



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



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| In the matter of: |) | |
| |) | |
| ----- |) | ISCR Case No. 08-03071 |
| SSN: ----- |) | |
| |) | |
| Applicant for Security Clearance |) | |

Appearances

For Government: Pamela C. Benson, Esquire, Department Counsel
For Applicant: *Pro Se*

December 31, 2008

Decision

HOWE, Philip S., Administrative Judge:

On July 13, 2007, Applicant submitted his Security Clearance Application (SF 86). On May 13, 2008, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing the security concerns under Guideline F. 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 acknowledged receipt of the SOR on May 19, 2008. He answered the SOR in writing on May 22, 2008, and requested a hearing before an administrative judge. I received the case assignment on August 27, 2008. DOHA issued a Notice of Hearing on October 20, 2008, and I convened the hearing as scheduled on November 6, 2008. The Government offered Exhibits 1 through 6, which were received without objection. Applicant testified and submitted no exhibits. DOHA received the transcript of

the hearing (Tr.) on November 17, 2008. 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 May 22, 2008, Applicant admitted the factual allegations in ¶¶ 1.a, to 1.e, and 1.g of the SOR, with explanations. He denied the factual allegations in ¶¶ 1.f, 1.h, and 1.i of the SOR. He also provided additional information to support his request for eligibility for a security clearance.

Applicant is 44 years old, married, and has three children. He works currently for a defense contractor in graphic design and computer support. He has worked for that employer for three years, since late 2005 or early 2006. He sought a job which had benefits and a regular income. Previously, he operated a wedding photography business out of his home. That business started to dwindle because of competition and digital photography. His income from that business at the end of it was about \$30,000 annually. His bankruptcy filing shows his adjusted gross income in fiscal year 2006 was \$91,655, and in fiscal year 2007 his adjusted gross income was \$27,500. He also worked a second job at a photo lab to support his family. He had the home-based photography business from 1984 until 2006. He works a second job now as a commercial photographer for a professional photography company. For that company he might work 18 weddings or similar functions this year, earning about \$1,000 for each photo shoot. His income from the defense contractor is \$42,000 annually. Applicant has not had a security clearance previously. (Tr. 17-27, 88-91, 98; Exhibits 1 and 3; Answer)

Applicant closed his photography business in 2006 because he was working at least 80 hours per week, and his income was not growing. In July 2006, his wife was diagnosed with mucosal melanoma in her nose. It was removed, and then in September 2007 she had a spot removed on her face. Her condition seemed fine after both these occurrences. In February 2008, his wife was diagnosed with cancer in her lung, spleen, liver, and sternum. During part of this treatment period, he had to drive her 90 miles one way to another city for the chemotherapy. Later, his wife was able to have her treatments in her home town. She underwent chemotherapy until June 2008, when she was hospitalized for three one-week long hospital admissions with different treatments. She also had been going to the emergency room frequently. In August 2008, she was in an extreme condition. Her chemotherapy regime was changed, and she has improved dramatically. At the time he closed his business, Applicant also realized he had to undertake greater family responsibilities because of his wife's medical situation. (Tr. 23-25, 81-91, 98; Exhibits 1 and 3)

Applicant has eight delinquent debts listed in the SOR totaling \$247,151. That amount includes the mortgage balance on his foreclosed house which should have been paid through the foreclosure sale. Of those eight debts, none have been proven to be paid except the last listed debt in Paragraph 1.h. Applicant filed a Chapter 13

bankruptcy action on July 26, 2007, to resolve his financial delinquencies. It was dismissed on October 4, 2007, because Applicant did not file an amended payment plan. There was an error in a tax return filed as part of the bankruptcy, and while Applicant was getting it corrected, his father-in-law died. Applicant's spouse is the executor of the estate. His attorney advised him to let the bankruptcy petition be dismissed until the bequests from the estate were determined, and Applicant's wife's inheritance calculated. She eventually received \$13,000 from her father's estate. Applicant and his wife spent \$7,000 on a tax bill, utility bill payments, and several car repairs, and retain \$6,000 in an emergency fund. She is also to get one-seventh of the value of her father's home when they are able to sell it. He values it at about \$95,000. Applicant was advised by two bankruptcy attorneys to hold off filing the Chapter 13 petition again until his creditors contact him again, especially with the medical deductible payments being on-going with his wife's cancer condition. Applicant would rather file bankruptcy soon and eliminate the financial uncertainty in his life, but feels he has no choice because of his wife's cancer treatments and their costs. He did participate in financial counseling when he filed the bankruptcy in 2007. He also will prepare a budget for his home expenses. (Tr. 29-34, 53-55, 99-101; Exhibits 1, 3)

Applicant owes \$386 as the last payment on a leased vehicle he turned in at the end of the lease term in March 2007. That time period was when Applicant had the most financial constraints on him. This debt has not been paid, though Applicant would pay it if he had the money to do so. This debt was included in his 2007 bankruptcy filing. (Tr. 34, 35; Exhibits 1-6)

Applicant owes \$17,292 to a credit card company for debts incurred as part of operating his photography business. He used the card to live on in 2006 as his business declined. This debt is included in his 2007 bankruptcy filing. It has not been paid. The business was not a corporation, and the debt is a personal obligation of Applicant's. (Tr. 35, 36; Exhibits 1-6)

Applicant owes four debts to a credit union with which he formerly did business. The first debt is for \$38,503 on an equity line of credit on his former home, \$1,826 on an auto loan, and \$212 on an overdraft protection account, and \$4,756 for business equipment for his former photography business. None of these debts have been paid. All were included in his bankruptcy petition filing. The overdraft protection account amount was listed in the SOR as \$4,756, but the Government amended the amount to the correct amount of \$212, and Applicant had no objection to the amendment, so I granted it. (Tr. 36-42, 79; Exhibits 1-6)

Applicant owes \$179,850 on the mortgage due on his home which was foreclosed in 2007. Applicant has not received any correspondence from the bank on this debt. To his knowledge, the bank bought the house for \$191,000 at the auction. That sale price would be sufficient to satisfy his mortgage and part of the \$38,503 line of credit he had tied to the home value. This debt was included in the 2007 bankruptcy filing. (Tr. 42-44; Exhibits 1-6)

The last debt listed in the SOR was for \$82 owed to a collector. Applicant denied that debt, and the credit report of October 27, 2008, shows the balance on this debt as zero. It has been paid. (Tr. 44, 45; Exhibits 1-5)

Applicant also owes debts not listed in the SOR. He owes federal and state income taxes for 2006. He filed the tax returns, but did not have the money to pay the taxes with the return after he changed his accounting system from accrual to cash basis. He has installment payment agreements with both tax collection agencies. He pays the federal tax at the rate of \$150 monthly. The original amount owed was about \$9,500, and now is about \$7,000. He pays the state tax agency \$75 monthly on a debt of \$1,200. (Tr. 45-49, 64, 93)

Applicant owes about \$5,000 in medical debts. He recently repaid \$300 in co-payment bills. He tries to pay the smaller bills. The larger hospital bills of \$1,500 to one hospital, for example, he cannot repay now. (Tr. 28, 29; Exhibits 2-5)

Applicant owes \$308 to a telephone company. He has not paid that bill, and has not had contact with the creditor for over a year. (Tr. 49; Exhibits 2-5)

Applicant's payments on his minivan are current. He paid \$162 to a children's hospital on a medical debt. A medical debt to a cancer doctor for \$1,108 was paid by insurance. Other medical bills listed in his bankruptcy petition were paid. The \$6,146 owed to a dentist from 2003 has not been paid because Applicant disputes that amount, and the quality of the work. (Tr. 49-53, 62; Exhibits 2-5)

Applicant has not incurred any new long-term debt since February 2007. He has paid debts which he could pay since then, and has managed to survive financially. His financial statement provided as part of his interrogatory answers in March 2008, is substantially correct currently. (Tr. 54-64; Exhibits 2-5)

Applicant has no credit cards presently. He owns two cars, one he is purchasing and the other is a 1991 Ford Tempo he inherited from his wife's father. His oldest child started college at a state university in September 2008. The son is studying visual communications. Applicant finances that education through loans, a scholarship, and a grant. Applicant paid \$1,680 for the fall semester. Applicant uses the money from his second job to pay that tuition. (Tr. 73-76)

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, and 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 some delinquent debt and was unable to pay some obligations for the last two years. He lived in his former home without paying the mortgage. The foreclosure process started, and the debt continues to show on his latest credit report. He has not pursued the Chapter 13 bankruptcy, and only paid an \$82 debt listed in the SOR. He did pay other small debts, but has not made any effort in the past year to resolve the bulk of his delinquent debts. He has delinquent taxes. 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 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." Applicant's financial worries arose between about 2006. He accumulated delinquent debt due to his wife's medical issues and his declining income from his business. The evidence does not raise this potentially mitigating condition.

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, some of the financial problems arose from his wife's medical problems, including the medical bills not covered by insurance. His wife was first diagnosed with a form of cancer in July 2006, after he was employed by the defense contractor. He acted responsibly in closing his business which consumed large amounts of his time, more than 80 per week, and in finding a position with a regular income and benefits which were needed when his wife was diagnosed with cancer. Applicant also had to assume additional familial responsibilities when his wife's cancer spread in her body. He also acted responsibly when he explored Chapter 13 bankruptcy, and carefully prioritized his bills. He allowed his residence to be foreclosed, reducing his housing costs. But his business was declining before his wife was diagnosed, so it was not a pre-existing condition under his employer's medical insurance to prevent coverage. I find this potentially mitigating condition is a factor for consideration in this case.

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). Similarly, AG ¶ 20(d) applies where the evidence shows “the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.” Applicant received counseling as part of his 2007 bankruptcy filing, and filed a Chapter 13 bankruptcy in July 2007. He dismissed it on advice of his attorneys when his wife was about to inherit money which might have allowed him to repay his debts. He has not refilled the bankruptcy petition, but would like to do so to rid himself of the burden of these unresolved delinquent debts. While he is not financially sound now because of his wife’s cancer treatments, he does have a plan to resolve his debts, and has paid some smaller debts while not incurring any other delinquent debt in almost two years. But he has not started a plan to repay his overdue creditors or resolve his delinquent debts without bankruptcy. I conclude these two potentially mitigating conditions do not apply.

The connection between Applicant’s inability to repay his delinquent debts, and his wife’s cancer treatments, is not shown persuasively by Applicant. His financial situation was declining before she was diagnosed in July 2006, and she was not shown to be in serious condition until February 2008, long after Applicant was employed with the defense contractor and had closed his photography business. His delinquent debts, including the failure to pay his mortgage debt, and his various car purchases or leases, predate his wife’s medical problems.

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. On the Applicant’s side of the issue, Applicant is a husband and parent faced with very great health and financial difficulties. He has a cancer-stricken wife for whom he must care, including driving her 180 miles round-trip for treatments for a period of time until he could get the same treatments in his hometown area. He saw his photography business declining, and sought regular employment three years ago.

On the financial side of the issue, it is clear his financial difficulties resulted from a declining business income, and his repeated use of his credit card to finance his business and to live on when his business declined. \$17,292 is owed on his credit card, and another \$38,503 on an equity line of credit. That totals about \$57,000 in debt incurred when he should have taken action earlier to decrease his losses. That action is not a responsible one, in addition to not paying his mortgage. Applicant is a mature adult with business experience who should have known what would occur if he continued as he had been doing in his business. It is unclear when these debts will be discharged in bankruptcy, or paid outside of bankruptcy. Therefore, the situation is continuing. He voluntarily incurred the debt.

Overall, the record evidence leaves me with questions or 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. I also conclude the "whole person" concept against Applicant.

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:

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| Paragraph 1, Guideline F: | AGAINST APPLICANT |
| Subparagraph 1.a to 1.i: | 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