



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



In the matter of:)
)
-----) ISCR Case No. 08-10829
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: James Norman, Esquire, Department Counsel
For Applicant: *Pro Se*

December 23, 2009

Decision

HOWE, Philip S., Administrative Judge:

On April 17, 2008, Applicant submitted his Security Clearance Application (SF 86) (e-QIP). He signed it again on May 7, 2009. On June 17, 2009, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing security concerns 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 within the Department of Defense for SORs issued after September 1, 2006.

Applicant acknowledged receipt of the SOR on June 30, 2009. He answered the SOR in writing on July 7, 2009, and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on August 12, 2009, and I received the case assignment on August 27, 2009. DOHA issued a Notice of Hearing on August 31, 2009, and I convened the hearing as scheduled on September 14, 2009. The

Government offered Exhibits 1 through 3, which were received without objection. Applicant testified and did not submit any exhibits at the hearing. DOHA received the transcript of the hearing (Tr.) on September 24, 2009. Subsequent to the hearing, Applicant requested permission to submit exhibits. The Department Counsel had no objection to their submission, and Applicant submitted Exhibits A through E. The record closed on November 2, 2009. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

Findings of Fact

In his Answer to the SOR, dated July 7, 2009, Applicant admitted all the factual allegations in the SOR, with explanations. He also provided additional information to support his request for eligibility for a security clearance.

Applicant is 50 years old, divorced in July 2008, and has two children. He operated his own computer installation business from 2000 to 2008, when he went to work for a defense contractor. Applicant served in the U.S. Army from 1980 to 1983, and then in the National Guard until approximately 1988. During that time, Applicant had a security clearance without any violations of policy. (Tr. 14, 21-31, 44; Exhibit 1)

Applicant blames his former wife's conspicuous consumption demands, and his weakness in not refusing them, for most of his delinquent debt and his inability to pay his current list of delinquent debt in the SOR. His former wife was an officer of his company and had access to the checking accounts. She wanted a new house in 2000, and got one costing \$205,000. She wanted a new car every year, and a private school education for their oldest child that had tuition of \$53,000 over four years. The marriage started to fall apart and they separated in December 2007. Without advice of legal counsel, Applicant signed a property settlement, which assigned him the obligation to pay the mortgage and other debts. (Tr. 29-31, 66)

Applicant incurred state and federal tax liabilities from his failure to pay sufficient income tax withholding or estimated payments during the years he operated his business. Applicant paid his business tax and other financial obligations. He filed all the returns required, but he did not have the money to pay the taxes. He did not save money during each year with which to pay the income taxes. The 10 state tax liens (SOR Para. 1.a to 1.h, 1.j, and 1.k) listed in the SOR, totaling \$19,505, arose from his failure to pay his personal income taxes for several years when he owned his computer business. He also owes \$37,898 to the Internal Revenue Service (SOR Para. 1.i) for personal income tax obligations. Applicant did not have an accountant handle his business books and records for the first two years of the business operation. He did not manage his accounts receivable in the proper manner, and his income fluctuated from year to year. He never paid himself a regular monthly income. He did pay his employee payroll taxes on time. Applicant does not have sufficient income from his current \$57,000 annual salary to pay these delinquent debts. From his monthly net income after taxes and deductions, he pays \$1,100 in child support for his daughter who is under 18 years of age. He pays his son's college tuition and some other expenses, leaving him a

remaining net income of about \$600 monthly. He has no savings and little money in his checking account. (Tr. 22, 23, 30, 31, 33, 34, 36, 44-46, 51-54, 56, 57, 68, 69; Exhibits 2, 3)

Applicant owes \$195,000 on his home, which is currently in foreclosure proceedings. Applicant attempted to sell the home between 2007 and 2009, but was not able to do so. His plan was to take any gain from the house sale and repay his delinquent debts. He also owes \$15,000 on a home equity loan. Neither of these debts are repaid or otherwise resolved. Applicant concludes that a Chapter 7 bankruptcy is the only method to rid his record of these financial obligations. He has started paying an attorney to represent him in such a proceeding, if he can include the tax liens as dischargeable debt. (Tr. 35, 37-42, 47, 54; Exhibits 2, 3)

Applicant does not have any credit cards at the present time. He used a \$5,800 income tax refund to repay part of his federal tax debt. He has maximum withholding taken from his monthly paycheck. He does not have a retirement plan, nor does he have health insurance because of the monthly \$600 cost. Applicant has not obtained any consumer debt counseling regarding his debt and personal finances. He does not have any other unpaid debts, other than his tax debts and the house loans. (Tr. 44, 48, 65)

Applicant is engaged. He lives with his fiancée and gives her his paycheck each month. From that money, she pays his alimony and child support payment of \$1,100 monthly, and his other expenses. Applicant also pays for the auto insurance for his two children, and is required to pay about \$600 worth of expenses for his daughter's school trip to Washington, D.C. Applicant claims he has no money remaining at the end of each month to pay any of his tax or home mortgage liabilities. Applicant did not provide any information that verifies where his income goes after he gives it to his fiancée. His financial statement submitted in response to the interrogatories shows that he pays her \$500 monthly rent and is paying the house mortgage and home equity loan. Applicant testified he paid the mortgage only a few times on the required schedule, and at the end of his marriage he did not have money to pay either the mortgage or the home equity loan. He does not have the present financial ability to pay those house loans. Applicant declared that he did not care about money, and it has only caused him pain. (Tr. 31, 38-40, 48-50, 52, 58, 59)

Applicant submitted exhibits showing three medallions he received for his work in support of U.S. military forces in his present employment, a certificate of appreciation for providing information technology support during a training exercise, a certificate of appreciation for his technical support during a military exercise, another certificate of appreciation for his technical support during another military training exercise at his place of employment, and his latest performance evaluation that shows he exceeds requirements in all areas but one. The evaluation shows his technical job knowledge is "outstanding." (Exhibits A to E)

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(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.

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, an "applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance 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 nine conditions that could raise security concerns. From these nine conditions, two disqualifying conditions are potentially applicable.

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 accumulated significant delinquent tax debt and is unable to pay these obligations from his former business income or current salary. These delinquent tax and house loan debts date back to 2000 when Applicant started his business. Applicant admits owing all his debts. The evidence is sufficient to raise these two disqualifying conditions,

The guideline also includes six examples of conditions that could mitigate security concerns arising from financial difficulties. Of these six conditions, three may have some applicability.

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." The financial problems arose from his failure to pay his state and federal personal income taxes while operating his business. He blames his former wife for extravagant spending on a large house, annually obtaining new cars, and private school tuition for at least one of his children. Applicant admitted that he could not control his wife's spending habits, and may not have tried to do so in order to avoid family arguments. Those actions were his fault and within his control. His business later started to fail, and he obtained a salaried position in 2008. He paid his business debts, but has done nothing to pay or resolve his personal income tax liabilities incurred in the 2000 to 2007 period. He has not paid his house mortgage or his home equity loan, or apparently made any attempt to do so. I find this potentially mitigating condition is not a factor for consideration in this case because Applicant has not acted responsibly under the circumstances that gave rise to his delinquent debts.

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 obtained any counseling and has not resolved the delinquent debts, either by payment or settlement or other good-faith efforts. There are no clear indications that his financial problems are under control. I conclude these potentially 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 relevant 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.

AG ¶ 2(c) requires each case must be judged on its own merits. 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 was a businessman and an adult when he incurred his delinquent tax debts. He could not manage his business finances properly during the life of his business from 2000 to 2008. Nor could he control his wife’s extravagant spending during the same time period. Applicant did not seek or obtain any financial counseling until 2008, nor has he made any efforts to resolve these debts. There is a continuous pattern of financial mismanagement exhibited by Applicant over the past eight years. Because the debts are unresolved, even in the smallest amount, there is the potential for pressure, coercion, exploitation, or duress. His inability to control his finances shows there is a likelihood of continuation or recurrence

Applicant’s statement about not caring about money, coupled with his monthly practice of giving his fiancée his income check without verifying where the money is spent, shows he is oblivious to his financial obligations. He wants to do his computer work and have someone else handle his money for him. As stated above, during his

years in business he showed no ability to handle money, shown by his working without an accountant for the first two years, and his repeated failure to save money for taxes. This attitude, coupled with his payments to his children for their expenses and auto insurance, demonstrates he takes care of his family first rather than his tax liabilities. While that attitude might be noble, it also makes him vulnerable to pressures from the family or because of the family to ignore his legal duty to pay his debts and taxes. It may also provide fertile ground for exploitation or duress in the future on other issues relating to classified information and its disclosure. I also conclude Applicant's actions show a lack of reliability in fulfilling his financial obligations. They also show a lack of good judgment in operating a business and his personal financial affairs.

It is clear Applicant is a good employee and a conscientious worker for his company. He knows computers and can handle the technical work. His efforts are recognized as shown by the certificates he submitted. However, these factors are not enough to overcome the financial mismanagement and chronic failure exhibited by Applicant to pay his income taxes over the past eight years.

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 Applicant did not mitigate the security concerns arising from his financial considerations. I conclude the "whole-person" concept against Applicant.

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
Subparagraphs 1.a to 1.m.:	Against 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.

PHILIP S. HOWE
Administrative Judge