



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



In the matter of:)
)
) ISCR Case No. 08-11015
)
)
Applicant for Security Clearance)

Appearances

For Government: Robert E. Coacher, Esquire, Department Counsel
For Applicant: *Pro Se*

September 10, 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 8, 2008, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP).¹ On March 16, 2009, 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 4.

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 March 23, 2009, Applicant responded to the SOR allegations, and elected to have his case decided on the written record in lieu of a hearing (Item 3). A complete copy of the file of relevant material (FORM), dated April 6, 2009, was provided to him by letter dated April 7, 2009. Applicant received the FORM on April 15, 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 August 6, 2009.

Findings of Fact

Applicant admitted the factual allegations in SOR ¶¶ 1.a through 1.e, and 1.g. He denied SOR ¶¶ 1.f, and 1.h through 1.m. 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 55-year-old engineering flight test technician working for a defense contractor.³ He served in the U.S. Army on active duty from March 1975 to March 1978. He attended college from January 1987 to July 1994, and received a bachelor's degree in professional aeronautics. Applicant indicated he was issued a secret security clearance, but provided no information about the period when he was granted access or the agency that sponsored his clearance. There is no evidence that he ever compromised or caused others to compromise classified information.

Applicant has been married and divorced three times. He indicated he has at least one adult son (Item 8). Applicant's security clearance application shows he has consistently worked for his current employer, a defense contractor, from September 1985 to the present.

In his 2008 security clearance application, Applicant disclosed he had tax liens against him for failure to pay his federal taxes. He also disclosed having debts over 180 days delinquent during the last seven years. He explained his financial problems were due to his poor financial decisions and expenses incurred caring for his son. He claimed that during the last two years he borrowed money from his father and friends to resolve

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 4 (2008 e-QIP) is the source for the facts in this decision, unless stated otherwise.

some of his debts (Item 4). Applicant's credit reports show he has been paying some of his delinquent and/or charged-off debts.

Applicant's background investigation revealed that in 1992, he filed for Chapter 7 bankruptcy protection and was released of all his dischargeable debts (Item 8). Applicant explained his financial problems then were due to his poor decision-making caused by his problems with drugs and alcohol. In June 1997, Applicant owed \$32,000 to the Internal Revenue Service (IRS) because of unpaid federal income taxes for tax years 1986, 1987, and 1992 through 1996 (Item 9). In 1997, Applicant made a \$5,000 settlement offer to the IRS that was rejected. He presented no evidence of additional efforts to pay, settle, or resolve his IRS debts until 2009.

The SOR alleges 13 delinquent and/or charged-off accounts, totaling approximately \$24,600, which were established by two credit reports (Items 6 and 7).⁴ Most of the debts have been delinquent for many years. Six of the SOR allegations concern tax liens filed against Applicant in 1993, 1994, 1997, 2001 (two), and in 2008. Applicant contacted the IRS in January 2009, apparently seeking a settlement for back taxes due for tax year 1998. He is still waiting for the IRS response.

Applicant provided no explanations about the other seven SOR delinquent debts he denied, which are also established by the record evidence. Applicant failed to explain how he acquired these debts, why they became delinquent, what he has done to resolve the debts. I also note that in 2008, DOHA issued Applicant a financial interrogatory in which he was asked to explain the status of the same seven debts alleged in the SOR. He failed to address any of these debts.

Applicant provided no evidence concerning his monthly income, expenses, and overall current financial situation. He also failed to indicate whether he has participated in financial counseling, and how he intends to avoid similar financial problems in the future.

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),

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).

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.

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 13 delinquent and/or charged-off accounts totaling approximately \$24,600, most of which have been outstanding for many years. Six of the SOR allegations concern tax liens filed against Applicant in 1993, 1994, 1997, 2001 (two), and 2008. Applicant's evidence of efforts to resolve his financial obligations is limited to two incidents of correspondence with the IRS to propose a settlement. Otherwise, he presented no evidence of efforts to pay or resolve any of the financial obligations alleged in the SOR.

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 little evidence to establish circumstances beyond his control contributing to his inability to pay his debts, i.e., periods of unemployment, business downturn, or expenses caused by one of his divorces. Other than his two contacts with the IRS, 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. Applicant has been consistently employed since 1985. His favorable information fails to establish a track record of financial responsibility. AG ¶ 20(b) does not apply.

AG ¶ 20(c) does not apply because there are no clear indications that his financial problem is being resolved or is under control. 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 three years of service to his country and his 24 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 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
Subparagraphs 1.a - 1.m:	Against Applicant

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