



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



In the matter of:)	
)	
)	ISCR Case No. 08-09796
SSN:)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Melvin A. Howry, Esq., Department Counsel
For Applicant: *Pro Se*

July 27, 2009

Decision

MARSHALL, Jr., Arthur E., Administrative Judge:

Applicant completed an Electronic Questionnaires for Investigations Processing form (e-QIP) on May 30, 2008. On December 12, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) enumerating security concerns arising 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 for SORs issued after September 1, 2006.

In a response notarized on December 29, 2008, Applicant admitted the eight allegations set forth in the SOR and declined a hearing on the record. Department Counsel submitted a File of Relevant Materials (FORM), dated February 19, 2009, that included 12 attached items. Applicant received the FORM on February 25, 2009. He did not respond to the FORM within the 30 days provided. On July 7, 2009, the Director,

DOHA, forwarded the case for assignment to an administrative judge for administrative determination. I was assigned the case on July 9, 2009. Based upon a review of the case file, submissions, and exhibits, I find Applicant failed to meet his burden regarding the security concerns raised. Security clearance is denied.

Findings of Fact

Applicant is a 52-year-old systems administrator working for a defense contractor. He has worked for the same company for more than seven years. Prior to that, he served in the military for approximately 30 years. Applicant has earned a high school diploma and a bachelor of science degree in information technology. He has been married for nearly 20 years. In responding to the SOR, Applicant submitted scant facts with little elaboration and no supporting evidence.

At some unspecified point in time, Applicant's wife developed a gambling compulsion. Spending "thousands of dollars per month at the casino," her gambling compromised Applicant's financial stability.¹ He told her he thought she had a problem and asked her to quit gambling, but she continued. He eventually had her name removed from the family bank account. This "helped a little, but the damage was already done and a snowballing affect [sic] occurred."² He struggled to stay current on their mounting debt while he tried to pay her creditors. Consequently, many of his obligations became delinquent and, ultimately, he lost his home to foreclosure in July 2008.

Forced to vacate their home in the middle of 2008, Applicant expended approximately \$6,000 in expenses moving out of the home and about \$3,000 moving into a rental property. To finance this move and meet his obligations, Applicant liquidated his 401(k) retirement account and obtained a \$3,000 advance from his employer. Around this same time, Applicant's automobile "failed," causing him to make a \$2,600 down payment on a replacement vehicle.³ Next, his wife's car lease expired. Due to their low credit rating, he was required to refinance her car at a high rate.

By the end of August 2008, Applicant believed the worst was over and that his finances were nearly stabilized. In September 2008, however, his employer began collecting \$1,000 per month to repay its \$3,000 advance. This dramatic reduction in net salary made it "literally impossible" for him to pay his bills.⁴

Applicant states, without evidence, that he tried to negotiate settlements with some of his creditors. Some of the creditors refused to negotiate or demanded

¹ Item 2, Response to SOR at 3.

² *Id.*

³ *Id.*

⁴ *Id.*

payments he could not afford. He also asserts that some of the negotiated payments were set for automatic payment from Applicant's bank account, but at a fee of \$35 per transaction plus \$5 a day "for continuous negativity in the account."⁵ He claims such bank fees added an additional financial burden of over \$600 a month.

At issue are six delinquent debts amounting to approximately \$147,400. This includes approximately \$134,000 owed toward his foreclosure and about \$12,000 owed on a car loan. Additionally, Applicant admits he filed for Chapter 7 bankruptcy protection twice, in March 23, 1998, and in September 26, 1988. Both petitions were ultimately discharged shortly after filing. In describing his present status in relation to his current debts, Applicant writes: "I am not sure what to do at this point, but this is the reasons [sic] for my indebtedness, except I am trying to continue negotiations with creditors."⁶

Policies

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. 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. An administrative judge's over-arching adjudicative goal is a fair, impartial and common sense decision. Under AG ¶ 2(c), this process is a conscientious scrutiny of a number of variables known as the "whole person concept." An 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.

The U. S. Government must present evidence to establish controverted facts alleged in the SOR. An applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven

⁵ *Id.*

⁶ *Id.*

by Department Counsel. . . .”⁷ The burden of proof is something less than a preponderance of evidence.⁸ The ultimate burden of persuasion is on the applicant.⁹

A person seeking access to classified information enters into a fiduciary relationship with the U.S. Government based on trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The U.S. 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). “The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”¹⁰ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such information.¹¹ The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of an applicant.¹² Nor does it reflect badly on that person’s character. It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Based upon consideration of the evidence, I find Guideline F (Financial Considerations) to be the most pertinent to the case. Conditions pertaining to this adjudicative guideline that could raise a security concern and may be disqualifying, as well as those which would mitigate such concerns, are set forth and discussed below.

Analysis

Guideline F – Financial Considerations

Under Guideline F, failure or an inability to live within one’s means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or an

⁷ See *also* ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

⁸ *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

⁹ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

¹⁰ *Id.*

¹¹ *Id.*

¹² Executive Order 10865 § 7.

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.¹³ The Directive sets out several potentially disqualifying conditions under this guideline.

Applicant admits to having successfully petitioned for bankruptcy in 1988 and in 1998. He also admits he is "not sure what to do" about the approximately \$147,400 in delinquent debt he presently owes. Such facts are sufficient to give rise to financial considerations disqualifying condition (FC DC) AG ¶ 19(a) ("inability or unwillingness to satisfy debts") and FC DC AG ¶ 19(c) ("a history of not meeting financial obligations").¹⁴ With such conditions raised, the burden shifts to Applicant to overcome the case against him and mitigate security concerns.

There are insufficient facts to determine what led Applicant to file for bankruptcy in both 1988 and 1998. He attributes his 2008 financial problems, however, to his wife's gambling and his efforts to pay her debts. As a consequence, his home was foreclosed upon and other accounts were neglected. His automobile's failure subsequently required him to seek a replacement car. In response to these obstacles, he removed his wife from their bank account, took a loan from his employer, liquidated his retirement savings, and tried to negotiate with his creditors. To the extent these factors contributed to his present situation, financial considerations mitigating condition (FC MC) AG ¶ 20(b) ("the conditions that resulted in the behavior 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") applies.

The majority of debts at issue became delinquent within the last two years. Applicant's 2008 finances present him with a financial dilemma it may be presumed he previously faced in 1988 and in 1999. While he links his current predicament with his wife's gambling and writes she is no longer on the family bank account, he presents no evidence indicating her problem is under control or that she is otherwise precluded from acquiring more family debt. Moreover, he has no plan to address his current financial situation. FC MC AG ¶ 20(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") does not apply. Further, there are no facts indicating he sought or received financial counseling or that any significant progress has been made to pay off this debt, obviating application of FC MC AG ¶ 20(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") and FC MC AG ¶ 20(d) ("the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts"). No other FC MCs apply.

¹³ Revised Adjudicative Guideline (AG) ¶ 18.

¹⁴ While FC DC AG ¶ 19(i) refers to gambling debts, it refers to debts incurred by an applicant.

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 an 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. As noted above, the ultimate burden of persuasion is on the applicant seeking a security clearance.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case, as well as the "whole person" factors. Applicant is a mature, educated man who rendered service to this country for the majority of his life. In requesting an administrative determination, however, he chose to present unelaborated facts and no supporting documentation. What documentation there is indicates a repeated pattern of financial instability about every 10 years, in 1988, 1998, and 2008. Assuming his wife's gambling was the cause of his current situation, there is a basis for mitigating their acquisition of delinquent debt related to her problem. There is, however, no evidence he has made any progress on the debts at issue and no indication he has devised a viable plan to address this debt by means other than repeated negotiations. Indeed, Applicant concedes he has no idea as to how to proceed at this point. Consequently, the accounts at issue remain delinquent. In light of the fact that the ultimate burden is on Applicant, financial considerations security concerns remain unmitigated. Therefore, it is not clearly consistent with national security to grant Applicant a security clearance. Clearance is denied.

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

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 a security clearance. Clearance is denied.

ARTHUR E. MARSHALL, JR.
Administrative Judge