



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



In the matter of:)
)
) ISCR Case No. 08-03664
)
)
Applicant for Security Clearance)

Appearances

For Government: James F. Duffy, Esq., Department Counsel
For Applicant: *Pro Se*

March 31, 2009

Decision

DAM, Shari, Administrative Judge:

Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

On September 27, 2007, Applicant submitted a Questionnaire for Sensitive Positions (SF 86). On November 14, 2008, the Defense Office of Hearings and Appeals (DOHA) issued 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.

On January 2, 2009, Applicant answered the SOR in writing and elected to have the case decided on the written record in lieu of a hearing. On January 29, 2009, Department Counsel prepared a File of Relevant Material (FORM) containing nine Items, and mailed Applicant a complete copy on February 2, 2009. Applicant received the FORM on February 9, 2009, and had 30 days from its receipt to file objections and submit additional information. On March 2, 2009, Applicant submitted a letter indicating that he had no objections to the FORM and had no additional information. On March 16, 2009, DOHA assigned the case to me.

Findings of Fact

In his Answer to the SOR, Applicant admitted all factual allegations contained in the SOR ¶¶ 1.a through 1.w.

Applicant is 43 years old and divorced. He has two children and two-step children. From 2000 until June 2007, he worked for several different companies until he obtained a job, as a laborer, with a federal contractor. (Items 5, 6)

In June and July 2008 (before the issuance of the SOR), Applicant completed sets of Interrogatories related to his finances. He started having financial difficulties approximately three years prior to completing the Interrogatories because he had low paying jobs without health care benefits, purchased too many items on credit and failed to live within his financial means. According to the budget he submitted in July 2008, his net monthly income was \$1,400 and his expenses were about \$2,453, indicating a \$1,000 monthly deficit. In both sets of Interrogatories, he asserted that he intended to seek financial assistance to help manage his debts and finances. (Items 6, 7) With his new position and income, he thinks he should be able to address them. (Item 6)

Based on credit bureau reports (CBR) dated September 28, 2007, and March 25, 2008, the SOR alleged 23 delinquent debts, totaling \$41,214. All of the debts remain unpaid or unresolved. They consist of debts owed to credit card companies, department stores and a utility company. Several debts are for medical services, which he seemingly incurred while he was without insurance, and one is for unpaid child support, which he asserted is paid. (Item 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 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 commonsense decision. According to AG ¶ 2(a), 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. According to 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 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 that an 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 adverse to an applicant 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 *a/so* Executive Order 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 of them are potentially disqualifying:

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

Based on two CBRs and his admissions, Applicant has been unable or unwilling to satisfy debts that began accruing since 2005. The evidence is sufficient to raise these two disqualifying conditions.

After the Government raised potential disqualifications, the burden shifted to Applicant to rebut and prove mitigation of the resulting security concerns. The guideline includes six examples of conditions that could mitigate security concerns arising from financial difficulties under AG ¶ 20:

- (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; and

- (f) the affluence resulted from a legal source of income.

Applicant's numerous financial delinquencies have been ongoing since 2005, and do not appear to have arisen out of unusual circumstance. Hence, AG ¶ 2 (a)

cannot apply. Applicant attributed some of the financial difficulties to periods of low paying positions and a lack of medical insurance. However, there is no evidence in the record indicating that he responsibly managed his finances during those difficult periods, which is necessary for full application of this mitigating condition. Thus, AG ¶ 20(b) has limited application. Applicant did not present any evidence that he received credit counseling or that the 23 delinquent debts are resolved or under control, as required under AG ¶ 20(c). Applicant has not paid or initiated repayment of any debt; hence, AG ¶ 20(d) does not apply.¹ There is no evidence indicating that he disputed any of the debts, which is required under AG ¶ 20(e). The record does not support the application of AG ¶ 20(f).

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). They include the following:

- (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.

According to 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 is 43-years old and has worked for a federal contractor since June 2007. In July 2008, he learned of the Government's concerns about his finances and indicated that he would begin resolving them. In November 2008, he again received notice of those concerns through the SOR, but did not take steps or submit any information indicating that he was attempting to resolve the debts and establish a workable budget. Without such proof, there is insufficient information in the record to mitigate the financial concerns. His failure to address the issues over the past couple years, raises questions about his judgment.

Overall, the record evidence leaves me with 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 his financial issues.

¹ Applicant indicated that his child support payments are current, but did not provide any evidence to support his statement.

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 through 1.w: Against Applicant

Conclusion

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

SHARI DAM
Administrative Judge