



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



In the matter of:)
)
-----) ISCR Case No. 08-02106
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Melvin A. Howry, Esquire, Department Counsel
For Applicant: *Pro Se*

February 24, 2009

Decision

HOWE, Philip S., Administrative Judge:

Applicant submitted his Security Clearance Application (SF 86), on May 30, 2007. On August 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 answered the SOR in writing on October 6, 2008, and requested his case be decided on the written record in lieu of a hearing.

On November 17, 2008, Department Counsel submitted the Department's written case. A complete copy of the file of relevant material (FORM) was provided to the

Applicant. He was given the opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant received the file. Applicant filed a response to the FORM on December 12, 2008, within the 30 day time allowed that would have expired on December 17, 2008. I received the case assignment on January 22, 2009. 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, dated October 6, 2008, Applicant admitted the factual allegations in ¶¶ 1.a, 1.b, 1.c, 1.d, 1.g, 1.j, and 1.k of the SOR, with explanations. He denied the allegations in ¶¶ 1.e, 1.f, 1.h, and 1.i.

Applicant is 57 years old, divorced, and works for a defense contractor. (Item 5)

Applicant has delinquent debts totaling \$12,500 in 11 debts. He claims he does not have sufficient income to repay these debts, except his education loan which he is required to repay. He also claims he cannot consolidate his debts and repay them because the agencies he consulted tell him his monthly income is too low to qualify for a debt consolidation loan. (Items 3, 4, 6-10, FORM Response)

Applicant's first debt listed in the SOR is for \$6,638 owed on his 2003 Federal income taxes. This debt is unpaid. (Items 3, 4, 6-10)

Applicant owes \$160 on a credit card. It is unpaid. (Items 4, 6-10)

Applicant owes \$511 to a creditor. It is unpaid. (Items 4, 6-10)

Applicant owes \$2,314 for a television he purchased for \$1,600. This debt is also unpaid. (Items 3, 4, 6-10)

Applicant denied he owed a telephone bill for \$851. He claims it is owed by someone else, but did not submit any proof of this debt being owed by another person. The debt remains unpaid. (Items 3, 4, 6-10)

Applicant is paying \$150 a month on his education loan of \$13,487. (Items 3, 4, 6-10, FORM Response)

Applicant admitted he owed \$110 on a cable television video account. He has not repaid this debt since 2004. (Items 4, 6-10)

Applicant denied he owes the debts listed in SOR Subparagraphs 1.h and 1.i for what he labels prepaid credit cards in the amount of \$410 and \$656. He claims he purchased only one card for \$75, and these debts are duplicates of each other. Neither debt has been repaid. (Items 3, 4, 6-10)

Applicant went to a hospital emergency room. He thought the bill would be \$350, but instead it was \$2,926, as set forth in SOR Subparagraph 1.j. He has not paid this debt either. (Items 3, 4, 6-10)

The final debt is owed to a towing service which towed Applicant's car. Applicant claims the service sold the car and kept the proceeds. The amount alleged to be owed is \$1,644. This debt is unpaid. (Items 3, 4, 6-10)

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, the administrative judge applies 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 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 substantial delinquent debt of \$12,500. He has not paid them, and offers no reasonable, good-faith explanation as to why he has not paid these debts listed in the SOR, except that he does not have the money to do so. He is required to repay the education loans, but claims in his FORM Response he needs his income to pay for his housing and current expenses. The evidence is sufficient to raise these potentially disqualifying conditions, requiring a closer examination.

The guideline in AG ¶ 20 includes examples of conditions that could mitigate security concerns arising from financial difficulties. The burden of proof is on him to show that the mitigating conditions should apply to him. He failed in this burden by not showing that he is repaying any debts except his education loan, or that his problems were beyond his control, or that any of the remaining mitigating conditions could apply. Applicant claimed his income was insufficient to repay his debts. He did not offer any documents or statements from anyone to support his contentions that someone else is liable on the telephone bill, or that the prepaid credit card debts are the same and that

he does not owe more than \$75. I do not find any potentially mitigating conditions are factors for consideration in this case.

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 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 incurred these debts as an adult, the debts are still owed and nothing has been paid on the debts except for the education loan, and he did not present any evidence of any changes in his spending habits to show the same situation will not occur in the future. His statements show his income is insufficient to repay these debts for several years in the future, at least, so the situation will recur. The potential for pressure, coercion, exploitation, or duress exists because of the size of Applicant's debt.

Overall, the record evidence leaves me with questions and substantial doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant did not mitigate 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:	Against Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	Against Applicant
Subparagraph 1.f:	For 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

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.

PHILIP S. HOWE
Administrative Judge