



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



In the matter of:)	
)	
-----)	ISCR Case No. 08-10657
SSN: -----)	
)	
Applicant for Security Clearance)	

Appearances

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

October 20, 2009

Decision

LYNCH, Noreen A., Administrative Judge:

Applicant answered and signed his Security Clearance Application (SF-86), on July 18, 2008. On May 19, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline F for 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 the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant acknowledged receipt of the SOR and elected to have his case decided on the record in lieu of a hearing. Department Counsel submitted the Government's written case on June 25, 2009.¹ Applicant received a complete file of relevant material

¹The Government submitted seven (7) items in support of its contention.

(FORM) on July 13, 2009, and was provided the opportunity to file objections and submit material to refute, extenuate, or mitigate the Government's case. Applicant did not submit additional information. The case was assigned to me on October 9, 2009. Based upon a review of the case file, eligibility for access to classified information is denied.

Findings of Fact

In his Answer to the SOR, dated May 28, 2009, Applicant admitted the factual allegations in ¶¶ 1.a through 1.d of the SOR. He did not provide additional information to support his request for eligibility for a security clearance.

Applicant is a 53-year-old employee of a defense contractor. He graduated from high school, and received a technical certificate in 1981. He is married and has two children. His wife has debilitating arthritis that prevents her employment. He has worked for his current employer since February 2008 (Item 4).

Applicant has worked steadily for many years. He refers to his strong work ethic and states that as a result of growing up on a ranch in Montana, he knows the value of hard work. He has never gambled. He believes that the SOR allegations put him in the same category as "thieves and compulsive gamblers." He takes offense at the idea that he is not reliable or trustworthy because he has delinquent debts.

Applicant stated that jobs in his state were scarce and that wages were low. He tried to raise his family on his income. He provided food and shelter, but he did not have enough money for everything. He obtained credit cards but he claimed he did not spend frivolously. He elaborated that he used the credit cards to buy propane gas, pay taxes and get groceries. He estimated that each year he seemed to be about \$10,000 short. He believed the use of the credit cards kept them from "going under." Applicant maintained that his wages never increased, but the debts mounted. He used the money for his family and not for any personal "high living" (Item 7).

Applicant moved to another state in 2007 to find better work. He reported a period of unemployment from December 2007 until February 2008. His 43-acre farm in his home state has been for sale for three years. Due to the economy and poor market, it has not sold. He intends to pay his delinquent debts when he sells the farm.

The SOR alleges four delinquent debts for a total amount of approximately \$21,068 (Item 3). Applicant admits owing the delinquent debts. His credit reports confirm the debts (Items 5 and 6).

In his 2009 response to DOHA interrogatories, Applicant admitted that he has a great deal of credit card debt. He is also adamant that he and his family are not extravagant. They buy used cars and are honest and hardworking. He has equity in his home and farm and will be able to pay his delinquent debts when there is a sale. He stated that he is making some payments on his debts, but most were turned over to

collection agencies. He also acknowledged that he could not make an accurate list of his debts right now. He is trying to avoid future use of credit. He did not produce any evidence to document any payments that he made to his creditors. He relied on his plan to pay all his delinquent debts with the future sale of his farm.

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 over-arching 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 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^o is potentially disqualifying. Similarly under AG & 19(c), a history of not meeting financial obligations^o may raise security concerns. Applicant has a history of financial problems since 2006. He accumulated delinquent debts from use of credit cards. 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.^o Applicant has delinquent debt that has not been resolved. He did not submit any mitigating information in response to the FORM. There is no indication when Applicant's home and farm may sell. Applicant's plan to pay these debts in the future is not sufficient for mitigation. This mitigating condition does not apply in this case.

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.^o I do not find this a factor for consideration in this case. Applicant had low wages and a period of unemployment for a few months. However, he has worked steadily for many years. He acknowledged that his expenses and spending exceeded his income by about \$10,000 each year.

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 has not resolved any debts. He did not submit any documentation that he has made payments on any accounts in small amounts. There is nothing in the record concerning financial counseling. His efforts are not sufficient to carry his burden in this case. I conclude these mitigating conditions do not apply.

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. Applicant has failed to provide any evidence that the debts are not his responsibility. He has not produced any documentation that he has made any payments even on small debts. His plan to sell his farm and pay the debts in the future is not sufficient for mitigation. He has worked steadily for many years. He admitted that he goes over his income each year by about \$10,000. He has not met his burden in this case.

Applicant has provided for his wife and family for many years. He worked hard and believed that he did not live in an extravagant manner. He believed in the work ethic. He wanted to sell his farm and pay the debts, but due to the economy that has not occurred. He does have good intentions, but that is not sufficient.

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated 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
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	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 eligibility for a security clearance. Eligibility for access to classified information is denied.

NOREEN A. LYNCH
Administrative Judge