



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



In the matter of:)
)
) ISCR Case No. 08-01473
)
)
Applicant for Security Clearance)

Appearances

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

May 27, 2009

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the government's security concerns under Guideline F, Financial Considerations. Applicant's eligibility for a security clearance is denied.

On July 25, 2008, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) detailing 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 August 22, 2008, and elected to have his case decided on the written record. Department Counsel submitted the Government's file of relevant material (FORM) on January 31, 2009. The FORM was

mailed to Applicant on February 11, 2009, and it was received on March 6, 2009. Applicant was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant did not object to the FORM and did not submit additional material. The case was assigned to me on May 15, 2009.

Findings of Fact

Applicant admitted all of the allegations in the SOR. After a thorough and careful review of the pleadings, exhibits, and statements submitted, I make the following findings of fact.

Applicant is 57 years old and has worked for his present employer, a federal contractor, as a machinist, since June 2007. Prior to then he was employed with various companies since 1996. He had two periods of unemployment from September 2006 to March 2007 and February 2002 to May 2002. Applicant served in the Air Force for four years and was honorably discharged. He was married and divorced from 1998 to 2002, from 1976 to 1983, and from 1970 to 1973. He has three grown children.¹

Applicant has three delinquent debts listed in the SOR totaling \$37,720. Applicant has not made any payments on these debts because he does not have the money.²

The debts in SOR ¶¶ 1.a and 1.b are to the same creditor. One is for a signature loan and one is for a car loan. Applicant does not know which debt applies to the different loans. The signature loan was opened jointly with his wife in 2000. The original balance was \$10,000. It was taken out to pay taxes and miscellaneous bills. He and his wife then went through a divorce and he could not get information on the loan because it was opened with his wife's credit union under her account number, even though it was a joint loan. It became delinquent in July 2002. Applicant does not know the status of this debt and does not have any agreement to pay the debt.

The other debt is a car loan. It was opened in January 1999, and the original loan was for approximately \$32,000. It was opened jointly with Applicant's wife and became delinquent in approximately December 2002. Applicant was divorced in July 2002 and was unable to keep current on the loan for a few months and eventually had difficulty paying all of his bills. The vehicle was repossessed in January 2003. At the time it was repossessed he believed the balance on the loan was \$8,000 to \$9,000. Applicant did not receive any correspondence on this account since the repossession. He does not have any agreement to pay this debt.

The debt in SOR ¶ 1.c is for a car loan. Applicant signed a loan for a car for his daughter because she was unable to get a loan. His daughter was to make the monthly payments. The account was opened in January 2003. Applicant believed the original

¹ Item 4.

² Item 5.

amount of the loan was \$23,000. His daughter made a few payments and then defaulted on the loan. Applicant tried to return the car to the creditor, but his daughter had given the car to her ex-husband and Applicant could not locate it. Applicant could not make the payments on the car and received repossession notices from the creditor. Sometime in 2003 the car was impounded and the driver of the car was arrested for an outstanding warrant. Approximately 13 months after the car was impounded Applicant received a notice from a collection company requesting payment of \$18,000 for the car. He later received a settlement offer for \$9,000. He notified the collection company he could not pay the amount. Applicant has not made any attempt to repay the loan.

Applicant was interviewed by an investigator from the Office of Personnel Management (OPM) on October 26, 2007. He stated he intended to pay all of his delinquent debts and would file for bankruptcy if he was unable to make the payments. He stated he started a new job and a new life in a different state. He stated all of his monthly bills were current.³

Applicant provided a statement explaining his debts became delinquent due to his divorce and they were incurred when he was living in a two income household. In his statement Applicant refers to another long-term debt he is currently paying. He stated he would like to pay his delinquent debts but does not earn enough money. No other information was provided.⁴

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

³ *Id.*

⁴ *Id.*

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. I have considered all of them under AG ¶ 19 and especially considered the following:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant has delinquent debts totaling \$37,720 that he incurred years ago and remain unpaid. He has not taken any action to resolve the debts. Applicant does not have sufficient resources to pay the debts. I find both disqualifying conditions apply.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. I have considered all of the mitigating conditions under AG ¶ 20 and especially considered the following:

- (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 admits he owes all of the delinquent debts and they remain unpaid. Therefore, the debts are recent and based on Applicant's financial situation I can not find the problem is unlikely to recur. I find mitigating condition (a) does not apply. Applicant bought his daughter a car and she was required to make the payments on it. She failed to do so and because the car loan was in Applicant's name he was responsible to pay the loan. He did not pay the loan. Applicant took out a loan to buy a car and took out a signature loan, both with his wife. They divorced and he could not pay these loans. These are conditions that were somewhat beyond his control. In order for mitigating condition (b) to be fully applicable Applicant must have acted responsibly under the circumstances. Applicant did not provide evidence to show he has taken any action to resolve these debts or made any payments towards them since he defaulted on them. I find mitigating condition (b) only partially applies. There is no evidence Applicant has received financial counseling or the problem is under control. There is also no evidence Applicant initiated a good-faith effort to repay his delinquent debts. I find none of the remaining mitigating conditions 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) 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 three large delinquent debts that have remained unpaid for many years. Although he stated he intends to pay his delinquent debts he has not taken any action to do so. Applicant failed to provide sufficient evidence to meet his burden of persuasion. I am unable to conclude Applicant has successfully mitigated the security concerns raised. Overall the record evidence leaves me with serious questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the security concerns arising from 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-c:	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. Eligibility for access to classified information is denied.

Carol G. Ricciardello
Administrative Judge