



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



In the matter of:)
)
) ISCR Case No. 08-06045
)
)
Applicant for Security Clearance)

Appearances

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

August 21, 2009

Decision

RIVERA, Juan J., Administrative Judge:

Applicant is financially overextended and does not have the means to overcome his financial problems. He failed to mitigate the financial considerations security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On July 10, 2007, Applicant submitted a Questionnaire for National Security Positions (SF 86). On February 19, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to him, pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as modified and revised.¹ The SOR alleges a security concern under Guideline F

¹ On Aug. 30, 2006, the Under Secretary of Defense (Intelligence) published a memorandum directing application of the revised Adjudicative Guidelines to all adjudications and other determinations made under the Directive and Department of Defense (DoD) Regulation 5200.2-R, *Personnel Security*

(Financial Considerations). The SOR detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for him, and recommended referral to an administrative judge to determine whether a clearance should be granted, denied or revoked.

On March 23, 2009, Applicant responded to the SOR allegations, and requested a hearing before an administrative judge. The case was assigned to me on April 24, 2009. DOHA issued a notice of hearing on May 5, 2009. The hearing was convened as scheduled on May 28, 2009. The government offered Government Exhibits (GE) 1 through 4, which were admitted without objection. Applicant testified on his own behalf, presented the testimony of one witness, and submitted Applicant Exhibits (AE) 1 through 22. I left the record open to allow Applicant time to submit additional documentary information. He timely submitted AE 23. All Applicant's exhibits were admitted without objection. DOHA received the transcript of the hearing (Tr.) on June 2, 2009.

Findings of Fact

Applicant admitted all the factual allegations in the SOR. His admissions are incorporated herein as findings of fact. After a thorough review of the evidence of record, and having considered Applicant's demeanor and testimony, I make the following additional findings of fact.

Applicant is a 31-year-old logistics manager/assistant program manager employed by a defense contractor. He joined the U.S. Army in August 1987, and served five years on active duty. He was discharged in August 2002, after completing his time in service. He achieved the rank of specialist (E-4), and his service was characterized as honorable (AE 4). Applicant's good performance in the Army is reflected in his awards, which include an Army Commendation Medal, a Certificate of Achievement, and a Good Conduct Medal.

Applicant married his wife in August 2001. He has three children. Two of the children, ages 10 and 6, were born of this marriage. His six year-old son was diagnosed as autistic in 2005. His third child, also age 10, was born out of wedlock from a prior relationship. Appellant claimed he did not know he was the father of his third child until 2007, when he was required to start providing financial support in the amount of \$346 a month.

After his discharge from the Army, Applicant was unemployed and/or underemployed for approximately one year. During this period, his wife also was

Program (Regulation), dated Jan. 1987, as amended, in which the SOR was issued on or after Sep. 1, 2006.

unemployed, and she delivered their youngest son. Applicant supported his family with his unemployment benefits and by taking occasional, low paying temporary jobs.

In July 2003, Applicant was hired by a government contractor providing logistics service to a government agency. In April 2007, his employer lost the government contract. Because of his outstanding job performance during the previous four years, the government agency recommended to the incoming contractor that it retain Applicant in his position. In May 2007, he was hired by his current employer, another government contractor, and has been working for the same employer since. Applicant supervises four other employees.

At his hearing, Applicant presented the testimony of his immediate supervisor (a Navy retiree with 21 years of service) (Tr. 26-34). Applicant discussed his financial problems with his supervisor and sought his supervisor's assistance with his financial problems. The supervisor has observed Applicant during the last two years on a daily basis, including many work weekends. He considers Applicant to be one of the most dependable and reliable employees in the company. The president of Applicant's company and the chief operating officer requested Applicant receive access to classified information. In their opinions, Applicant's work and professionalism has been above reproach. They believe Applicant has matured during the last two years.

Applicant is considered to be a valuable employee not only by his supervisors, but also by the government agency's personnel. Because of his excellent job performance, he was selected by the government agency to attend specialized Lean Six Sigma training. Applicant's excellent performance is further evidenced in his character reference letters (AE 1-3). Applicant has established a reputation as a reliable and trustworthy employee. He has consistently exceeded performance expectations for the contract he manages.

Applicant attended college from August 2006 to March 2007, and completed approximately 20 college credits. He paid for his education using student loans, and owes approximately \$10,000 (Tr. 64). Because he stopped attending college, his student loans became due. Applicant requested a one-year deferment which will expire in the summer of 2009. He did not continue his college education because he was selected to attend job-related training.

Applicant attributes his current financial problems to three main causes: the period of unemployment and underemployment he experienced when he departed the Army; the additional expenses associated with taking care of his autistic son; and his wife's inability to work. Because of his limited income, he could not afford to pay both his past financial obligations and his family's day-to-day living expenses.

In July 2007, he submitted a security clearance application in which he disclosed having a car repossessed in 2006, and problems with paying his state taxes. His background investigation addressed his financial status and included the review of

August 2007 and January 2009 credit bureau reports (CBRs), and Applicant's answers to a September 2008 DOHA interrogatory.

The SOR alleges 10 delinquent and/or charged off accounts, totaling approximately \$15,000, which have been delinquent for a number of years. In his response to the SOR, Applicant admitted these were his debts and that they are outstanding. The debts are also established by the admitted CBRs. At his hearing, Applicant disputed SOR ¶¶ 1.e, 1.i and 1.j. He disputed SOR ¶ 1.e (\$130), because he believed his wife paid it. He disputed SOR ¶ 1.i (\$440), because he returned the cable T.V. company's equipment and was not given credit for it. He disputed SOR ¶ 1.j (\$671), because he did not recognize the creditor.

After his hearing, I allowed Applicant additional time to submit documentation showing he had paid, properly disputed, or made efforts to contact his creditors in an attempt to resolve any of his debts. He failed to provide such information. I find that all the alleged SOR debts are Applicant's debts and that they have been outstanding for a number of years. Applicant also has student loans that were deferred and will become due during the summer of 2009 (not alleged in the SOR).

The largest debt (SOR ¶ 1.f (\$8,627)) concerns a repossessed car that Applicant bought for his wife in 2006. Applicant bought his wife a used car so that she could commute to work. However, her professional license was suspended for failure to pay state taxes and she has not been able to work since. He returned the car because he could not afford the payments. Many of the remaining delinquent debts could be considered small debts since they are for \$1,000 or less.

Applicant has had financial problems since 2002-2003. He has not been making enough money to pay his bills and for his family's day-to-day living expenses. Applicant testified he received some financial counseling while in the Army. He claimed he entered into a debt consolidation program in 2005 when he and his wife tried to improve their credit to purchase a home. He presented no evidence to corroborate this claim. He also stated he was in the process of seeking financial counseling from his bank. Notwithstanding, he failed to submit a working budget, evidence of lifestyle changes, or a plan to resolve his ongoing financial problems.

Applicant expressed remorse for his financial problems. He was candid and forthcoming explaining the circumstances surrounding his financial problems. He claimed he was not deliberately ignoring his financial obligations, and that he was making efforts to resolve his financial problems. He failed to present evidence of such efforts. I believe he is not aware of what is required of him to show that he is reliable, trustworthy, and financially responsible.

Applicant highlighted that he has served his country well during the last 11 years, both in the Army and working for contractors providing services to a government agency. He believes that because of his performance and service record, his financial

problems do not make him a security risk or concern. There is no evidence that Applicant ever compromised or caused others to compromise classified information.

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 controlling 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.

In the decision-making process, the government has the initial burden of establishing controverted facts alleged in the SOR by "substantial evidence,"² demonstrating, in accordance with the Directive, that it is not clearly consistent with the national interest to grant or continue an applicant's access to classified information. Once the government has produced substantial evidence of a disqualifying condition, the burden shifts to applicant to produce evidence "to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by department counsel, and [applicant] has the ultimate burden of persuasion as to obtaining a favorable clearance decision." Directive ¶ E3.1.15. The burden of disproving a mitigating condition never shifts to the government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

A person who seeks access to classified information enters into a fiduciary relationship with the government predicated upon trust and confidence. This relationship

² See Directive ¶ E3.1.14. "Substantial evidence [is] such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the contrary evidence in the record." ISCR Case No. 04-11463 at 2 (App. Bd. Aug. 4, 2006) (citing Directive ¶ E3.1.32.1). "Substantial evidence" is "more than a scintilla but less than a preponderance." See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994).

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* Executive Order 12968 (Aug. 2, 1995), Section 3.

Analysis

Guideline F, Financial Considerations

Under Guideline F, the security concern is that 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. AG ¶ 18.

The SOR alleged 10 delinquent and/or charged off debts that have been delinquent for a number of years. The debts are Applicant’s debts as established by the evidence and Applicant’s admissions. Applicant presented no evidence he has paid, settled, or properly disputed any of the alleged debts. Applicant does not have the financial means to pay his legal obligations, delinquent debts, and his day-to-day living expenses. AG ¶ 19(a): inability or unwillingness to satisfy debts; and AG ¶ 19(c): a history of not meeting financial obligations, apply.

AG ¶ 20 lists six conditions that could mitigate the financial considerations security concerns:

- (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 established that his financial problems resulted from circumstances beyond his control contributing to his inability to pay his debts, i.e., his one-year period of unemployment and underemployment; his status as the sole provider for his family; and the additional expenses related to taking care of his autistic son. I find AG ¶ 20(b) applies, but does not fully mitigate the financial concerns. Applicant's evidence is not sufficient to show he acted responsibly under the circumstances. He presented little evidence of debt payments, contacts with creditors, settlement or negotiations of debts, or that he has properly disputed any of his debts. I also find he is financially overextended and his financial problems are not under control.

AG ¶¶ 20(a), (c), (d), and (e) do not apply because Applicant's financial problems are not yet under control. He also failed to show he made good-faith efforts to resolve his debts. AG ¶ 20(f) does not apply.

Despite partial applicability of AG ¶ 20(b), financial considerations concerns are not mitigated. Applicant is financially overextended. He lacks the income to bring his debts to current status.

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 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.

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. AG ¶ 2(c).

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant is a good husband and father. He honorably served five years in the Army. He has successfully worked for a defense agency (as employee of two defense contractors) for approximately six years. There is no evidence he has ever compromised classified information or committed any security violations. Applicant expressed remorse for his financial mistakes and promised to repay his creditors. He established circumstances beyond his control contributing to his inability to pay his debts. These factors show responsibility, good judgment, and mitigation.

On the other hand, Applicant has been consistently employed since July 2003. He presented little documentary evidence of efforts to resolve his debts. There are no clear indications that his financial problem is being resolved or is under control. His inability to pay even relatively small debts shows he is financially overextended. He does not have the financial means to resolve his financial problems. On balance, I conclude Applicant's favorable evidence is insufficient to mitigate the security concerns arising under the financial considerations guideline.

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.k:	Against Applicant

Conclusion

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue eligibility for a security clearance for Applicant. Eligibility for a security clearance is denied.

JUAN J. RIVERA
Administrative Judge