



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



In the matter of:)
)
) ISCR Case No. 08-10600
)
)
Applicant for Security Clearance)

Appearances

For Government: Paul M. DeLaney, Esquire, Department Counsel
For Applicant: *Pro Se*

July 23, 2009

Decision

RIVERA, Juan J., Administrative Judge:

Applicant’s available information is not sufficient to mitigate the security concerns arising from financial considerations. Eligibility for access to classified information is denied.

Statement of the Case

On June 19, 2008, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP).¹ On December 16, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to him, pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive),

¹ FORM Item 5.

dated January 2, 1992, as amended, modified and revised.² The SOR alleges security concerns under Guideline F (Financial Considerations). The SOR detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for him, and recommended referral to an administrative judge to determine whether a clearance should be denied or revoked.

On January 2, 2009, Applicant responded to the SOR allegations, and elected to have his case decided on the written record in lieu of a hearing (Item 4). A complete copy of the file of relevant material (FORM), dated February 3, 2009, was provided to him by letter dated February 4, 2009. Applicant received the FORM on February 9, 2009. He was afforded a period of 30 days to file objections and submit material in refutation, extenuation, or mitigation. He failed to submit any materials, comments, or objections in response to the FORM. The case was assigned to me on April 16, 2009.

Procedural Issue

In the FORM, the government moved to amend the SOR by adding SOR ¶ 1.r: “You are indebted to CRDTONEBNK in the approximate amount of \$523 on an account that was charged off. As of December 9, 2008, this debt had not been paid.”

I granted the amendment without objection. The amendment was supported by the evidence provided and Applicant was provided the required notice.

Findings of Fact

Applicant admitted the factual allegations in SOR ¶¶ 1.a through 1.d, 1.f, 1.h through 1.k, and 1.n through 1.q. He denied SOR ¶¶ 1.e, 1.g, 1.i, 1.m, and 1.r. Concerning SOR ¶¶ 1.e and 1.g, Applicant answered the SOR allegation stating “unknown,” and I considered both denied. He did not answer the additional allegation in SOR ¶ 1.r, and I considered it denied. His admissions are incorporated herein as findings of fact. After a thorough review of the evidence of record, I make the following additional findings of fact.

Applicant is a 48-year-old production control dispatcher working for a defense contractor.³ He graduated from high school and attended college from July 2006 to October 2006. Applicant indicated he was issued a confidential security clearance between 1983 and 1991. He provided no information about the agency or employer that granted this confidential security clearance. There is no evidence that he ever compromised or caused others to compromise classified information.

² On Aug. 30, 2006, the Under Secretary of Defense (Intelligence) published a memorandum directing application of revised Adjudicative Guidelines to all adjudications and other determinations made under the Directive and Department of Defense (DoD) Regulation 5200.2-R, *Personnel Security Program* (Regulation), dated Jan. 1987, as amended, in which the SOR was issued on or after Sep. 1, 2006.

³ Item 5 (2008 e-QIP) is the source for the facts in this decision, unless stated otherwise.

Applicant has never been married and has no children. Applicant's security clearance application shows he has been employed from April 2001 to the present. From April 2001 to April 2004, he worked for six different employers, most of them for short periods of time. He has worked for his current employer, a defense contractor, from April 2004, to the present. Initially, he worked as an "expeditor," and since April 2008, he has worked as a production control dispatcher.

In his 2008 security clearance application, Applicant disclosed he had debts over 180 days delinquent during the last seven years and that, at the time he submitted his security clearance application, he also had debts over 90 days delinquent. He specifically disclosed having delinquent accounts with the creditors alleged in SOR ¶¶ 1.m (a note for a repossessed car), and 1.r. (a credit card).

The SOR alleges 17 delinquent and/or charged-off accounts, totaling approximately \$19,600, which were listed in the two credit reports.⁴ Many of the debts have been delinquent for a number of years, and can be considered small debts as they are for less than \$1,000. Applicant provided no explanation about the debts he admitted or denied. He failed to explain how he acquired the alleged debts, why they became delinquent, what he has done to resolve his delinquent and/or charged off debts, and what he plans to do to avoid similar financial problems in the future.

Applicant's November 2008 personal financial statement (PFS) shows a monthly net remainder of \$55. His indicated a monthly income of \$1,960; monthly expenses of \$1,500; and two monthly payments totaling \$405 (for a car note and a student loan payment). He indicated no payments being made to resolve any of the debts alleged in the SOR.

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 required to be considered 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 controlling 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

⁴ An applicant's credit report showing the delinquent debts alleged in an SOR is sufficient to establish the government's *prima facie* case. See ISCR Case No. 03-20327 at 3 (App. Bd. Oct. 26, 2003).

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.

In the decision-making process, the government has the initial burden of establishing controverted facts alleged in the SOR by “substantial evidence,”⁵ demonstrating, in accordance with the Directive, that it is not clearly consistent with the national interest to grant or continue an applicant’s access to classified information. Once the government has produced substantial evidence of a disqualifying condition, the burden shifts to applicant to produce evidence “to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by department counsel, and [applicant] has the ultimate burden of persuasion as to obtaining a favorable clearance decision.” Directive ¶ E3.1.15. The burden of disproving a mitigating condition never shifts to the government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).⁶

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* Executive Order 12968 (Aug. 2, 1995), Section 3.

⁵ See Directive ¶ E3.1.14. “Substantial evidence [is] such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the contrary evidence in the record.” ISCR Case No. 04-11463 at 2 (App. Bd. Aug. 4, 2006) (citing Directive ¶ E3.1.32.1). “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994).

⁶ “The administrative judge [considers] the record evidence as a whole, both favorable and unfavorable, evaluate[s] Applicant’s past and current circumstances in light of pertinent provisions of the Directive, and decide[s] whether applicant ha[s] met his burden of persuasion under Directive ¶ E3.1.15.” ISCR Case No. 04-10340 at 2 (App. Bd. July 6, 2006).

Analysis

Guideline F, Financial Considerations

Under Guideline F, the security concern is that an applicant's 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. AG ¶ 18.

Applicant has accumulated 17 delinquent and/or charged-off accounts totaling approximately \$19,600, many of which have been outstanding for a number of years and involve small debts of less than \$1,000. He presented no evidence of efforts to pay or resolve his financial obligations.

AG ¶ 19(a): inability or unwillingness to satisfy debts and AG ¶ 19(c): a history of not meeting financial obligations, apply in this case.

AG ¶ 20 lists six conditions that could mitigate the financial considerations security concerns:

- (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;
- (b) 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;
- (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;
- (d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts;
- (e) 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; and
- (f) the affluence resulted from a legal source of income.

Applicant's sparse favorable evidence fails to fully raise the applicability of any mitigating condition. His financial problems are ongoing and his evidence fails to show they occurred under such circumstances that they are unlikely to recur and do not cast doubt on Applicant's current reliability, trustworthiness, or good judgment. AG ¶ 20(a) does not apply.

Applicant presented no evidence to establish circumstances beyond his control contributing to his inability to pay his debts, i.e., period of unemployment and/or business downturn. AG ¶ 20(b) does not apply.

Applicant presented no evidence of efforts to contact creditors, or to resolve his debts by entering into settlement agreements or payment plans with any creditors. I note that in his security clearance application, he claimed that two debts were pending settlement. However, Applicant presented no evidence to corroborate his claim. Applicant has been consistently employed since April 2001. He presented no evidence of efforts to resolve any of his delinquent debts from 2001 to the day he received the FORM.

AG ¶ 20(c) does not apply because there are no clear indications that his financial problem is being resolved or is under control. His inability to pay even relatively small debts shows he is financially overextended. He also failed to present any evidence that he received financial counseling or that his financial problems are not likely to recur. The remaining mitigating conditions are not reasonably raised by the facts in this case.

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.

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. AG ¶ 2(c).

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant receives credit for his five years working for a government contractor. There is no evidence of any security violation, or that he ever compromised classified information. These factors show some responsibility and mitigation.

Notwithstanding, security concerns remain about Applicant's current financial responsibility, reliability, and judgment. The sparse record evidence fails to convince me of Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the security concerns arising from his financial considerations.

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
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Subparagraphs 1.a - 1.r:	Against Applicant
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Conclusion

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

JUAN J. RIVERA
Administrative Judge