



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



In the matter of:)	
)	
)	ISCR Case No. 08-04847
SSN:)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Julie R. Mendez, Esquire, Department Counsel
For Applicant: *Pro Se*

April 24, 2009

Decision

HENRY, Mary E., Administrative Judge:

Based upon a review of the case file, pleadings and exhibits. I conclude that Applicant's eligibility for access to classified information must be denied.

Applicant submitted his Security Clearance Application (SF 86) (e-QIP), on August 19, 2007. On October 31, 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 acknowledged receipt of the SOR on November 17, 2008. He submitted a notarized, written response to the SOR allegations on December 29, 2008, and requested a decision on the written record in lieu of a hearing.¹

Department Counsel prepared a File of Relevant Material (FORM) and mailed Applicant a complete copy on February 2, 2009. Applicant received the FORM on February 9, 2009. He had 30 days from receipt of the FORM to file objections and submit material in refutation, extenuation, or mitigation. He did not file response or additional evidence. DOHA assigned this case to me on April 16, 2009. The government submitted nine exhibits, which have been marked as Item 1-9 and admitted into the record. Applicant's response to the SOR has been marked and admitted as Item 3. His response and attachments to the FORM are admitted into evidence.

Findings of Fact

In his undated Answer to the SOR, Applicant admitted the factual allegations in ¶¶ 1.a, 1.d, 1.h, 1.k-1.p, and 1.t of the SOR. He denied the factual allegations in ¶¶ 1.b, 1.c, 1.e-1.g, 1.i, 1.j, 1.q, and 1.r of the SOR. He also provided additional information to support his request for eligibility for a security clearance.²

Applicant, who is 52 years old, works as an engineering technician for a Department of Defense contractor. He began this position in August 2007. He served in the United States Navy from 1973 until 1996. He held a secret clearance without any violations of procedures. He retired as a Chief Warrant Officer 3. Since his retirement, he has worked as a hazmat supervisor and a home mortgage loan officer. He was unemployed for four months in 2000.³

Applicant married in 1975 and divorced in 1990. He has three children, two daughters ages 31 and 21, and a son, age 23. He also has a stepdaughter, age 37, from his first marriage. He is not married, but lives with a long-time companion, who sustained injuries in a car accident in 2006. He reduced his work hours to care for his companion.⁴

Applicant's monthly gross income totals \$6,250 and his monthly military retirement and disability pay totals \$3,435. His net monthly income totals \$8,720. His monthly expenses total \$2,565, leaving \$6,155 a month income available to pay debts.⁵

¹Item 2; Item 3.

²Item 3, *supra* note 1, and attachments.

³Item 4 (SF-86).

⁴*Id.*; Item 8.

⁵Item 9, at 8.

The SOR lists 15 debts, 3 judgments and a 2001 Chapter 13 bankruptcy filing, based on the credit reports of record. Applicant denies owing two of the three judgments. He also denies owing 7 of the 15 debts. He correctly alleges that the judgment in SOR allegation 1.b and the debt listed in SOR allegation 1.q are the same. Based on a careful review of the four credit reports of record, I find that the debts in these allegations are the same. Thus, I find that allegation 1.q is a duplicate debt and is found in favor of Applicant.⁶

Applicant indicated in his SF-86 that his pay had been garnished to pay the judgments identified in SOR allegations 1.b and 1.o. He has not provided information which shows these debts have been paid as a result of the garnishment. I note that the judgment listed in SOR allegation 1.o is not shown on the April 18, 2008 credit report. The other two judgments are on this credit report. The December 8, 2008 credit report submitted by Applicant lists all three judgments as unpaid.⁷

In his answers to the interrogatories sent by the government, Applicant does not deny owing the debts listed in the SOR; rather, he acknowledges that he had not taken any action on the debts listed in the SOR. He indicated that the debts would or had been removed from his credit report by certain dates between November 2007 and July 2008. He denied owing some of these debts in his response to the SOR. In his interview with the investigator, he denied any knowledge about the numerous debts listed in the SOR.⁸

The court entered two judgments against Applicant in 2003 and one in 2007. Under state law these judgments are valid and collectible for ten years from the date of judgment and renewable for another ten years. Ten of the debts listed in the SOR became delinquent between 2001 and 2003, some six to eight years ago. Only four are not barred from collection under the State Statute of Limitations. All remain unpaid.⁹

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

⁶Item 1; Item 3, *supra* note 1, with attachments; Item 6, Item 7, and Item 9, *supra* note 5.

⁷Item 3, *supra* note 1; Item 4, *supra* note 3, at 30-31; Item 6, *supra* note 6, at 1-2.

⁸Item 3, *supra* note 1; Item 8, *supra* note 4; Item 9, *supra* note 5.

⁹See MCL 600.5807(8); MCL 600.5809(3).

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 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 accumulated numerous delinquent debts and three judgments. He has been unwilling to pay these obligations. 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 condition may be mitigated where "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." This mitigating condition does not apply as Applicant has not provided any explanation for how most of his debts arose between 2001 and 2003.

Under AG ¶ 20(b), it may be mitigating 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." Applicant was unemployed for four months in 2000, and in 2006, he decreased his work hours to care for his ill companion, This resulted in a loss of income for him. For this mitigating condition to apply, he must show he acted responsibly under the circumstances. He has not explained why he could not pay part of these debts when he was receiving his military retirement pay each month and when he was unemployed, he would have received unemployment benefits. He has not shown he acted responsibly under the circumstances. I find this 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). Similarly, AG ¶ 20(d) applies where the evidence shows "the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts." Applicant has not received financial counseling, he has not made a good faith effort to resolve his debts, and the delinquent debts remained unpaid. His financial statement shows that his current expenses are under control and that he has sufficient income to pay future contingencies. I conclude these mitigating conditions do not apply.

Mitigation may be established under AG ¶ 20(e), if "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, under AG ¶ 20(f) "the affluence resulted from a legal source of income." Applicant has not challenged the validity of any

of the debts listed in the SOR, thus mitigating condition AG ¶ 20(e) is not applicable. AG ¶ 20(f) is not raised in this case.

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 lost income when he was unemployed for four months in 2000 and when he worked part-time while caring for his companion who had been injured in a car accident. He, however, has not explained why he did not attempt to pay his bills during this period of time as he still received his military retirement pay each month and some other monthly income. He did not identify his expenses during these periods of reduced income. He simply did not pay his bills for a period of time. Many of these bills are not collectible under the law because of the age of the bills. However, the three judgments are valid for at least another four to eight years and are collectible. He has made no effort to pay the judgments and believes he no longer owes the debts which have dropped off his credit report.

Applicant has made no effort to resolve the many debts listed in the SOR and has not provided any explanation for his conduct. He chose to ignore his debts, not resolve them. He has not established that he mitigated the government's security concerns.

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 from his 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:	Against Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	Against Applicant
Subparagraph 1.f:	Against Applicant
Subparagraph 1.g:	Against Applicant
Subparagraph 1.h:	Against Applicant
Subparagraph 1.i:	Against 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
Subparagraph 1.o:	Against Applicant
Subparagraph 1.p:	Against Applicant
Subparagraph 1.q:	For Applicant
Subparagraph 1.r:	Against Applicant
Subparagraph 1.t: ¹⁰	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.

MARY E. HENRY
Administrative Judge

¹⁰The SOR does not contain an allegation 1.s. See Item 1.