



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



In the matter of:)
)
) ISCR Case No. 08-04225
)
)
Applicant for Security Clearance)

Appearances

For Government: Daniel F. Crowley, Esq., Department Counsel
For Applicant: *Pro Se*

December 17, 2008

Decision

LOUGHRAN, Edward W., Administrative Judge:

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

On July 22, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing the 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 18, 2008, and elected to have the case decided on the written record in lieu of a hearing. Department Counsel submitted the government's written case on September 12, 2008. A complete copy of the file of relevant material (FORM) was provided to Applicant, who was afforded an

opportunity to file objections and submit material to refute, extenuate, or mitigate the security concerns. Applicant received the FORM on September 24, 2008. As of December 12, 2008, he had not responded. I received the case assignment on December 12, 2008.

Findings of Fact

Applicant is a 33-year-old employee of a defense contractor. He has worked for his current employer since August 2007. He has a bachelor's degree awarded in 2000. He was attending college when he submitted his Questionnaire for National Security Positions (SF 86) in August 2007. He worked as a student assistant for the university he was attending while on educational leave from the defense contractor. He has never been married and has no children.¹

The SOR alleges 17 delinquent debts, totaling \$57,877. Applicant admitted to owing all the debts. There is no evidence of payments on any of the debts. There is little information in the record as to the cause of Applicant's financial problems. His SF 86 indicates he attended college for much of the time since he earned his degree in 2000. There were brief periods of unemployment. Much of his work was related to the university and he was likely not well-paid. His credit reports also indicate a number of student loans.²

Applicant submitted documentation in response to DOHA interrogatories that he inquired with a credit counseling service in June 2008 about using their services. The company developed a proposed consolidation plan to pay \$37,106 in debts to eight creditors, with an estimated monthly payment of \$947. Applicant did not submit additional evidence as to whether he actually contracted with the company or made any payments to his creditors through the plan.³

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.

¹ Items 4, 6.

² Items 2, 4-7.

³ Item 4.

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 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 *a/so* 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 both of these potentially disqualifying conditions.

Five Financial Considerations Mitigating Conditions under AG ¶¶ 20(a)-(e) 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 made payments on any of the debts alleged in the SOR. AG ¶ 20(a) is not applicable. He provided no explanation as to how he arrived at his current financial situation. It appears to be related to his student status, unemployment, and low-paying university jobs. These could be conditions that were largely beyond his control. To be fully applicable, AG ¶ 20(b) also requires that the individual act responsibly under the circumstances. Applicant did not explain all his debts or what if any affect these conditions had on his finances. He consulted with a credit counseling company in June 2008, but there is no evidence that he ever contracted with the

company or made any payments on the proposed plan. There is insufficient information for a finding that he has acted responsibly under the circumstances. AG ¶ 20(b) is not applicable.

The credit counseling company provides financial counseling, but there is no evidence that Applicant availed himself of that counseling. There are not clear indications that the problem is being resolved or is under control. AG ¶ 20(c) is not applicable. He has not made a good-faith effort to repay overdue creditors or otherwise resolve debts. AG ¶ 20(d) is not applicable. He did not dispute owing any of the debts. AG ¶ 20(e) is not applicable.

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. Applicant has more than \$55,000 in delinquent debt. He provided no explanation for his financial problems. He has not mitigated the security concerns raised by his substantial delinquent debt.

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 the 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.q: Against Applicant

Conclusion

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

Edward W. Loughran
Administrative Judge