



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



In the matter of:)
)
-----) ISCR Case No. 08-08874
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Jeff A. Nagel, Esquire, Department Counsel

For Applicant: *Pro se*

January 22, 2010

DECISION

ROSS, Wilford H., Administrative Judge:

Applicant submitted his Electronic Questionnaire for Investigation Processing (e-QIP), on June 12, 2008 (Government Exhibit 1). On April 3, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline F (Financial Considerations) concerning the 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 President Bush on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant submitted an Answer to the SOR on May 5, 2009, and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on May 28, 2009. I received the case assignment on June 1, 2009. DOHA issued a notice of hearing on July 2, 2009, and I convened the hearing as scheduled on August 4, 2009. Government offered Government Exhibits 1 through 6, which were received

without objection. Applicant testified on his own behalf, and submitted Applicant Exhibits A through D, which were received without objection. DOHA received the transcript of the hearing, and the record closed, on August 17, 2009. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

Findings of Fact

Applicant is 57, and single. He is employed by a defense contractor and seeks to obtain a security clearance in connection with his employment.

Guideline F, Financial Considerations

The Government alleges that Applicant is ineligible for clearance because he is financially overextended and therefore at risk of having to engage in illegal acts to generate funds. Applicant admits all of the allegations in the SOR. Those admissions are hereby deemed findings of fact.

1.a. Applicant admits that a judgment was entered against him in the amount of approximately \$12,649. This judgment was entered in 2004. While Applicant admits the existence of this judgement, he was unable to provide the name of the creditor. This debt has not been paid, and he has no current intentions to pay this debt. (Government Exhibits 3-6; Transcript at 40-43.)

1.b. Applicant admits that he was indebted to a department store in the amount of \$79. He submitted documentary evidence showing that he has paid this debt. This subparagraph is found for the Applicant. (Applicant Exhibit C; Transcript at 44.)

1.c. Applicant admits that a judgment was entered against him in the amount of approximately \$10,216. This judgment was entered in 2004. This debt has not been paid, and he has no current intentions to pay this debt. (Government Exhibit 3; Transcript at 44.)

1.d.¹ Applicant admits that a judgment was entered against him in the amount of approximately \$1,236. This judgment was entered in 2003. This debt has not been paid, and he has no current intentions to pay this debt. (Government Exhibit 3; Transcript at 44.)

1.e. Applicant admits that a judgment was entered against him in the amount of approximately \$10,891. This judgment was entered in 2006. The Applicant paid this judgment pursuant to a garnishment on his wages. This allegation is found for the Applicant. (Government Exhibit 3; Applicant Exhibits A and B; Transcript at 44.)

¹This allegation was numbered "1.c" in the SOR at page 2, and was the second so numbered. It was renumbered "1.d." to avoid confusion. The allegations in the SOR originally numbered "1.d. " through "1.g." in the SOR have been renumbered "1.e. through "1.h."

1.f. Applicant admits that he owes a debt to a creditor in the amount of \$1,513. This account was opened in 2000 and has been delinquent since at least 2002. Applicant has not paid this debt and has no current plans to pay this debt. (Government Exhibit 3; Transcript at 44-47.)

1.g. Applicant admits that he owes a debt to a creditor in the amount of \$1,965. Applicant has not paid this debt and has no current plans to pay this debt. (Government Exhibit 3; Transcript at 47.)

1.h. Applicant admits that he owes a debt to a creditor in the amount of \$2,234. Applicant has not paid this debt and has no current plans to pay this debt. (Government Exhibit 3; Transcript at 47.)

During his testimony, the Applicant stated that he was unable to pay his past due debts because all of his money goes to pay his monthly expenses and remain current on his active credit accounts. He attributes much of his financial difficulty to getting divorced in 1999, and subsequently helping his two children financially as they went through college. He hopes to file bankruptcy within five or six months, once he saves the money required for the filing fee. (Government Exhibit 2; Transcript at 30-38, 47-52.)

Policies

Security clearance decisions are not made in a vacuum. 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 to be used as appropriate 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. In addition, the administrative judge may also rely on his own common sense, as well as his knowledge of the law, human nature, and the ways of the world, in making a reasoned 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. Security clearance decisions include, by necessity, consideration of the possible risk that 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.

Finally, as emphasized in Section 7 of Executive Order 10865, “Any determination under this order . . . shall be a determination 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, by his own admission, has over \$29,000 in past due debts, all of which have been due and owing for several years. 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.” The Applicant’s financial difficulties are of a longstanding nature. As stated above, he has paid off two of his debts. One was very small, and the other was paid through a garnishment. However, the evidence is meager as to how he is going to pay his remaining past due debts. It is the Applicant’s burden to submit evidence showing that this mitigating condition applies to this case. He has not done so.

AG ¶ 20(b) states that the disqualifying conditions may be mitigated where “the conditions that resulted in the financial problem were largely beyond the person’s control (e.g., . . . divorce or separation), and the individual acted responsibly under the circumstances.” Applicant and his wife were divorced in 1999. He indicates that the divorce exacerbated his financial situation. However, there is scant evidence in the record to conclude that he has acted responsibly since then. With the available record, I cannot find, under these particular facts, that the Applicant has acted responsibly under the circumstances.

Applicant has not initiated a good-faith effort to pay off his creditors, or otherwise resolve the debts. There is no track record of his making payments for a consistent period of time. Accordingly, AG ¶ 20(d) is not applicable. Finally, given the fact that he is at least \$29,000 in debt, I cannot find that “there are clear indications that the problem is being resolved or is under control,” as required by AG ¶ 20(c).

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. 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 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.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. The Applicant is under financial strain, and has been for several years. His debt situation is not yet under control. Under AG ¶ 2(a)(3), the Applicant’s conduct is recent. Based on the state of the record, I

cannot find that there have been permanent behavioral changes under AG ¶ 2(a)(6). Accordingly, at the present time, I find that there is the potential for pressure, coercion, exploitation, or duress (AG ¶ 2(a)8)), and that there is a high likelihood of recurrence (AG ¶ 2(a)9)).

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 the Applicant has not mitigated the security concerns arising from his financial situation at this time. If he is able to pay down his debts, or otherwise resolve them, he may be eligible for a clearance in the future. He is not eligible now.

On balance, it is concluded that the Applicant has not successfully overcome the Government's case opposing his request for a DoD security clearance. Accordingly, the evidence supports a finding against the Applicant as to the factual and conclusionary allegations expressed in Paragraph 1 of the Government's Statement of Reasons.

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 THE APPLICANT
Subparagraph 1.a:	Against the Applicant
Subparagraph 1.b:	For the Applicant
Subparagraph 1.c:	Against the Applicant
Subparagraph 1.d:	Against the Applicant
Subparagraph 1.e:	For the Applicant
Subparagraph 1.f:	Against the Applicant
Subparagraph 1.g:	Against the Applicant
Subparagraph 1.h:	Against the 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.

WILFORD H. ROSS
Administrative Judge