



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



In the matter of:)	
)	
-----)	ISCR Case No. 08-10460
SSN: -----)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Stephanie Hess, Esquire, Department Counsel
For Applicant: *Pro Se*

December 23, 2009

Decision

LYNCH, Noreen A., Administrative Judge:

Applicant answered and signed his Security Clearance Application (SF-86) on July 16, 2008. On June 17, 2009, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) detailing the security concerns under Guidelines F and E. 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.

On August 14, 2009, Applicant answered the SOR and requested a hearing. DOHA received the request and assigned the case to me on September 18, 2009. On October 5, 2009, a Notice of Hearing was issued, scheduling the hearing for October 27, 2009. The hearing was convened as scheduled. Department Counsel submitted four exhibits (GE) 1-4, without objection. Applicant presented 13 exhibits (AE) A-M, without objection. He testified on his own behalf. At Applicant's request, I kept the record open

until November 10, 2009. Applicant submitted a packet of receipts which was marked AE N and admitted into the record without objection. The transcript (Tr.) was received on November 5, 2009. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

Findings of Fact

In his Answer to the SOR, Applicant denied the factual allegations in ¶¶ 1.a through 1.l and 2.a of the SOR. He admitted the allegation in ¶ 2.b of the SOR.

Applicant is a 58-year-old employee of a defense contractor. He graduated from high school and obtained an undergraduate degree in 1973. Applicant is married and has four children. He has worked for his current employer since June 2008.

In late 2004, Applicant was unemployed for eight months. He obtained several contract jobs that were sporadic. His income was greatly reduced and he could not pay all his bills. Applicant used his retirement savings to help pay his bills as long as he could. He relocated to find work. His wife became ill in 2006 and incurred many medical bills. She does not work outside the home (Tr. 11). She is now on disability. Prior to his unemployment, Applicant earned \$72,000 a year and did not have any financial difficulties (Tr. 36).

The SOR alleges 12 delinquent debts, including medical accounts. The approximate total for Applicant's debts is \$52,000 (GE 3). The current status of Applicant's delinquent debts is described below.

The debt alleged in SOR ¶ 1.a is for a collection account in the amount of \$4,097. Applicant settled the account for \$2,900. His final payment is in December 2009 (AE A).

Applicant is in repayment status for the alleged debt in SOR ¶ 1.b for \$10,181. He pays \$488 monthly on the debt. The balance is \$3,439 (AE B).

Applicant pays \$257 monthly on the debt alleged in SOR ¶ 1.c. The balance owed is \$6,753. This amount may be reduced in the next months by the credit union (Tr. 25).

The debt alleged in SOR ¶ 1.d for \$4,555 is a student loan that he cosigned for his son. He is paying \$100 a month on the loan (AE D).

The debt alleged in SOR ¶ 1.e for \$19,733 is the result of a voluntary repossession. Applicant could not pay the \$539 a month car loan when he lost his job in 2004 (Tr. 27). He had made payment on the car for approximately 18 months before he returned the vehicle to the dealer. The automobile was resold by the dealership. Applicant has formally disputed the amount. He is waiting an accurate accounting of any balance that might be due (AE N).

The debt alleged in SOR ¶ 1.f for \$326 was settled and paid (Tr.30).

The debt alleged in SOR ¶ 1.g is for \$240. This is a credit card account. Applicant paid the account in full (AE F).

The debt alleged in SOR ¶ 1.h is a phone account for \$651. Applicant paid the account (AE N).

The debt alleged in SOR ¶ 1.i is a medical bill for \$145. This is paid (AE I).

The debt alleged in SOR ¶ 1.j is for another medical bill that was paid in full in the amount of \$130 (AE J).

The debt alleged in SOR ¶ 1.k for \$4,200 is paid. This represented money owed to a former landlord (AE K).

The debt alleged in SOR ¶ 1.l refers to the voluntary repossession in allegation 1. e.

Applicant's net monthly income is approximately \$8,145 (GE 2). He is current with his monthly expenses. His net monthly remainder is approximately \$439. He has a savings account (GE 2). He has no credit cards. He began repayment of his debts as soon as he obtained full-time employment. He has also been paying medical bills that are not covered by any insurance for his wife (Tr. 40). His son requires medical care for a health issue. This has required Applicant to pay many bills over a sustained period (AE N).

When Applicant completed his July 16, 2008 security clearance application, he read question 27 concerning any property repossessions and answered "No." He explained that since he had made payments on his car until his unemployment forced him to return the vehicle voluntarily to the dealership, he did not consider that he had any property "repossessed." He was credible in his explanation (Tr. 33). In that application, he answered "No" to question 28a concerning financial delinquencies in the last seven years over 180 days, and "No" to question 28b concerning financial delinquencies over 90 days (GE 1). Applicant knew he had outstanding debts, but did not have any financial information with him and was unclear as to the exact situation. He now realizes that he should have answered that question in the affirmative (Tr. 34).

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, 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 (EO) 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 *a/so* 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 debts⁶ is potentially disqualifying. Similarly under AG & 19(c), a history of not meeting financial obligations⁶ may raise security concerns. Applicant accumulated delinquent debts on many accounts for a period. His credit reports confirm the debts. The evidence is sufficient to raise these 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.⁶ Applicant acknowledged that he had many things happen in 2004 that caused his financial difficulties. He had also provided for his family and was responsible. This mitigating condition applies in part.

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.⁶ Before 2004, Applicant did not have financial difficulties. When he lost his job and could not find work for almost eight months, he incurred delinquent debts. He also had his wife's illness and his son's health problems which required a substantial outlay of money. When he found employment, he was receiving a lower salary. He did not find a permanent position until 2008. At that point, he began repaying his delinquent debts. He also had to turn in his vehicle after he had made payments for almost 18 months. The car was sold, but he has not been given credit for the sale which would reduce the amount of debt reported on his credit card. He is disputing the amount and attempting to obtain an accurate amount that he will pay. Applicant has acted responsibly in paying his accounts under the circumstances. This mitigating condition applies.

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 control⁶ 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.⁶ Applicant has not received formal financial counseling. He has resolved his debts and is not shirking payment on the voluntary car repossession. He disputed the amount and is actively working on resolving the issue. He entered into repayment status and has been consistent so far. His efforts are sufficient to carry his burden in this case. I conclude these mitigating conditions apply.

AG ¶ 20(e) applies where the evidence shows “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.” As discussed above, the \$19,000 for his vehicle is in formal dispute. He provided documentation for this assertion. I conclude this mitigating condition applies.

Guideline E, Personal Conduct

The security concern relating to the guideline for Personal Conduct is set out in AG ¶ 15:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual’s reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to cooperate with the security clearance process.

The guideline notes several conditions that could raise security concerns. Under AG ¶ 16(a), “deliberate omission, concealment, or falsification of relevant facts from any personnel questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities” is potentially disqualifying.

In this case, when Applicant completed his 2008 security application, he did not answer “yes” to questions 27 or 28. He denied the allegation concerning a falsification of his answers. At the hearing, he stated that he answered the questions to the best of his ability and did not know realize at the time the information was not accurate. He incorrectly answered the questions but he did not intentionally falsify his application.

When a falsification allegation is controverted or denied, the Government has the burden of proving it. Proof of an omission, standing alone, does not establish or prove an applicant’s state of mind when the omission occurred. An administrative judge must consider the record evidence as whole to determine whether there is direct or circumstantial evidence concerning an applicant’s state of mind at the time the omission occurred. ISCR Case No. 03-09483 at 4 (App. Bd. Nov. 17, 2004) (explaining holding in ISCR Case No. 02-23133 at 5 (App. Bd. Jun. 9, 2004)). Thus, AG ¶ 16(a) does not apply in this case. I find for Applicant on SOR ¶ 2.a.

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 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 and conclude they are insufficient to overcome the government's case. Applicant has worked all his life. He supported his family. His wife and son have medical concerns. He never had financial difficulties before his unemployment in 2004. He acted responsibly in handling the delinquent debts when he obtained permanent employment. He has resolved the delinquent debts through his repayment plan. He answered questions 27 and 28 concerning financial delinquencies in the last 7 years to the best of his ability. He did not intentionally falsify his SF 86.

Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has mitigated the security concerns arising under financial considerations and personal conduct guidelines.

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: FOR APPLICANT

Subparagraphs 1.a: through 1.l: FOR Applicant

Paragraph 2, Guideline E: FOR APPLICANT

Subparagraph 2.a: For Applicant

Subparagraph 2.b: For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

NOREEN A. LYNCH
Administrative Judge