



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



In the matter of:)
)
) ISCR Case No. 08-06875
)
)
Applicant for Security Clearance)

Appearances

For Government: Braden M. Murphy, Esquire, Department Counsel
For Applicant: *Pro Se*

August 20, 2009

Decision

ANTHONY, Joan Caton, Administrative Judge:

After a thorough review of the case file, pleadings, and exhibits, I conclude that Applicant failed to rebut or mitigate the Government's security concerns under Guideline F, Financial Considerations. His eligibility for a security clearance is denied.

Applicant completed and certified a security clearance application (SF-86) on January 16, 2008. On February 25, 2008, he was interviewed by an authorized investigator from the U.S. Office of Personnel Management and provided information about his financial obligations. On February 20, 2009, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing the security concerns 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 within the Department of Defense for SORs issued after September 1, 2006.

Applicant responded to the SOR on March 18, 2009, and he requested that his case be adjudicated on the written record in lieu of a hearing. His response did not contain admissions or denials of five of the eleven allegations on the SOR. When this omission was brought to his attention, Applicant provided a complete response to the SOR allegations on April 29, 2009. The Government compiled its File of Relevant Material (FORM) on May 28, 2009. The FORM contained documents identified as Items 1 through 9. By letter dated June 1, 2009, DOHA forwarded a copy of the FORM to Applicant, with instructions to submit any additional information and/or objections within 30 days of receipt. Applicant received the file on June 5, 2009. His response was due on July 5, 2009. He did not file additional information within the required time period. On August 6, 2009, the case was assigned to me for a decision.

Findings of Fact

The SOR contains eleven allegations of financial delinquency under AG F, Financial Considerations (SOR ¶¶ 1.a. through 1.k.). In his Answer to the SOR, Applicant admitted all eleven of the Guideline F allegations. He provided the following explanation in response to each allegation:

I **admit** to the statement. Due to my spouse being unemployed I have taken sole responsibility of all household financial problems that occur. I have to provide for my wife, three children and as well as other day to day tasks which may have [played] a factor in late payments, or no payments at all. I am not trying to run from my debt, nor has this debt affected my judgment as an upstanding DOD employee for over 9 years. I just have to make lower payment at this time. Thanks for your understanding.

Applicant's admissions are entered herein as findings of fact. (Item 1; Item 5.)

Applicant is 30 years old and employed as a help desk technician by a government contractor. He is a high school graduate, married, and the father of three young children. He has held a security clearance since approximately 1998. (Item 6.)

Applicant has been steadily employed since 1997. The record is silent about the nature and duration of Applicant's wife's employment and unemployment. (Item 6.)

The eleven delinquent accounts alleged on the SOR were listed on Applicant's credit reports of January 30, 2008 and August 26, 2008. He admitted all eleven delinquent debts, which totaled approximately \$18,988. Applicant's credit reports reflect that these accounts became delinquent between 2004 and 2008. His largest debt is a personal loan delinquency of \$10,767 (SOR ¶ 1.a.). The account was opened in July 2005 and charged off in January 2008. Applicant is responsible for four delinquent accounts in amounts between \$1,000 and \$2,327 (SOR ¶¶ 1.b., 1.c., 1.g., and 1.h.). His remaining financial delinquencies are debts of \$196 (SOR ¶ 1.d.), \$820 (SOR ¶ 1.e.), \$405 (SOR ¶ 1.f.), \$80 (SOR ¶ 1.i.), \$227 (SOR ¶ 1.j.), and \$120 (SOR ¶ 1.k.). (Item 1; Item 7; Item 9.)

In his answer to the SOR, Applicant admitted all eleven debts. However, in an interview with an authorized investigator in February 2008, he claimed he was financially sound and current on all his debts. Additionally, he claimed in the interview that he had satisfied the \$120 debt alleged at SOR ¶ 1.k; that he had negotiated a payment plan of \$225 a month with the creditor identified at SOR ¶ 1.a; and that he had satisfied the debt alleged at SOR ¶ 1.b. He provided no documentation to show that he had satisfied or made payments on these or any other debts alleged on the SOR. Nothing in the record establishes that Applicant has sought and received consumer credit counseling. (Item 5, Item 8 at 9.)

Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security, and it has emphasized that “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information.” *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant Applicant’s eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.

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, 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 these 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.

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” is potentially disqualifying. Similarly under AG ¶ 19(c), “a history of not meeting financial obligations” may raise security concerns. Between 2004 and 2008, Applicant accumulated substantial delinquent debt and the record reflects that he did not pay his creditors. This 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. Several Guideline F mitigating conditions

could apply to the security concerns raised by Applicant's financial delinquencies. Unresolved financial delinquency might be mitigated if it "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." (AG ¶ 20(a)). Additionally, unresolved financial delinquency might be mitigated if "the conditions that resulted in the financial problem were largely beyond the person's control, [such as] 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)). Still other mitigating circumstances that might be applicable include evidence 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" (AG ¶ 20(c); that "the individual has initiated a good-faith effort to repay overdue creditors or otherwise resolve debts" (AG ¶ 20 (d)); or that "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." (AG ¶ 20(e)).¹

Applicant has a history of financial delinquencies that dates to at least the period of 2004 to 2008. Moreover, the delinquencies remain unpaid and have occurred under circumstances that are likely to recur. He has not sought consumer credit counseling that could provide him with strategies for resolving his delinquent debts. While he attributed his delinquent debt to his wife's unemployment, he did not specify when she was employed or became unemployed and how her unemployment directly impacted the family's income.

It is unclear from the record whether Applicant has sufficient resources to pay or settle his delinquent debts. The record does not reflect that the circumstances that gave rise to his delinquencies were beyond his control. In his answer to the SOR, Applicant stated that because of his current familial obligations, he was delinquent in paying some debts and had not paid others at all. In determining an individual's security worthiness, the Government cannot rely on the possibility that an applicant might resolve his or her outstanding debts at some future date. ISCR Case No. 98-0614 at 5 (App. Bd. Jul. 12, 1999). I conclude that AG ¶¶ 20(a), 20(b), 20(c), 20(d), and 20(e) do not apply in mitigation to the security concerns raised by the facts in this case.

Whole Person Concept

Under the whole person concept, an administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of an applicant's conduct and all relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

¹ A sixth possible mitigating circumstance applies when "the affluence resulted from a legal source of income." (AG ¶ 20(f)). This mitigating circumstance is not relevant in this case.

(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 the facts and circumstances surrounding this case. Applicant is a mature adult, has held a security clearance for several years, and has been steadily employed since 1998. He is the sole breadwinner in his family. Despite some economic stability, Applicant has failed to satisfy over \$18,988 in delinquent debts, several of which are for relatively small amounts of money. The record does not reflect that he has sought consumer credit counseling or contacted his creditors to arrange settlement or payment of his debts. His failure to satisfy his creditors raises security concerns about his judgment and reliability.

Overall, the record evidence leaves me with questions and doubts at the present time as to Applicant's eligibility and suitability for a security clearance. For these reasons, I conclude Applicant failed to mitigate the security concerns arising from his financial delinquencies. Applicant can reapply for a security clearance one year after the date that this decision becomes final. If he wishes, he can produce new evidence that addresses the Government's current security concerns.

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. k.:	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.

Joan Caton Anthony
Administrative Judge