



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



In the matter of:)	
)	
-----)	ISCR Case No. 08-04229
SSN: -----)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Nichole Noel, Esquire, Department Counsel
For Applicant: Pro Se

January 21, 2009

Decision

LYNCH, Noreen A., Administrative Judge:

Applicant submitted his Security Clearance Application (SF 86), on January 11, 2008. On June 30, 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 requested a hearing before an Administrative Judge. I received the case assignment on October 28, 2008. DOHA issued a notice of hearing on November 18, 2008, and I convened the hearing as scheduled on December 10, 2008. The Government offered Exhibits (GE 1-5), which were received into the record without objection. Applicant testified in his own behalf. He submitted Exhibits (AE A-F), without objection. I held the record open until January 9, 2009 and Applicant timely submitted a

document marked as AE G. Department Counsel had no objection and the document was received into the record. DOHA received the transcript on December 18, 2008. Based upon a review of the record, eligibility for access to classified information is denied.

Findings of Fact

In his Answer to the SOR, dated August 6, 2008, Applicant admitted the factual allegations in ¶¶ 1.a through 1.n. He provided additional information to support his request for eligibility for a security clearance.

Applicant is a 27-year-old employee of a defense contractor. He graduated from high school in May 2000. In May 2003, he received a degree in electronic engineering. He has been employed with his current employer since August 2008 (GE 1).

In 2004, Applicant had some delinquent debt as a result of “mistakes that he made with his credit” (GE 4). He trusted his family and friends with his credit but they defaulted on payments to the accounts in his name. He obtained a loan consolidation in the amount of \$3,000 to help pay that debt. He is still paying on the loan (Tr. 38). He believes the balance is \$1,900.

Applicant worked full time after high school. He worked steadily until March 2007 when he was laid off from his job. At that time his hourly salary was \$17 an hour. He was unemployed for two weeks (Tr. 63). He took temporary jobs that ranged in pay from \$11 to \$12 an hour. Applicant could not maintain his expenses and accumulated delinquent debt (Tr. 14).

In March 2006, Applicant purchased a truck for his parents. He signed for the car loan but his parents did not assume the monthly payments as planned. The payments were delinquent without Applicant’s knowledge. He tried to settle with the company in 2006 but he did not have a sufficient lump sum (Tr. 32).

Applicant is single but plans to wed next year (Tr. 16). He stated he will need money to pay for the wedding. He has a two-year-old daughter from a long term relationship that ended in 2008. He pays child support in the amount of \$500 a month to her mother (AE B). A garnishment of \$40 a month from his paycheck is for insurance for his daughter (GE 4).

The SOR alleges 13 delinquent debts/collection accounts. The total amount of the delinquent debt is approximately \$19,647.

SOR ¶ 1.a is a collection account in the amount of \$958 for a cell phone. This account is unpaid.

SOR ¶ 1.b is a collection account in the amount of \$100. Applicant settled this account for \$30 (AE D).

SOR ¶¶ 1.c., d., and e. are three separate collection accounts with the same cable company. Applicant paid \$106 on one account. The other two accounts are unpaid (Tr. 44).

SOR ¶ 1.f is for a telephone account in collection for \$358. Applicant's parents used the phone but did not pay the bills. This account remains unpaid.

SOR ¶ 1.g is a collection account for \$640. Applicant does not know the origin of this account. The account is unpaid.¹

SOR ¶ 1.i. is an account in the amount of \$79. The account is paid (AE C).

SOR ¶ 1.j is a collection account for a water bill in the amount of \$179. The account remains unpaid.

SOR ¶ 1.k is a collection account for the truck purchased for his parents in the amount of \$14,245. This is unpaid.

SOR 1.l is a collection account for a cell phone that belonged to Applicant's girlfriend. The account for \$589 is unpaid.

SOR 1.m is for a collection account in the amount of \$1,135. Applicant has no knowledge of this account.

SOR 1.n is for another cell phone account that belonged to his girlfriend's sister in the amount of \$449 which is unpaid.

Applicant earns approximately \$50,000 a year. After monthly expenses and payment on some debt, he has approximately \$500 net remainder (Tr. 60). He is current with his car payment. His own credit card bills are paid. He has \$100 in savings. Applicant has not received financial counseling. His parents now agree to give him \$400 a month to help him pay his delinquent debts (AE G). He promised to pay a few more debts in the weeks after the hearing but he did not submit any documentation to support this assertion.

Applicant's annual performance appraisals rate him as "fully meeting requirements" with "exceeds requirements" in several areas. He displays an ability to handle a large workload while adhering closely to policies and procedures (AE G). He displays a positive attitude at work.

Applicant's interpersonal and communication skills include excellent listening and troubleshooting skills. He can diagnose a problem and devise viable solutions. He has an ability to remain unflustered during frenzied periods at work. He is an asset to his team. His supervisor recommends him for a security clearance (AE G).

¹The SOR did not include an allegation 1.h.

Applicant's colleagues and friends attest to his reliability, maturity and high level of dedication to his work. He has received various awards in recognition of his achievements. He is a loyal and trusted friend who is respectful and conscientious.

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, 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^o is potentially disqualifying. Similarly under AG & 19(c), Aa history of not meeting financial obligations^o may raise security concerns. Applicant has numerous delinquent debts (\$19,647) and could not meet his financial obligations from 2003 until the present. 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 conditions may be mitigated where Athe 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.^o Applicant-s financial worries are partially the result of allowing his credit to be used by family and friends who defaulted on paying their bills. However his delinquent debts have various sources and have been ongoing. This potentially mitigating condition does not apply.

Under AG & 20(b), it may be mitigating where Athe 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.^o As noted above, his financial problems may have increased with a short period of unemployment and lower wage rate, but Applicant did not act responsibly in identifying and resolving his debts. He did not take an active stance when he learned about many of them. Applicant has worked steadily for many years with a few periods of unemployment, I find this potentially mitigating condition does not apply.

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). This does not apply. Applicant has no budget and has had no financial counseling. He is paying child support insurance through a garnishment. He does not have a handle on his financial affairs at this time. He plans to pay his delinquent debt but has no firm plan in place at this time.

AG & 20(d) applies where the evidence shows the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts. Applicant initially obtained a loan consolidation plan to repay earlier debt in 2004. Since then he has not attempted to resolve his financial issues. He paid several small debts but the majority are unresolved. I conclude this potentially mitigating condition does not apply.

AG ¶ 20(e) applies where the evidence shows “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.” In this case, Applicant stated that the alleged debts were due to his parents and friends not paying on the accounts that Applicant allowed them to use. He acknowledged that he signed for the accounts and is responsible for them. I conclude this potentially mitigating condition does not apply.

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 and conclude that under the whole person, there is not sufficient mitigation to overcome the government’s case.

Applicant has worked for a number of years since receiving his degree. He has a very good work record and a recommendation from his supervisor. He is a valuable and trusted employee. He received good evaluations. His friends and colleagues attest to his loyalty, responsibility, and dedication. He has a two-year-old-daughter that he supports. He helped his parents and friends when they needed credit. However, that

exacerbated his financial difficulties. The largest debt is the purchase of the truck for his parents. He acknowledges that he is the signer on the loan and is responsible for the debt.

Applicant promises to pay his delinquent debts soon. His parents are providing \$400 a month toward that plan. However, Applicant has not yet established a payment plan. He paid several small debts but the majority of his delinquent debt is unpaid. He has not provided sufficient mitigation to sustain his burden in this case.

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 security concerns arising under 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:	For Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	Against Applicant
Subparagraph 1.f:	Against Applicant
Subparagraph 1.g:	Against Applicant
Subparagraph 1.i:	For Applicant
Subparagraph 1.j:	Against Applicant
Subparagraph 1.k:	Against Applicant
Subparagraph 1.l:	Against Applicant
Subparagraph 1.m:	Against Applicant
Subparagraph 1.n:	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.

NOREEN A. LYNCH
Administrative Judge