



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



In the matter of:)
)
-----) ISCR Case No. 08-05012
SSN:-----)
)
Applicant for Security Clearance)

Appearances

For Government: Emilio Jaksetic, Esquire, Department Counsel
For Applicant: *Pro Se*

September 17, 2009

Decision

HOWE, Philip S., Administrative Judge:

On May 8, 2007, Applicant submitted his electronic version of the Security Clearance Application (SF 86) (e-QIP). On November 5, 2008, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guidelines F and E. 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. Applicant submitted three Answers because the first two Answers did not respond to the allegations under Guideline E. Applicant requested his case be decided on the written record in lieu of a hearing.

On May 12, 2009, Department Counsel submitted the Department's written case. A complete copy of the file of relevant material (FORM) was provided to the Applicant on May 14, 2009. He was given the opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant received the file on May 22, 2009. Applicant did not file a Response to the FORM within the 30 day time period allowed that expired on June 21, 2009. I received the case assignment on August 6, 2009. Based upon a review of the case file, pleadings, and exhibits, eligibility for access to classified information is denied

Findings of Fact

Applicant had to submit three Answers to the SOR because he neglected to respond to SOR Paragraph 2 in his first two Answers. In his first Answer, he denied the allegation in Subparagraph 1.o and admitted all other allegations. In the two subsequent Answers he admitted all allegations in Paragraph 1. In his third Answer, he admitted the allegations in Paragraph 2. (Items 2-6)

Applicant is 50 years old, married and divorced twice. He has five children from his two marriages. Applicant's first divorce became final in 1990. His last divorce occurred in 2005. (Item 7)

The SOR lists 19 delinquent debts. These debts total \$115,241.75. The earliest delinquency date is 2002. Eight of these debts are owed to medical providers. Applicant's interrogatory answers admitted that he has not made payments on any of the 19 debts. The file does not contain any evidence that Applicant made payments on his debts or attempted to resolve them. He offered as a defense the explanation that he has more debts than income. He also asserted in his three Answers to the SOR that he had medical problems in 2003, consisting of kidney problems and later a heart attack. Applicant cites unemployment as a contributing factor to his financial problems, but his SF-86 shows he was employed from March 1997 to November 2005, then unemployed, and gained new employment in November 2005 until April 2006. Next, he lost his job and was employed again in September 2006. He has been employed in his current job since April 2006. Applicant did not submit any evidence to support his medical conditions and unemployment contentions. (Items 2-6, 8-11)

Applicant answered the SF 86 Question 28, subsections (a) and (b), with "No" responses. Question 28.a asked Applicant if he had been more than 180 days delinquent on any debt in the past seven years. Question 28.b inquired if Applicant was delinquent more than 90 days on any debt currently. Applicant admitted the allegations, and explained he did not intentionally falsify his answer to Question 28. Applicant claimed that he did not know what was on his credit report. He asserted that he may have hit the "skip" button on the computer electronic form on both questions. (Items 2, 6, 11)

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, the administrative judge applies the guidelines in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense 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.

According to Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an "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, and 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 at AG ¶ 19 contains nine disqualifying conditions that could raise security concerns. From these nine conditions, two conditions are applicable to the facts found in this case:

- (a) inability or unwillingness to satisfy debts is potentially disqualifying; and,
- (c) a history of not meeting financial obligations.

From 2002 to the present, Applicant accumulated 19 delinquent debts, totaling \$115,241.75 that remain unpaid or unresolved.

The guideline in AG ¶ 20 contains six conditions that could mitigate security concerns arising from financial difficulties. Only one mitigating condition might have partial applicability.

(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.

AG ¶ 20 (b) would apply if the loss of employment were shown by Applicant to have a substantial effect on his ability to repay his debts. In the past 12 years, Applicant has been unemployed 11 months. He failed to meet his burden of proof on that issue.

Applicant also offers his divorces as reasons for his delinquent debts, but fails again to explain how a four-year-old divorce affected his current debt delinquencies. Again, he failed to meet his burden of proof on that issue.

Lastly, Applicant contends his medical problems in 2003 caused some of his delinquent debt. Only eight debts were owed to medical providers, less than half the number of debts owed. Applicant failed to prove AG ¶ 20 (b) applied because he did not submit sufficient evidence of the conditions that he asserted were beyond his control and that he acted responsibly in resolving his delinquent debts during the time the debts were accumulating.

Guideline E, Personal Conduct

AG ¶ 15 expresses the security concern pertaining to personal conduct:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

The following will normally result in an unfavorable clearance action or administrative termination of further processing for clearance eligibility:

(a) refusal, or failure without reasonable cause, to undergo or cooperate with security processing, including but not limited to meeting with a security investigator for subject interview, completing security forms or releases, and cooperation with medical or psychological evaluation; and,

(b) refusal to provide full, frank and truthful answers to lawful questions of investigators, security officials, or other official representatives in connection with a personnel security or trustworthiness determination.

AG ¶ 16 describes a condition that could raise a security concern and may be disqualifying:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities.

Applicant did not disclose his financial delinquencies as alleged in SOR Paragraph 1. He disclaims any intentional action in doing so. Applicant could not follow instructions in making his Answer to the SOR, and had to submit a total of three Answers to comply with the Directive. If he had difficulty following directions with regard

to filing his Answer, it is reasonable to believe his explanation that he did not follow instructions on the SF 86. Applicant committed an inadvertent error, not a deliberate effort to mislead the Government. This guideline is found in his favor. Hence, it is not necessary to consider any mitigating condition.

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 relevant 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 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 facts and circumstances surrounding this case. Applicant was an adult when he incurred the debts. He has not taken any action to resolve his delinquent debts. This inaction leaves him vulnerable to pressure, coercion, exploitation, or duress based on the magnitude of his financial obligation. His lack of action continues to this day, and is obviously voluntary. His inaction will continue based on his past performance. Applicant displayed a lack of good judgment incurring the debts. Next, he exhibited a continued lack of appropriate judgment by failing to make payments on any of his delinquent debts during the past seven years.

Overall, the record evidence leaves me with questions or substantial doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant did not mitigate the security concerns arising under the guideline for Financial Considerations. He did mitigate the security concerns under the guideline for Personal Conduct. I conclude the "whole person" concept against Applicant.

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 to 1.o:	Against Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraphs 2.a and 2.b:	For 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.

PHILIP S. HOWE
Administrative Judge