



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



In the matter of:)	
)	
-----)	ISCR Case No. 08-04599
SSN: -----)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Alison O’Connell, Esquire, Department Counsel
For Applicant: Pro Se

April 7, 2009

Decision

ABLARD, Charles D., Administrative Judge:

Applicant failed to mitigate security concerns regarding Guideline F (Financial Considerations). Eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted his Security Clearance Application (SF 86), on August 29, 2007. On November 6, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns for Applicant under Guidelines F (Financial Considerations), and E (Personal Conduct). 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 November 20, 2008 and requested a hearing before an administrative judge. Department Counsel was prepared to proceed and I received the case assignment on January 30, 2009. DOHA issued a notice of hearing on February 3, 2009, for a hearing on February 19, 2008. It was amended on February 9 for a February 18, 2009, hearing and convened as scheduled.

At the hearing, the government offered six exhibits (Exhs. 1-6) that were admitted in evidence without objection. Applicant submitted two exhibits (Exhs. A and B) that were admitted without objection. He testified on his own behalf. DOHA received the transcript of the hearing (Tr.) on February 26, 2009. I granted Applicant's request to keep the record open until March 6, 2009, to submit additional evidence. A post-hearing submission was received within the specified time after the conclusion of the hearing. It contained two separate letters of support from his supervisor and a colleague (Exhs. C - 1 and 2). The government had no objection to the submission and the documents were admitted in evidence without objection.

Procedural Rulings

At the opening of the hearing, the government moved to withdraw the allegations under Guideline E, Applicant had no objection and the motion was granted.

Findings of Fact

In his answer, Applicant admitted all of the 22 allegations in the SOR concerning a Chapter 13 bankruptcy in 2001 and delinquent debts of over \$30,000. Two of them may be duplicates. He attached a statement as a part of his answer. He denied that the allegations showed that he was at risk for committing illegal acts, and breaching national security.

Applicant is a 38-year-old employee of a defense contractor working as an electronic technician since March 2008. for his present employer He served nine years in the Marine Corps between 1995 and 2004. He was unemployed for four months before obtaining work in 2004 for another defense contractor. He worked there in a similar position until his present employment. He does not have a college degree but has accumulated enough hours that he will have one in a year. He has been married for 13 years and has two teen age children.

In 2001, while on active duty, Applicant filed for Chapter 13 bankruptcy which was dismissed in 2003 by the trustee (SOR ¶ 1.a.). The principal reason for the bankruptcy was the purchase of a home from which he and his family moved when he re-joined the Marine Corps. He and his wife let his parents-in-law use the house and pay no rent since they had very little income. The result was that Applicant fell behind on mortgage payments of \$450 per month since he was paying for his former home and his present home. His parents-in-law later became employed and also became eligible for social security payments. They were then able to buy the house they occupied and assume the mortgage payments. The alleged \$8,572 debt (SOR ¶ 1.r.) disputed by

Applicant arose from this transaction. While it may have once been owed to the mortgagee, his parents-in-law assumed any deficient mortgage payments when they purchased the house from him.

The debts alleged in the SOR arose from various accounts. One is for a cell phone in the amount of \$856 on which no action has been taken (SOR ¶ 1.b.). It may be duplicated in another account listed for over \$900 about which he has no other information. He has had no contact with the creditor (SOR ¶ 1.n.). The next debt is for a big screen TV in the amount of \$8,254. He forgot about this debt. He believes it may have been repossessed as it now shows on his credit report as owing \$3,000 (SOR ¶ 1.c.). Two debts totaling over \$5,000 are for military loans now charged off (SOR ¶¶ 1.d. and e.). One debt is to an animal hospital for treatment of his dog for \$183 which he intended to pay the day following the hearing (SOR ¶ 1.f.). He has seven medical bills in collection for varying amounts (SOR ¶¶ g.,h.,i.,o.,p.,t., and u.). One debt is for the purchase of tires for over \$1,000 in 2007 (SOR ¶ 1.m.). Four debts are credit card related about which he has little information (SOR ¶¶ l., j.,k.,and s.). Two other alleged debts are for traffic fines imposed by the city where he once lived 200 miles from where he now lives. Two of them may be duplicates (SOR ¶¶ 1.q. and v.). He needs to go to court in that city to resolve the debts but has not done so (Tr. 30-59).

Applicant has settled one debt of \$142 for a returned check issued by his wife that was not on the SOR (Exh. A). Two other small debts for \$14 and \$42 have been paid to a collection agency but do not appear to be on the SOR. The first may be a portion of the animal hospital debt referenced above (Exh. B). The collection letter also listed several other debts four of which are medical debts that appear to be part of the seven noted above. He intends to pay the collection agency as funds are available.

Applicant was raised in a family that provided him with funds when he needed help, paid his bills in college, and at other times. He acknowledges that his current financial situation arose because of his "irresponsibility" (Tr. 67), and "bad judgment" (Tr. 15). Although he had several delinquent medical bills, no one is very large and there is no evidence that they are the proximate cause of his indebtedness.

Applicant's annual salary from his employment is approximately \$52,000. His wife is employed and her annual salary is approximately \$32,000. He had a 401(k) account of \$4,000 through his employer but withdrew it in the hope of making a down payment on a home. However, he discovered that his credit rating was too low to do so. He now intends to use the funds to pay some of his debts.

Applicant is highly regarded by his supervisors and a colleague for his work ethic, dedication to accomplishing the mission of his employer, and willingness to go beyond the requirements of his job (Exhs. C-1 and 2).. He has held a security clearance since his military service.

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 overarching 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. . . ." 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" is potentially disqualifying. Similarly under AG ¶ 19(c), "a history of not meeting financial obligations may raise security concerns."

Applicant did incur substantial delinquent debts and was the subject of two federal tax liens and a home foreclosure. Thus, the conditions required were established by the government sufficient to raise a security concern.

The guideline also includes examples of mitigating conditions (MC) that could mitigate security concerns arising from financial considerations. Under AG ¶ 20(b), the security concern may be mitigated 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. Although he had some medical expenses, and several months of unemployment when he left active duty, there is no indication that these factors were the cause of his indebtedness. He has now been employed for over four years with little resolution of most of his debts. Thus, I conclude that he has failed to act responsibly and the mitigating condition is not applicable.

Under AG ¶ 20(d) the security concern may be mitigated when the individual initiated a good faith effort to repay overdue creditors or otherwise resolve debts. From the lack of evidence presented to establish this mitigating condition, it is not applicable.

Under AG ¶ 20(e) the security concern may be mitigated when the individual has a reasonable basis to dispute the legitimacy of the past-due debt that 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. He has provided evidence of a reasonable basis for disputing two of four allegations as duplicates but two are still outstanding. He has established a reasonable answer to the allegation relating to his mortgage payments on his former home, the largest of his debts. This mitigating condition is applicable to those three 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.

Applicant is a mature adult with significant responsibility in his work for which he is highly regarded. His effort to help his parents-in-law was commendable but the problems arising from that effort were resolved several years ago. The present debts arose several years ago, and very little has been done to resolve them until recently. He acknowledges that the debts arose and have not been resolved through his own lack of responsibility. He is an impressive young man who has considerable potential and has sufficient income to begin a program to resolve the debts. There is no reason to think he would compromise national security but his actions to date to resolve his financial problems do not meet the minimum requirements under the guideline to justify a grant of a security clearance. Thus, it is premature to grant him a security clearance at this time.

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
Subparagraphs 1.c.-p.:	Against applicant
Subparagraphs 1.q. and r.:	For Applicant
Subparagraphs 1.s.-v.:	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. Access to classified information is denied.

CHARLES D. ABLARD
Administrative Judge