 4, 2008. I granted Applicant's request to keep the record open for 30 days to submit additional evidence. Three additional documents (Exhs. B - D) were submitted and accepted in evidence without objection

Findings of Fact

Applicant is a 46-year-old employee of a defense contractor since July 2006 working as a senior network technician. He was honorably discharged from the Army as a private first class in 1997 after four years of active duty (Tr. 14). He had debts that raised questions about his continued military service. He filed bankruptcy to prevent his discharge. However, the Army revoked his security clearance because of the delinquent financial accounts. The revocation resulted in ineligibility to do the job for which he was trained so he left the service. The skills he learned in the Army are those that he has used in his civilian employment since his discharge. The debts arose during his marriage when his wife accumulated debts of which he was unaware both during the marriage and sometime thereafter. The marriage was terminated by separation in 1997 and divorce in 2001.

In his Answer, Applicant admitted all 15 of the financial allegations relating to approximately \$13,000 in delinquent debts ranging in size from \$64 to \$2,700 (SOR ¶ 1.a.-1.- 1.o.). They arise from medical bills, credit cards, telephone bills, and student loans. None of the debts have been paid. One debt for \$2,500 (SOR ¶ 1.g.) from an apartment rental is in dispute (Tr. 47) but no evidence was offered to show how it was being disputed. After his discharge from the Army, he was employed by a major telecom corporation until 2000. He was laid off when that industry encountered financial problems. He was largely unemployed in 2001 and 2002 except for unemployment compensation, a few part time jobs, and withdrawals from his 401k account from his former employer. His total income for 2002 was \$22,000 (Exh. A). The current debts at issue arose during those periods of unemployment and under-employment in 2001 and 2002 (Tr. 36). He was then living alone, so to lessen his living expenses, he lived with his sister.

In March, 2003 he was employed by another telecom until May, 2006. He was unemployed for a two month period until he was hired by the predecessor corporation of his present employer. During the three year period of this employment between 2003 and 2006 when he was not married, he managed his current income without incurring additional debts. He also stated that he contacted creditors to attempt to resolve the debts (Tr. 24). The holders of the larger debts insisted on lump sum payments that he could not pay. No explanation was given for failure to resolve any of the smaller debts.

Applicant's annual salary from his present employment began at \$45,000 and is now approximately \$54,000. He has a 401(k) account valued at \$4,000 from which he took a loan of \$1,500 to move to the state where he now resides. He re-married in 2006. He has three children from his first marriage and his wife has six from hers. Two of the children and one grandchild live with them. The grandchild's mother is serving with the military in Iraq. While they have a large number of children, most are mature and not living at home.

In a financial statement (Exh. 2) filed in response to interrogatories in this matter, Applicant indicated that he had negative cash flow of \$371 per month. Since he filed that statement he has moved to another state with lower living costs and had an increase in his salary. Thus the negative figure does not appear to be accurate although an alternate figure was not submitted. His wife is seeking employment which, if successful, also will have a positive effect on their income.

At the hearing in this matter, Applicant indicated his intention to file bankruptcy for his debts. In the post hearing submission he submitted his Chapter 7 bankruptcy petition and other related documents. He also submitted a letter from his lawyer outlining the reasons for the filing and the advice he had received from his lawyer and a bankruptcy counsel regarding his qualification for bankruptcy, and his decision to file under Chapter 7 (Exhs. B - 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 overarching 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 several years ago and has not made payments to the creditors even though he was earning a salary for over two years that made some payments possible. Thus, the evidence clearly raises these potentially disqualifying conditions.

The guideline also includes examples of mitigating conditions (MC) that could mitigate security concerns arising from financial difficulties. Under AG ¶ 20(e) the security concern may be mitigated when the individual has a reasonable basis to dispute the legitimacy of the past-due debt that 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. He disputes one debt but provided no documentation of the dispute.

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 over six years ago but very little has been done to resolve them. Thus, the debts are considered to be recent and ongoing.

Under AG ¶ 20(b) the disqualifying condition could be mitigated if the conditions that resulted in the financial problem were largely beyond the person’s control through loss of employment, separation or divorce, and the individual acted responsibly under the circumstances. In this matter, it appears that his first group of debts during his military service was related to his separation and divorce or at least was part of the cause of the divorce. However those debts are not at issue in this matter. The debts at issue here arose eight years ago during the nearly two years of unemployment and underemployment. That could be grounds for mitigation but there is inadequate evidence that he acted responsibly from the time he obtained employment in 2003. None of the debts have been settled or paid during that time. No evidence was offered to show proof of any discussions, correspondence, or negotiation with any creditor.

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 a potentially mitigating condition under AG ¶ 20(c). Applicant is receiving counseling but it is related to filing for bankruptcy which, if successful, will result in the elimination of his debts.

AG ¶ 20(d) could apply if the evidence shows the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts. While it not necessary that all of the delinquent debts be resolved for mitigation to apply, it is necessary that a significant portion of the debts be settled or paid. Since none of the debts, even two of under \$100, have been resolved or even successfully negotiated, I conclude that mitigating conditions do not apply.

Applicant has not been sufficiently diligent in pursuing the problem and now seeks to resolve all the delinquent debts through Chapter 7 bankruptcy. Even if bankruptcy is filed or discharged, I must assess the overall history of financial problems (ISCR Case 98-0445 April 2, 1999). This bankruptcy will be Applicant’s second in the last twelve years. While bankruptcy may place him on a sound financial footing for the future, it is premature to grant a security clearance at this time before sufficient time has passed to see if he can manage his finances to remain out of debt. The mitigating conditions are 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) 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. Overall, the record evidence leaves me with questions or doubts as to Applicant's eligibility and suitability for a security clearance at this time. I recognize his present expressed intent to resolve these financial issues to keep a security clearance. However, these delinquent debts have been extant for several years, and although he has been employed at a reasonable salary for over five years in two jobs, none of the listed debts has been paid or settled. Applicant has not mitigated the security concerns arising from these financial considerations. Applicant was impressive in his testimony about his family history and work experience, there is no reason that he should not receive a security clearance at some future time but It is premature at this time to grant one.

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.q: 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. Access to classified information is denied.

CHARLES D. ABLARD
Administrative Judge

