



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



In the matter of:)
)
) ISCR Case No. 08-06669
)
)
Applicant for Security Clearance)

Appearances

For Government: Alison O’Connell, Esquire, Department Counsel
For Applicant: *Pro Se*

January 29, 2010

Decision

RIVERA, Juan J., Administrative Judge:

Applicant lacks a track record of financial responsibility, appears to be financially overextended, and does not have a viable plan to avoid similar financial problems in the future. He failed to mitigate financial considerations security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On January 29, 2008, Applicant submitted a security clearance application. On April 9, 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 Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as revised; and the revised adjudicative guidelines (AG) promulgated by the President on December 29, 2005.

The SOR alleges security concerns under Guideline F (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 August 11, 2009, Applicant responded to the SOR allegations and requested a hearing before an administrative judge. The case was assigned to me on September 4, 2009. DOHA issued a notice of hearing on September 14, 2009. The hearing was convened as scheduled on October 6, 2009. The government offered Government Exhibits (GE) 1 through 13, which were admitted without objection. Applicant testified, presented the testimony of one witness, and submitted Applicant Exhibit (AE) 1, post-hearing, which was admitted without objection. DOHA received the transcript of the hearing (Tr.) on October 14, 2009.

Findings of Fact

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

Applicant is a 56-year-old lead plant protection officer employed by a defense contractor. He attended college from 1971 to 1972, but did not complete a degree. He served honorably in the U.S. Navy from 1984 to 1988, as a disbursing clerk. Applicant married his first wife in 1978 and they were divorced in 1981. He married his second wife in 1984 and they were divorced in 1999. He has two children of this relationship, a 25-year-old daughter and a son, age 19. He provides some financial assistance for his daughter and he is paying \$250 monthly (by garnishment of pay) in child support for his son.

Applicant has been working for his current employer, a defense contractor, since October 1997. Under the sponsorship of his employer, Applicant has possessed a security clearance at the secret level for approximately 12 years. There is no evidence he has ever compromised or caused others to compromise classified information. At his hearing, Applicant presented the testimony of his direct supervisor. Applicant's supervisors and co-workers consider him to have an outstanding reputation and an impeccable work ethic. He is considered to be a patriotic American, trustworthy, and dedicated to his work and accomplishing his mission.

Applicant has kept his supervisors and parents informed of his financial problems. His supervisor believes Applicant is doing all he can under the circumstances to resolve his financial problems. Applicant consistently volunteers to work overtime and during holidays to earn extra income to pay his debts.

In his January 2008 security clearance application, Applicant indicated that he had no debts that were over 180 days delinquent within the last seven years and/or 90 days delinquent at the time he completed his application. He also indicated that in the last seven years he had not been a party to any public record civil court action, and had no unpaid judgments. His background investigation addressed his financial status and included the review of February 2008, August 2008, and February 2009 credit bureau reports (CBRs), numerous state court documents, and Applicant's security clearance application.

The SOR alleges three delinquent accounts, two of which are judgments, totaling approximately \$27,000. All of his debts have been delinquent since 1999. He explained that the three debts were his ex-wife's personal debts, which she acquired without his knowledge. When he divorced his wife in 1999, he was awarded the three debts as part of the marital property settlement agreement.

Applicant testified he tried to pay the debts, but did not have the financial means to do so. His income was not sufficient to cover the debts and his day-to-day living expenses. In 2000, he tried to resolve the debts by filing for bankruptcy protection. He hired an attorney and completed some preliminary bankruptcy filings; however, he did not have the money to pay his attorney to complete the process. In 2001-2002, he underwent credit counseling and made some monthly payments pursuant to a debt consolidation agreement. However, he stopped making payments because, again, he lacked the financial means. Shortly thereafter, Applicant moved residences and lost contact with his creditors. Since then, Applicant has made no further effort to pay, settle, or resolve the three delinquent debts until 2008. In December 2008, Applicant contacted the creditor of the debt alleged in SOR ¶ 1.c and was offered a structured settlement. He declined the settlement offer because he could not afford the monthly payments.

In September 2009, Applicant retained the services of an attorney to help him resolve the three delinquent debts and to stop his son's child support payments. Applicant seeks to stop the \$250 child support garnishment of pay because his son is almost 20 years old. Applicant has asked his attorney to research his debts to determine the proper creditors and determine whether he is financially liable for the debts since some are too old. Applicant also has asked his parents for financial assistance. His mother promised to lend Applicant the money to pay off his creditors.

Applicant earns approximately \$38,000 a year. His take home pay is approximately \$1,400 a month. In August 2009, he started receiving a \$269 pension, which he will receive until he is paid a total of \$26,000. His monthly expenses include \$750 rent and an average of \$600 in food expenses. Prior to receiving the \$269 pension, Applicant had only \$50 of disposable income at the end of the month. He struggled financially, but his parents provided him with financial assistance whenever he needed it. In 2004, Applicant underwent vocal cord cancer surgery. Because he does not have insurance coverage, he has had to pay for his medications out of pocket. A review of Applicant's CBRs shows he seems to be living within his financial means.

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 required 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."¹ 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 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 safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to

¹ 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).

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 three delinquent debts, including two judgments and one collection, which have been delinquent since approximately 1999. These are Applicant’s delinquent debts as established by the admitted CBRs and his testimony at the hearing.

The delinquent debts were his ex-wife’s accounts which were awarded to Applicant in 1998-1999, as part of the marital property settlement agreement. Initially, Applicant attempted to resolve the debts through bankruptcy proceedings and credit consolidation but both failed. After 2001-2002, Applicant made no further effort to resolve his financial obligations until 2008. Based on Applicant’s testimony, he is struggling financially and 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 circumstances beyond his control, which contributed to his inability to pay his debts, i.e., his divorce and his limited earnings. I find AG ¶ 20(b) partially 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 no evidence of debt payments, contacts with creditors, and settlement or negotiations to resolve his SOR debts after 2002 until he received his SOR in 2008. Considering the evidence as a whole, Applicant is struggling financially and his financial problems are not under control. Applicant does not seem to have the financial means to resolve his financial predicament or to avoid similar financial problems in the future.

AG ¶¶ 20(a), (c), (d), and (e) do not apply because Applicant's financial problems are not yet under control. He did show some effort to resolve his debts. However, his actions are not sufficient to fully raise the mitigating conditions. AG ¶ 20(f) is not relevant to this facts.

Despite partial applicability of AG ¶ 20(b), financial considerations concerns are not mitigated. Applicant has not demonstrated his financial responsibility by taking sufficient actions to resolve his debts.

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 mature man and an outstanding worker. He is a patriotic, law abiding American, and a proud U.S. Navy veteran. He has worked well for government contractors and has held access to classified information for approximately 12 years. There is no evidence he has ever compromised or caused others to compromise classified information. Applicant established some circumstances beyond his control, which contributed to his inability to pay his debts. These factors show some responsibility, good judgment, and mitigation.

Nonetheless, Applicant's evidence is not sufficient to fully mitigate the financial considerations concerns. He has limited earnings and seems to be struggling financially. He presented little documentary evidence of debt payments, contacts with creditors, and settlement or negotiations of debts from the time he acquired the debts in 1999 to 2008 when he received the SOR. His favorable information fails to show financial responsibility and good judgment or that he acted responsibly under the circumstances. His financial problems are not under control. He does not have a viable plan to avoid similar financial problems in the future.

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 - 1.c:	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 eligibility for a security clearance for Applicant. Eligibility for a security clearance is denied.

JUAN J. RIVERA
Administrative Judge