



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



In the matter of:)
)
) ISCR Case No. 08-03399
)
)
Applicant for Security Clearance)

Appearances

For Government: Robert E. Coacher, Esq., Department Counsel
For Applicant: *Pro Se*

August 12, 2009

Decision

LOUGHRAN, Edward W., Administrative Judge:

Applicant has not mitigated Financial Considerations security concerns. Eligibility for access to classified information is denied.

On July 31, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, Financial Considerations. The action was taken under Executive Order (EO) 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 on August 13, 2008, and requested a hearing before an administrative judge. The case was assigned to another administrative judge on October 23, 2008, and reassigned to me on December 8, 2008. The hearing was scheduled and postponed on several occasions due to Applicant's medical problems. DOHA issued a notice of hearing on June 3, 2009, scheduling the hearing for June 30,

2009, by video teleconference (VTC). The hearing was convened as scheduled. The Government offered Exhibits (GE) 1 through 4, which were received without objection. Applicant testified on his own behalf, but did not submit any documentary evidence. DOHA received the transcript of the hearing (Tr.) on July 9, 2009.

Findings of Fact

Applicant is a 37-year-old employee of a defense contractor. He has worked for his current employer since June 2001, but he has been out of work on disability since October 2008. He served in the U.S. Air Force from 1992 to 1998, and was honorably discharged as a senior airman (E-4). He attended college for a period but did not obtain a degree. He was married from 1992 until his divorce in 1999. He married again in 2000. He has a 12-year-old child who lives with his first wife. He has a three-year-old child and a 13-year-old stepchild. Both children live with him and his wife.¹

Applicant started having financial difficulties after his divorce in 1999. His problems worsened when he was laid off in 2000. He estimates that he was out of work for "a couple of months." He obtained other jobs but at lower salaries. Things improved after he was rehired by his current employer in about June 2001. Applicant and his wife attempted to help her father and grandfather through some problems in about 2002 or 2003. They rented their house to her father while they cared for her ill grandfather. Her father paid them with about \$3,000 in checks that were returned for insufficient funds. Applicant's wife lost her job sometime between 2003 and 2005. She developed significant medical problems after she was laid off. Their insurance did not cover all her expenses, resulting in unpaid medical bills. She attempted to start a business but it was unsuccessful. She did not return to the workforce for a lengthy period. With the high cost of childcare, Applicant and she decided that she would stay at home with their young child.²

Applicant had knee surgery in October 2008. The knee became infected and he developed complications after the surgery, requiring additional surgery. He has been unable to return to work because of the complications from the surgeries. He anticipates being off work for several more months. He is on long-term disability, which is substantially less than his regular salary. There have been problems with him receiving his disability pay. There is a lawsuit pending against the doctor who performed his surgery. There are disputes with his insurance companies as to covering the additional procedures and his disability pay. The insurance companies believe that the doctor is responsible because of his malpractice.³

The SOR alleges 20 delinquent debts as listed on credit reports dated October 3, 2007 and May 1, 2008. In his answer to the SOR, Applicant admitted to all the debts

¹ Tr. at 64-65; GE 1.

² Tr. at 22-24, 39, 66-69; GE 1, 3.

³ Tr. at 24-28, 33-39, 55.

alleged in the SOR with the exception of the debts alleged in SOR ¶¶ 1.d, 1.g, 1.l, and 1.q. The total amount owed on the 16 debts that Applicant admitted owing is about \$25,789.

Applicant responded to DOHA interrogatories on May 14, 2008. He acknowledged that he had delinquent debts. He contacted a number of his creditors. Most of his creditors wanted more each month for a payment plan than he could afford to pay. He provided documentation that he settled a \$476 medical debt on May 2, 2008, for \$249. He settled another medical debt with the same collection company on May 2, 2008, for \$261. This is the debt alleged in SOR ¶ 1.s. On May 2, 2008, he paid \$20 to a collection company on behalf of a satellite television company, and stated that he would pay \$20 per month until it was paid. This is the \$159 debt alleged in SOR ¶ 1.k. He used a credit card to make the \$249, \$261, and \$20 payments on May 2, 2008. He indicated that he set up a payment plan to pay \$37 per month for three months starting in June 2008, to pay the \$112 debt to a bank, as alleged in SOR ¶ 1.t. He stated that he would pay \$10 per month to three other creditors.⁴

Between May 2008 and when he had his knee operation in October 2008, Applicant paid in total about \$75 toward his delinquent debts. He paid the \$36 debt alleged in SOR ¶ 1.m, and about \$39 toward his other debts.⁵

Applicant disputed owing the debts alleged in SOR ¶¶ 1.d, 1.g, 1.l, and 1.q. SOR ¶ 1.d alleges a delinquent debt of \$2,250 owed to a bank. Applicant admitted to having an account with the bank and an additional account is listed on the two credit reports in evidence. The October 3, 2007 report lists a collection account with this bank. It lists a high credit of \$2,250 with a zero balance, and states the debt was transferred or sold. The May 1, 2008 credit report does not list the debt. SOR ¶¶ 1.g and 1.l list debts of \$489 to collection companies on behalf of cable television providers. Applicant credibly testified that he has never used the cable providers as cable television is unavailable where he lives. SOR ¶ 1.q alleges a delinquent debt of \$521 for a dishonored check. This check was written on an old, closed account without Applicant's knowledge or consent. He submitted a copy of the police report wherein he filed an affidavit that the check was forged.⁶

Applicant stated that he fully intends to pay his delinquent debts and will initiate payment plans once he returns to work or receives a settlement from his lawsuit. He contacted a credit counseling company but the company told him that he did not have sufficient unsecured debt to justify their assistance. In addition to the SOR, he is several

⁴ GE 3.

⁵ Tr. at 43, 75-78.

⁶ Tr. at 28-30, 40-51; Applicant's response to SOR; GE 2-4.

months behind on his mortgage and child support. His wife recently obtained a part-time job.⁷

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 to be used 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, administrative judges apply 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 the 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

⁷ Tr. at 31-32, 39, 51-55, 62. The delinquent mortgage and child support were not alleged in the SOR and will not be used for disqualification purposes. They will be considered in assessing Applicant's overall financial situation, in the application of mitigating conditions, and in analyzing the "whole person."

permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Section 7 of Executive Order 10865 provides that adverse 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. Two are potentially applicable in this case:

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

Applicant accumulated a number of delinquent debts and was unable or unwilling to pay his obligations for a period of time. The evidence is sufficient to raise the above disqualifying conditions.

Five Financial Considerations Mitigating Conditions under AG ¶ 20 are potentially applicable:

- (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;

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and

(e) 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.

Applicant has not resolved most of the debts alleged in the SOR. His financial issues are ongoing. AG ¶ 20(a) is not applicable. Applicant's financial problems started with his divorce. He was unemployed and underemployed for a period. His father-in-law took advantage of him and his wife and wrote them about \$3,000 worth of bad checks. His wife lost her job. Applicant and his wife both had major medical issues. These all qualify as conditions that were outside his control. To be fully applicable, AG ¶ 20(b) also requires that the individual act responsibly under the circumstances. Applicant has been unable to address his delinquent debts since his knee operation in October 2008. I will base my assessment of whether he has acted responsibly on his actions prior to going on disability. When Applicant responded to DOHA interrogatories in May 2008, he provided information that he made payments of \$249, \$261, and \$20 to three creditors. All the payments were made with a credit card, which transferred the debt to another creditor. He stated he would pay \$37 per month on one debt, \$20 on another debt, and \$10 per month on three other debts. He testified that he only paid about \$75 between May and October 2008. That is insufficient for a finding that he acted responsibly during that period. AG ¶ 20(b) is partially applicable.

Applicant has not received financial counseling and his financial problems are far from being resolved or under control. AG ¶ 20(c) is not applicable. His payments are insufficient for a finding that he made a good-faith effort to pay all of his delinquent debts. AG ¶ 20(d) is applicable to the paid debts. Because of the amount still owed, I am unable to find AG ¶ 20(d) applicable to all his debts.

Applicant disputed the debts alleged in SOR ¶¶ 1.d, 1.g, 1.l, and 1.q. The debt alleged in SOR ¶ 1.d is not established by the record evidence. He provided credible testimony about the debts in SOR ¶¶ 1.g and 1.l, and documentation about his dispute of the debt in SOR ¶ 1.q. AG ¶ 20(e) is applicable to those debts.

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 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. I have incorporated my comments under Guideline F in my whole person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment. I considered Applicant's honorable service in the Air Force. Applicant has suffered a series of unforeseen events which have devastated his finances. He has been on long-term disability since October 2008. I have decided to look at the period before he went on disability to determine whether he has mitigated the financial concerns. When he responded to interrogatories in May 2008, he established that he made three payments toward his debts, but the payments were made by credit card. He promised that he would pay \$87 per month toward five debts, but only paid a total of about \$75. Applicant's actions during that period do not convince me that he will act responsibly toward his creditors even after he returns to work.

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 Financial Considerations security concerns.

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.c:	Against Applicant
Subparagraphs 1.d-1.e:	For Applicant
Subparagraph 1.f:	Against Applicant
Subparagraph 1.g:	For Applicant
Subparagraphs 1.h-1.k:	Against Applicant
Subparagraphs 1.l-1.m:	For Applicant
Subparagraphs 1.n-1.p:	Against Applicant
Subparagraph 1.q:	For Applicant
Subparagraph 1.r:	Against Applicant

Subparagraph 1.s:
Subparagraph 1.t:

For Applicant
Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Edward W. Loughran
Administrative Judge