



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



In the matter of:

SSN: -----

Applicant for Security Clearance

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ISCR Case No. 08-05530

Appearances

For Government: Robert E. Coacher, Esq., Department Counsel

For Applicant: *Pro Se*

August 19, 2009

Decision

MARSHALL, Jr., Arthur E., Administrative Judge:

Applicant completed an Electronic Questionnaire for Investigations Processing (e-QIP) on August 27, 2007. On December 5, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) enumerating security concerns arising 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 for SORs issued after September 1, 2006.

In a response notarized on December 18, 2008, Applicant admitted one of the nine allegations set forth in the SOR. He declined to request a hearing on the record in his response. When contacted by DOHA regarding whether he wished to have a

hearing, Applicant stated he preferred an administrative determination.¹ Department Counsel submitted a File of Relevant Materials (FORM), dated April 28, 2009, that included nine attached items. Applicant received the FORM on May 8, 2009. He did not respond to the FORM within the 30 days provided. On August 4, 2009, the Director, DOHA, forwarded the case for assignment to an administrative judge for administrative determination. I was assigned the case on that same day. Based upon a review of the case file, submissions, and exhibits, I find Applicant failed to meet his burden regarding the security concerns raised. Security clearance is denied.

Findings of Fact

Applicant is a 43-year-old senior technician. He has worked for the same defense contractor since 2003. He has a post-secondary degree in electronic engineering. Applicant is divorced. He has five children, ranging in age from 9 to 19 years old. His credit rating is “poor to fair.”² Although Applicant has not received credit counseling, he states he is working to improve his credit rating and satisfy his debts.³

The SOR sets forth 10 allegations. Each allegation represents a delinquent debt identified either in Applicant’s answers to Interrogatories, dated July 15, 2008, a credit report dated May 30, 2008, or a credit report dated October 5, 2007.⁴ In responding to the SOR, Applicant only responded to the allegations by writing either “I deny” or “I admit” with no further elaboration.

In his Interrogatories, Applicant maintained that he disputed the nine delinquent debts cited in SOR allegations ¶¶ 1.a – 1.i. He produced no documentary evidence to substantiate this claim. Those allegations represent approximately \$30,800 in delinquent debt. The credit reports dated April 28, 2009, and May 30, 2008, however, indicate that Applicant disputed the two delinquent accounts noted at SOR allegations ¶ 1.b (approximately \$411) and ¶ 1.c (approximately \$857).⁵ Applicant admitted to allegation ¶ 1.j (approximately \$1,123), regarding a child support arrearage, in his SOR response.

¹ Item 2, Transmittal Letter and Receipts at 9 (Memorandum for the Record, dated Mar. 31, 2009). Department Counsel later requested Applicant to submit a written request for an administrative determination, but no additional materials were forthcoming. FORM at 2, footnote 2.

² Item 6, Interrogatories, at 4.

³ *Id.*

⁴ See Items 5-6 (Interrogatories), Item 8 (May 2008 credit report), and Item 9 (Oct. 2007 credit report), respectively.

⁵ See Items 7-8 (Apr. 2009 and May 2008 credit reports), respectively.

Policies

When evaluating an applicant's suitability for a security clearance, an 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. 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. An administrative judge's over-arching adjudicative goal is a fair, impartial and common sense decision. Under AG ¶ 2(c), this process is a conscientious scrutiny of a number of variables known as the "whole person concept." An 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.

The U. S. Government must present evidence to establish controverted facts alleged in the SOR. An applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." ⁶ The burden of proof is something less than a preponderance of evidence. ⁷ The ultimate burden of persuasion is on the applicant. ⁸

A person seeking access to classified information enters into a fiduciary relationship with the U.S. Government based on trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The U.S. 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). "The clearly consistent standard

⁶ See *also* ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

⁷ *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

⁸ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

indicates that security clearance determinations should err, if they must, on the side of denials.”⁹ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such information.¹⁰ The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of an applicant.¹¹ Nor does it reflect badly on that person’s character. It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Based upon consideration of the evidence, I find Guideline F (Financial Considerations) to be the most pertinent to the case. Conditions pertaining to this adjudicative guideline that could raise a security concern and may be disqualifying, as well as those which would mitigate such concerns, are set forth and discussed below.

Analysis

Guideline F – Financial Considerations

Under Guideline F, failure or an inability to live within one’s means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or an 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.¹² The Directive sets out several potentially disqualifying conditions under this guideline.

Applicant admitted he has a delinquent debt of over \$1,100 involving child support. As for the remainder of the delinquent debts at issue, although the record shows two of those nine accounts were formally disputed, Applicant failed to show he disputed any of the other credit report entries. Those entries represent almost \$30,000 in delinquent debt. Such facts are sufficient to raise security concerns under financial considerations disqualifying condition (FC DC) AG ¶ 19(a) (“inability or unwillingness to satisfy debts”) and FC DC AG ¶ 19(c) (“a history of not meeting financial obligations”). With such conditions raised, the burden shifts to Applicant to overcome the case against him and mitigate security concerns.

In relying on an administrative determination after failing to provide documentary evidence or more information, Applicant presented insufficient facts to review his finances in light of the allegations. Moreover, there are insufficient facts to determine what led Applicant to become delinquent on any debt and no corroborating evidence showing how or whether he tried to dispute the alleged debts. Consequently, neither financial considerations mitigating condition (FC MC) AG ¶ 20(a) (“the behavior

⁹ *Id.*

¹⁰ *Id.*

¹¹ Executive Order 10865 § 7.

¹² Revised Adjudicative Guideline (AG) ¶ 18.

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") nor FC MC AG ¶ 20(b) ("the conditions that resulted in the behavior 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") applies. Further, Applicant has not received financial counseling and there is little evidence he has worked toward honoring his debts or disputing the majority of delinquent accounts noted on his credit reports, obviating the applicability of FC MC AG ¶ 20(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") and FC MC AG ¶ 20(d) ("the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts"). The only evidence of Applicant-initiated efforts toward correcting his credit report is regarding SOR allegations ¶¶ 1.b - 1.c, amounting to about \$1,270 of alleged debt which Applicant disputes. No other FC MCs 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 an 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 commonsense judgment based upon careful consideration of the guidelines and the whole person concept. As noted above, the ultimate burden of persuasion is on the applicant seeking a security clearance.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case, as well as the "whole person" factors. Applicant is a mature, educated man. In requesting an administrative determination, however, he chose to carry his burden regarding the allegations by presenting unelaborated facts and no supporting documentation. Applicant's best advocate regarding his claim that he disputed nine of the 10 accounts at issue is Department Counsel, whose FORM includes documentary evidence that two of the more minor debts at issue were formally disputed. Otherwise, there is no corroborating

documentation showing that the other accounts Applicant denies were formally disputed and no indication as to whether any progress has been made on his child support arrearage. Consequently, the 10 alleged delinquent debts at issue remain unrefuted. In light of the fact that the ultimate burden is on Applicant, financial considerations security concerns remain unmitigated. Therefore, it is not clearly consistent with national security to grant Applicant a security clearance. Clearance is denied.

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.h:	Against Applicant
Subparagraph 1.i:	Against Applicant
Subparagraph 1.j:	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 a security clearance. Clearance is denied.

ARTHUR E. MARSHALL, JR.
Administrative Judge