



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



In the matter of:)
)
) ISCR Case No. 08-04889
)
)
Applicant for Security Clearance)

For Government: Melvin A. Howry, Esquire, Department Counsel
For Applicant: *Pro Se*

February 19, 2009

Decision

DAM, Shari, Administrative Judge:

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

On October 10, 2007, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP). On October 3, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant 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.

Applicant answered the SOR in writing on November 3, 2008, and requested a hearing before an administrative judge. On December 15, 2008, DOHA assigned the case to me and issued a Notice of Hearing on December 16, 2008. The case was

heard on January 13, 2009, as scheduled. Department Counsel offered Exhibits (GE) 1 through 7 into evidence without objection. Applicant testified and offered Exhibit (AE) A into evidence without objection. At the conclusion of the hearing, I left the record open until January 28, 2009, to give Applicant an opportunity to submit additional information. Applicant timely submitted four exhibits that I marked AE B through E and admitted into the record without objection by the Government. On January 26, 2009, DOHA received the hearing transcript (Tr.)

Findings of Fact

In his Answer to the SOR, Applicant admitted the debts contained in ¶¶ 1.b through 1.i, and denied the debt contained in ¶ 1.a.

Applicant is 56 years old and married. He and his wife have four children, ages 30, 21, 18 and 16. The two youngest children are still in high school. In October 1996, Applicant began working for his current employer, a federal contractor. In June 1997, he was interviewed by a Government investigator about financial matters that arose during the security clearance process. During that interview, Applicant noted that several debts, appearing on his credit bureau report (CBR), became delinquent after he was laid off from a previous job. (GE 1) He subsequently received a Secret security clearance that is now in the renewal process. (Tr. 8)

Applicant worked for said federal contractor until April 2000 when he was laid off. He was earning about \$40,000 annually when he lost his position. Over the course of the next twenty-two months, he worked at various other jobs on and off, in between periods of unemployment. He earned about \$25-30,000 during that time frame. His wife earns about \$600 monthly.

Applicant returned to work with his former employer in February 2002. He now earns about \$80,000 annually, including his wife's salary. In October 2007, Applicant completed an e-QIP in order to renew his security clearance. In December 2007, a Government investigator interviewed him about his financial circumstances. Applicant noted that his current delinquent debts started shortly after he and his wife purchased a home in July 2006. (GE 5 at 11; GE 3). They bought a \$335,000 home with a \$6,000 down payment, requiring them to take out two mortgages. Applicant did not own a home previous to this purchase. Shortly after the purchase, he was told by his realtor and loan officer that he would be able to refinance the house, as he was having difficulty make the payments and meeting his other obligations. During the interview, he addressed several debts (subsequently included in the SOR) and noted that he was attempting to resolve them. (GE 5 at 12) He was hoping to renegotiate the mortgages, which would give him additional monies to manage his other debts. (GE 5 at 12)

In January 2008, Applicant renegotiated the two loans, one to a rate of 8% and the other to 11.60%, bringing the monthly mortgage payments to \$2,600. Because of his poor credit rating, he could not find a more reasonable rate. Despite the monthly reduction, the payments continued to strain his budget and led to the accumulation of

delinquent debts, as he still could not afford to make payments on the house and other debts. (GE 5; Tr. 33-35) After receiving the SOR in October 2008, he tried to obtain a personal loan, but was unable to do so because of his low credit rating. (Tr. 50; GE 5)

As of the date of the hearing, Applicant had not made mortgage payments for the previous four months. (Tr. 45) He stopped making the payments in anticipation of obtaining another loan modification. (Tr. 56) He placed the money that he would have used for mortgage payments into a savings account to cover closing costs. He wants to resolve all of his debts and estimates that once he reduces the monthly mortgage payments he will have money for the repayment of delinquent debts. (Tr. 47)

The SOR alleged that Applicant has nine delinquent debts, totaling \$19,484. All of the debts are unpaid:

1. The debt in SOR ¶ 1.a for \$164 is listed as owing to a credit card company. He asserted the debt was paid. (Tr. 55-56) He was going to check into the matter after the hearing. As of the close of the record, the debt remains unpaid.
2. The debt in SOR ¶ 1.b for \$698 is owed to a department store. The original debt was \$400. (Tr. 36)
3. The debt in SOR ¶ 1.c for \$2,798 is owed to a department store. Applicant believes the original amount was \$2,000. (Tr. 37)
4. The debt in SOR ¶ 1.d for \$1,417 is owed to a credit card company. The original debt was \$1,000. (Tr. 39)
5. The debt in SOR ¶ 1.e for \$8,622 is owed to a credit card company. The original debt was \$6,000. (Tr. 40)
6. The debt in SOR ¶ 1.f for \$644 is owed to a department store. The original debt was about \$500. (Tr. 40)
7. The debt in SOR ¶ 1.g for \$2,234 is owed to a credit card company. The original debt was around \$2,000. (Tr.40)
8. The debt in SOR ¶ 1.h for \$799 is owed to a credit card company. (Tr. 42)
9. The debt in SOR ¶ 1.i for \$2,108 is owed to a credit card company for a computer purchase. (Tr. 42)

Applicant submitted recent mortgage modification documents, listing one mortgage for \$292,787 and the other for \$75,526, for a total of \$368,313. As of February 1, 2009, he will make two monthly payments, \$1,475 and \$429, totaling \$1,904. (AE D) According to his current budget, he and his wife have a net monthly

income of \$5,600 (this includes his overtime) and expenses of \$5,535, including the \$2,600 mortgage payment. Under the re-negotiated payment schedule, he will have an additional \$700 in his monthly budget. He has not sought any type of credit counseling and does not know if his employer provides it. (Tr. 69) He stopped using credit cards in 2006. (Tr. 65) He does not want to file bankruptcy. The house's value has decreased to about \$200,000 because of the economic downturn. (Tr. 50)

Applicant provided a letter from a co-worker, who has known Applicant for 12 years. He has a very high regard for Applicant, having worked with him closely over those years. He is aware of Applicant's financial difficulties and does not believe that they have or would compromise Applicant's integrity or create security concerns. He noted that Applicant drives 160 miles a day to come to work. Both of them are machinists and have sole responsibility for maintaining a multi-million dollar building during their shift. (AE E)

During his testimony, Applicant honestly acknowledged his mortgage problems and debts. He admitted that he purchased a home he could not afford, which has required him to refinance twice. He hopes the new mortgage payments will help resolve the delinquent debts listed on the SOR.

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(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 and has the ultimate burden of persuasion to obtain a favorable security decision.” 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.”

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.

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 two conditions that could raise security concerns and may be potentially applicable in this case. 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 began accumulating a significant amount of delinquent debt after he purchased a home in 2006 that he could not afford. Those debts remain unresolved. The evidence is sufficient to raise these disqualifications.

After the Government produced substantial evidence of those disqualifications, the burden shifted to Applicant to produce evidence and prove a mitigating condition. AG ¶ 20 includes six conditions that could mitigate security concerns arising from financial difficulties:

(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;

(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 financial delinquencies arose after July 2006 and continue today. Because the problems are recent, on-going and not isolated, AG ¶ 20(a) cannot apply.

Applicant accumulated significant delinquent debts after he and his wife purchased a home in July 2006 that their budget could not accommodate. That was a circumstance within his control. Hence, AG ¶ 20(b) is not applicable.

Applicant has not obtained any credit counseling nor produced sufficient evidence to indicate that his financial situation is under control, as required under AG ¶ 20(c). As of February 1, 2009, his mortgage payment will be reduced by \$700, which may help him resolve the delinquent debts; however, to-date he did not produce any documentary evidence to show that he made attempts to resolve or pay the nine debts listed in the SOR, despite having knowledge of the Government's concerns since December 2007. Thus, AG ¶ 20(d) does not apply.

There is no evidence to support the application of AG ¶ 20(e) and 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 include 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 a 56-year-old married man with four children, two of whom live at home. He has a history of financial problems, dating back to 1997 when he completed his first security clearance application. He seemingly was able to manage them for periods of time, as documented by a CBR. However, that is not the situation since he purchased a home in July 2006 and assumed mortgage payments that he cannot afford despite a good income. He was forced to re-negotiate the loan in January 2008 and again in February 2009. He hopes the recent reduction in monthly payments will leave him with money to resolve the mounting delinquent debts, now at \$19,500. He realizes that he made a serious financial mistake when he bought the house and relied on his realtor and loan officer's advice. With his overtime work, his budget may accommodate the revised mortgage payments and leave a small amount for debt reduction. Applicant wants to pay his debts and does not want to file bankruptcy.

Applicant's co-worker of twelve years is very supportive of Applicant's request for the renewal of his security clearance. He is aware of Applicant's financial problems and does not believe Applicant poses a security threat because of them. More importantly, his knowledge of the financial difficulties diminishes the potential for financial exploitation. The co-worker asserted that Applicant is honest and confirmed Applicant's dedication to his job.

While appreciating Applicant's mortgage difficulties in view of the current mortgage crisis in our economy and his desire to pay his debts, it is troubling that he did not follow through on his statements to the Government investigator in December 2007 that he intended to address the delinquent debts of concern. Furthermore, he obviously could not afford the house he purchased in 2006 because his income was insufficient to make the high mortgage payments. That financial decision fatally affected his ability to repay his other debts. And now he has failed to pay his mortgage in an attempt to save money to refinance his two mortgages for a second time. He continues to try to maintain the house which he cannot afford on his income (albeit a good one) while allowing more delinquencies to accrue. These current financial decisions demonstrate a lack of judgment. Unfortunately, he is now trapped by the current substantial decrease in the

market price of his house, which if sold, would leave him with over \$160,000 in debt to repay. On his income, only bankruptcy would eliminate all his delinquent debts. He rejects that option in a noble attempt to save his house and pay his debts.

As of January 2009, Applicant did not produce evidence that he had contacted any of the creditors, most of whom are department stores and credit card companies, or sought help from a credit counselor. During the hearing, he indicated that he would supply information after the hearing documenting the payment of the \$164 debt listed in SOR ¶ 1.a. He did not do so.

Overall, the record evidence leaves me with questions as to Applicant's eligibility and suitability for a security clearance based on issues involving his judgment. Until he establishes a solid budget and a realistic plan for managing his finances, it is likely that these financial difficulties will continue. For all of the above reasons, I conclude Applicant did not mitigate 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

Subparagraphs 1.a through 1.j: Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly not 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