



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



In the matter of:)	
)	
)	ISCR Case No. 08-07164
SSN:)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Tom Coale, Esquire, Department Counsel
For Applicant: *Pro Se*

July 31, 2009

Decision

HENRY, Mary E., Administrative Judge:

Based upon a review of the case file, pleadings, exhibits, and testimony, I conclude that Applicant's eligibility for access to classified information is denied.

Applicant submitted his Security Clearance Application (SF 86) on August 31, 2004. The Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F on March 2, 2009. 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 received the SOR and prepared his answer to the SOR in writing on March 30, 2009. Applicant requested a hearing before an administrative judge. DOHA

received the request on April 3, 2009. Department Counsel was prepared to proceed on May 14, 2009, and I received the case assignment on May 15, 2009. DOHA issued a notice of hearing on May 27, 2009, and I convened the hearing as scheduled on June 18, 2009. The government offered eleven exhibits (GE) 1 through 11, which were received and admitted into evidence without objection. Applicant testified on his own behalf. He submitted one exhibit (AE) A, which was received and admitted into evidence without objection. DOHA received the transcript of the hearing (Tr.) on June 26, 2009. I held the record open until July 20, 2009, for Applicant to submit additional matters. On July 20, 2009, he submitted additional documents, which have been marked as AE B through AE P, and admitted without objection.¹ I received one exhibit from Applicant's bankruptcy attorney, which is marked as AE A-1 and admitted without objection. The record closed on July 20, 2009.

Procedural and Evidentiary Rulings

Motion to Continue

Applicant orally requested to continue the hearing on June 17, 2009. After hearing argument by telephone conference with both parties, I denied Applicant's request. Applicant renewed his motion for a continuance at the hearing. Applicant sought a continuance to allow time for him to file his bankruptcy petition. I denied Applicant's motion, but held the record open 30 days for Applicant to submit a copy of his bankruptcy petition. (Tr. 11-15)

Findings of Fact

In his Answer to the SOR, Applicant admitted all the factual allegations in the SOR, with explanations. He also provided additional information to support his request for eligibility for a security clearance.

Applicant, who is 46 years old, works as an e-mail engineer for the Department of State, a position he has held for eight years. He enlisted in the United States Army in 1982 and retired as an E-6 in 1998. Following his retirement from the Army, he worked in computer engineering. He held a security clearance for 26 years without incident.²

Applicant married his first wife in 1987. They had two sons, who are now 21 and 19. They divorced in 1991. He paid his former wife child support until December 2007, when his obligation ceased.³

¹Department Counsel received the faxed documents on July 21, 2009.

²GE 2 (e-QIP); Tr. 30-31.

³GE 1; Tr. 67, 70.

Applicant and his current wife married in 1992. He has two stepsons from this marriage. One stepson is incarcerated and the other stepson, along with the stepson's wife and two children, lives with Applicant and his wife.⁴

Applicant's wife worked at the Pentagon on September 11, 2001. She sustained injuries in the terrorist attacks on that day. Her injuries led to the development of autoimmune diseases. She developed palmopantar keratoderma, a type of psoriasis which causes open cuts on her hands and feet and prevents her from walking for days at a time. She later developed rheumatoid arthritis in her knees, which also affects her ability to walk. She remains under the care of two physicians for her health issues.⁵

Applicant's wife returned to her job one year after the September 11, 2001 attacks. She continued to work with difficulty. When her employer offered her an early retirement, Applicant and she decided to accept the offer. She retired on January 1, 2005. Her income decreased from \$100,000 a year to approximately \$11,000 a year.⁶

Two events occurred after Applicant's wife retired, which impacted his income. In April 2005, Applicant's employer sold the company. The new owner changed his pay status from independent contractor with his salary paid for tax purposes on a 1099 form to paid employee on a W-2 for taxes. The change in the payment form reduced his yearly income from \$150,000 to \$104,000. Because of the substantial loss in income, Applicant obtained a second full-time job, which paid \$60,000 a year. This job ended in late 2007. Applicant currently works a part-time job in security in addition to his full-time job. His wife works as a non-paid minister in their church.⁷

Applicant and his wife purchased their house for \$268,000 in 2002. Before his wife's retirement, they also purchased a recreational vehicle (RV) and a time share. They owned two cars. They had credit cards, several with very small limits, and one with a \$15,000 limit. They used their credit cards regularly. They carried balances on these cards every month. In 2005, when their income decreased significantly, Applicant and his wife returned the RV and directed their time share company to sell their interest. Applicant does not know if their time share interest was sold. The holder of the RV loan sold this vehicle.⁸

In 2005, Applicant contacted a credit counseling service. This service placed him in a payment program, which he did not complete. In his statement to the investigator, Applicant stated he withdrew from this program because he could not afford the monthly

⁴GE 1; Tr. 68.

⁵AE P (Medical reports); Tr. 31-33.

⁶AE E (wife's monthly retirement statement); Tr. 33.

⁷Tr. 34, 38-41.

⁸GE 5; Tr. 34-35, 44-45, 81-82.

payment, and at the hearing, he indicated that he had problems with the company making payments, so he withdrew from the service. Either way, Applicant did not complete the program and did not enroll in another debt consolidation program. He resolved some small debts on his own.⁹

In March 2009, Applicant retained the services of a bankruptcy attorney. With the assistance of their attorney's staff, Applicant is developing all the information needed to file his petition for a Chapter 13 bankruptcy petition. As part of this process, Applicant and his wife must take on-line debt counseling. As of the hearing, they had not taken these courses. In addition, on advice of his counsel, Applicant has tried to pay some small bills, but not the rest because of the upcoming bankruptcy filing. By letter dated July 20, 2009, his bankruptcy attorney advised that Applicant's Chapter 13 petition should be filed within the next 10 days. The purpose of the bankruptcy filing is to reorganize Applicant's debts and repay his debts under a court approved payment plan. The attorney did not provide any time table for when the repayment plan would begin.¹⁰

The SOR lists 23 debts, including one unpaid judgment and two state tax liens for total debts in excess of \$154,000. The government also submitted court information sheets, which indicate three additional judgments have been obtained against Applicant. Two of these judgments are listed as unpaid debts in SOR ¶¶ 1.k and 1.p. Applicant paid one judgment, not listed in the SOR, through garnishment of his wife's checking account. He has a settlement offer on one other judgment (allegation 1.k). One state tax lien occurred because the State lost his tax returns for the 2000 and 2001 tax years. He has spoken to state representatives, but has not resolved the issue. The other state tax lien is for additional monies owed on his taxes for 2007. He has not resolved either of these issues.¹¹

Applicant's gross monthly income from his full-time job for an 80-hour week is \$9,208 and his net pay is \$6,516. Over the last two months, Applicant has been paid for additional hours and received an additional net income of \$905. His wife's net retirement income totals \$920¹² and his net military retirement pay is \$306.¹³ Applicant's income from his part-time job varies monthly because his work hours range from 16 hours at a minimum to 56 hours at a maximum. In the summer, he works more hours. In May 2009, for 16 hours worked in a pay period, he received \$371 net pay and in July 2009, for 56 hours worked in a pay period, he received \$1,265 net pay. His son provides at least \$400 a month to the household. Applicant receives at least \$8,533 a

⁹GE 5; Tr. 44, 86.

¹⁰AE A; AE A-1; Tr. 51, 63-64.

¹¹SOR; GE 9; GE 10; GE 11; Tr. 55, 74.

¹²Two months, Applicant's wife's former employer wrote them, indicating that her retirement benefit may end. It has not yet ended. Tr. 38.

¹³Applicant's former wife receives more than 50% of his military retirement pay. Tr. 37.

month in net income. In the last three months, he also received an additional \$1,800 in household income.¹⁴

Applicant prepared a budget which shows his estimated monthly expenses at \$8,622. Overall, he has sufficient income each month to pay his current bills. Applicant missed several mortgage payments. He and his mortgagor reached an agreement about repaying his arrearage. He increased his monthly payment by \$300 for two years and is current on his payments. He is not currently paying the full amount of his second mortgage. He has two old, paid cars.¹⁵

Applicant resolved two of his three debts with one credit card company and has a settlement offer on the third account, which is now a judgment. He has not paid the settlement offer. Applicant had five accounts with his bank and has resolved two of the five accounts. He paid \$1,441 on his past due 2007 state taxes through a garnishment action. In March 2009, he developed a payment plan with his home owners association to pay his arrearage, and has complied with the plan. He could not locate the unidentified medical bill listed in the SOR. The other debts remain unpaid.¹⁶

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 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 of 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

¹⁴AE C; AE D; AE E; AE F; Tr. 41.

¹⁵AG G; Tr. 70-71.

¹⁶AE J; AE K; AE L; AE M; AE N.

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. Applicant accumulated significant delinquent debt and has not paid most of his old debts. The evidence is sufficient to raise these potentially disqualifying conditions, requiring a closer examination.

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 began in 2005 when his wife retired and he lost income. His financial problems, however, have continued to increase and remain a serious problem. This 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.” As noted above, Applicant’s financial problems arose when his wife retired because of medical problems and his income declined by one-third. He sustained a significant loss of household income. Applicant obtained a second full-time job to help pay his expenses and still works part-time. Despite all his work hours and income, Applicant could not pay his bills. This mitigating condition is partially applicable.

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 retained a financial counseling service in 2005. His association with this company did not last. He has resolved several small debts in the last four years and has worked out a payment plan for his mortgage arrearage and his home owners association arrearage. He complies with both plans. The majority of his debts remain unpaid and his debt problems are not resolved. These mitigating conditions have some applicability.¹⁷

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

¹⁷AG ¶¶ 20(e) and 20(f) are not applicable in this case.

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. The decision to grant or deny a security clearance requires a careful weighing of all relevant factors, both favorable and unfavorable. In so doing, an administrative judge must review all the evidence of record, not a single item in isolation, to determine if a security concern is established and then whether it is mitigated. A determination of an applicant's eligibility for a security clearance should not be made as punishment for specific past conduct, but on a reasonable and careful evaluation of all the evidence of record to decide if a nexus exists between established facts and a legitimate security concern.

In reaching a conclusion, I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant lost nearly \$140,000 in income in 2005 when his method of salary payment changed and his wife retired for health reasons. To manage this income loss, Applicant obtained a second full-time job to help pay his expenses. He continues to work a second job. His efforts to earn income is commendable. Applicant, however, has significant financial problems which he has not resolved. He incurred debt to finance a life style. Even though he has worked extremely hard to earn money, he has mismanaged his resources regularly. He earns, and has earned, sufficient money each month to pay his expenses, but missed payments on all his bills regularly, leading to his current problem. He intends to file a Chapter 13 bankruptcy petition and enter into a wage earners plan to repay his debts. He has not yet filed this petition. Even if it is filed shortly, it will take at least six months for all the steps in the bankruptcy process to complete and he begins his repayments. Given his poor debt payment history in the last four years, Applicant needs to establish a track record for meeting the obligations under his Chapter 13 bankruptcy wage earners plan. He also should show significant improvement in financial management. While Applicant has never violated security procedures in the 26 years he has held a security clearance and works very hard, these facts do not outweigh the security concerns about his extensive debt and financial problems.

Overall, the record evidence leaves me with questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant did not mitigate the security concerns arising from his financial issues.

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:	For Applicant
Subparagraph 1.g:	Against Applicant
Subparagraph 1.h:	Against Applicant
Subparagraph 1.i:	Against Applicant
Subparagraph 1.j:	For 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
Subparagraph 1.q:	Against Applicant
Subparagraph 1.r:	Against Applicant
Subparagraph 1.s:	Against Applicant
Subparagraph 1.t:	Against Applicant
Subparagraph 1.u:	Against Applicant
Subparagraph 1.v:	Against Applicant
Subparagraph 1.w:	Against Applicant

Conclusion

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

MARY E. HENRY
Administrative Judge