



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



In the matter of:)
)
-----) ISCR Case No. 08-06550
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Robert E. Coacher, Esquire, Department Counsel
For Applicant: Pro Se

March 27, 2009

Decision

LYNCH, Noreen A., Administrative Judge:

Applicant submitted his Security Clearance Application (SF 86), on January 16, 2008. On October 30, 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 11, 2008. He requested a hearing before an Administrative Judge. I received the case assignment on December 16, 2008. DOHA issued a notice of hearing on February 19, 2009, and I convened the hearing on March 5, 2009. The Government offered Exhibits (Ex.) 1-4, which were received without objection. Applicant testified in his own behalf. He did not submit any exhibits at the hearing. I held the record open and Applicant timely

submitted one document marked as Exhibit (AE) A which was admitted into the record without objection. The record closed on February 24, 2009. DOHA received the transcript of the hearing (Tr) on March 23, 2009. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

Findings of Fact

In his Answer to the SOR, dated November 11, 2008, Applicant admitted the factual allegations in ¶¶ 1.a through 1.p of the SOR. He provided additional information to support his request for eligibility for a security clearance.

Applicant is a 40-year-old employee of a defense contractor. He graduated from high school in 1987. He served in the United States Air Force (USAF) from 1987 until 1990. While in the Air Force, he completed technical courses and received a diploma in 1988. He has worked for his current employer for almost one year. (Tr. 21). He held a security clearance for 11 years.

Applicant married in 1995. He and his wife have four children (Tr. 22). He has a child from a previous relationship for whom he pays child support. He and his wife are in the process of divorcing. This is causing him further financial difficulty.

Applicant was steadily employed in his field until he left his position in 2001 to be closer to his family. From 2001 until 2004, he held a position as an electronic technician. However, in 2004 he lost his employment due to loss of a government contract (Tr. 19). He was unemployed for approximately fourteen months (Tr. 20). When he lost employment in 2004, Applicant helped his wife with her embroidery business. In December 2005, he found full-time employment which lasted for two years. However, the company moved out of the country. Applicant started the position with his current employer in 2008 (Tr. 21).

The SOR alleged 16 delinquent debts that total approximately \$38,000. The debt includes two vehicle repossessions. He is indebted to the Internal Revenue Service (IRS) for a 2004 federal tax lien in the amount of \$7,410. (GE. 3). His credit report confirms the delinquent debts and tax lien (GE 4).

Applicant admitted that the accounts in allegations ¶ 1.a through 1.p are his delinquent debts (GE 2). He also acknowledges that they are not paid. The financial delinquencies started when he lost employment in 2004. At the same time a business customer failed to pay his wife almost \$14,000. Applicant stated this has ruined his credit. In 2007, he consulted a bankruptcy attorney, but he decided it was morally wrong to walk away from the debts (GE 1). His plan is to obtain a job in Iraq and use the income to pay the delinquent debts. He tried to make payment arrangements with his creditors. He explained that the creditors were very aggressive. They wanted him to sell personal items, such as his wife's wedding ring to pay on his debt. He believes the creditors are not willing to work with him (Tr. 16).

Applicant admitted that he has not filed his taxes since 2001 (Tr. 26). The paperwork for the filings are with his accountant and he owes his accountant \$1,400. He does not have an immediate plan to address this issue.

Applicant's current net monthly income is between \$2,900 and \$3,600 a month. After his monthly expenses, he has nothing left.

Applicant is working out of state three weeks a month to meet his current obligations. He works almost 100 hours a week. He sends 90% of his check to his estranged wife to provide for the family (Tr. 23). He sold his house to his father-in-law, and he and his wife received \$10,000. The proceeds were split between his and his wife (Tr. 28).

Applicant applied for several positions recently that require a security clearance. He attends job fairs to find a suitable position earning a greater income, but all of them require a security clearance. He wants to go overseas so that his income will be greater and he can begin paying all his debts. At the hearing, he was candid. He chose not to file for bankruptcy years ago because he wants to pay his debts. He continues to work long hours and away from home to meet his daily expenses. He is currently not working in his field. He is determined to provide for his family (Tr. 14).

Applicant is diligent in seeking ways to obtain a better income. He hopes to obtain a degree that would enable him to get a better job (Tr. 29). He is searching for any employer who would pay for his education. He is also exploring other options, such as an apprenticeship.

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, 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^o is potentially disqualifying. Similarly under AG & 19(c), a history of not meeting financial obligations^o may raise security concerns. Applicant accumulated delinquent debts on numerous accounts. He admits that he did not meet his financial obligations from 2004 until the present. He is

indebted to the IRS. His credit reports confirm that he has recent debts as well. The evidence is sufficient to raise these potentially disqualifying conditions.

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. Applicant's financial worries arose when he lost his job in 2004. He has unresolved debt of approximately \$38,000, and he is indebted to the IRS in the amount of \$7,410. He has not made any payments on these debts. This potentially mitigating condition does not apply.

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 lost employment and his wife had a client who did not pay a substantial amount of money. He has been employed for a number of years, admittedly, at a lower pay. He also explained that he pays child support and that he and his current wife are in the process of getting a divorce. Applicant has worked hard, but has not acted as responsibly as he could have in identifying and resolving these debts. He admits making poor financial decisions. I find this mitigating condition partially applies.

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 formal financial counseling. He did contact a bankruptcy attorney. He has no plan at the present time to pay his delinquent debts. He is trying to obtain employment overseas to begin a payment plan. His promises to pay in the future do not constitute evidence of financial reform or resolution of debts. I conclude these mitigating conditions do not 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 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 intends to pay his debts and his tax lien. Although, he admitted that he has no immediate plan to pay his delinquent debts due to insufficient income. His goal is to find employment in Iraq and use the income to pay his delinquent bills. He had a clearance for eleven years. He suffered from unemployment and is working hard to support his family. He was candid and straightforward at the hearing. He does not want to file for bankruptcy. The record does not show any good-faith efforts to resolve any of his debts. His recent efforts to obtain employment overseas to enable him to pay his debts are not sufficient for him to meet the burden in this case.

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

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.

NOREEN A. LYNCH
Administrative Judge