



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



In the matter of:)	
)	
-----)	ISCR Case No. 08-11222
SSN:-----)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Caroline H. Jeffreys, Esquire, Department Counsel

For Applicant: *Pro se*

June 25, 2009

Decision

ROSS, Wilford H., Administrative Judge:

Applicant submitted his Electronic Questionnaires for Investigations Processing (eQIP), on July 11, 2008 (Item 5). On February 3, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline F concerning the 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 President Bush on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant submitted an Answer to the SOR which was received by DOHA on March 9, 2009, and requested a decision without a hearing (Answer). Department Counsel submitted a File of Relevant Material (FORM) to the Applicant on March 19, 2009. The Applicant received the FORM on March 26, 2009, and was given 30 days to submit any additional information. He elected not to submit any additional

documentation. The case was assigned to me on May 20, 2009. Based upon a review of the case file, pleadings, and exhibits, eligibility for access to classified information is denied.

Findings of Fact

The Applicant is 51 and married. He is employed by a defense contractor and seeks to obtain a security clearance in connection with his employment.

Guideline F, Financial Considerations

The Government alleges in this paragraph that the Applicant is financially overextended and therefore at risk of engaging in illegal acts to generate funds. The Applicant admitted the factual allegation, but denied that his conduct showed poor self-control, lack of judgment, or unwillingness to abide by rules and regulations.

The Applicant worked for a school system for 20 years. He was laid off from this job in September 2007. Until he found work with his present employer in June 2008, he was underemployed while trying to find a permanent job. (Item 5 at question 11.)

Subparagraph 1.a. The Applicant admits that he owes approximately \$16,030.00 for a past-due credit card account. The Applicant states that he was, and is, unable to make payments on this account due to his lack of meaningful employment. In his Answer to the SOR, the Applicant states that he attempted to work out a payment arrangement with this creditor, Citi Bank, but was unable to do so. According to the Applicant, Citi has obtained a judgment against the Applicant. He also stated that, due to his continued inability to pay this debt, he may have to declare bankruptcy. (Item 4.) There is no information that the Applicant has attempted to resolve this debt since being employed by his current employer.

Mitigation

The Government's credit bureau reports show that he has paid off or resolved all of his debt other than the credit card debt. The Applicant submits that this supports his argument that he shows good judgment with regards to his debts. (Items 6 and 7.)

Policies

Security clearance decisions are not made in a vacuum. 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 common sense 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. In addition, the Administrative Judge may also rely on his own common sense, as well as his knowledge of the law, human nature, and the ways of the world, in making a reasoned 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. Security clearance decisions include, by necessity, consideration of the possible risk that 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.

Finally, as emphasized by President Eisenhower in Section 7 of Executive Order 10865, "Any determination under this order . . . shall be a determination 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. An "inability or unwillingness to satisfy debts," is a concern under AG ¶ 19(a). Under AG ¶ 19(c), "a history of not meeting financial obligations" may also raise security concerns. The Applicant admits that he owes the debt set forth in SOR subparagraph 1.a, and has been unable to pay it for two years. The evidence is sufficient to raise both of these potentially 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." Applicant's financial difficulties arose in 2007, due to his layoff. However, there is no indication that he has taken recent action to resolve this debt since he was employed in June 2008. It is the Applicant's burden to submit evidence showing that his financial situation has improved. He has not done so. This mitigating condition is not applicable to this case.

AG ¶ 20(b) states that the disqualifying conditions may be mitigated where "the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, . . .), and the individual acted responsibly under the circumstances." The Applicant's financial difficulties seem to be connected to his layoff. However, once again, there is no evidence that he has made recent attempts to resolve this situation. I cannot find, under these particular facts, that the Applicant has acted responsibly under the circumstances.

Finally, the Applicant is at least \$16,000.00 in debt. Under these facts I cannot find that "there are clear indications that the problem is being resolved or is under control," as required by AG ¶ 20(c).

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) 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. The Applicant is under financial strain, and has been for two years. He has not made a sufficient showing that his debt situation is under control. Under AG ¶ 2(a)(3), the Applicant’s conduct is recent. Based on the state of the record, I cannot find that there have been permanent behavioral changes under AG ¶ 2(a)(6). Accordingly, at the present time, I cannot find that there is little to no potential for pressure, coercion, exploitation, or duress (AG ¶ 2(a)(8)), or that the likelihood of recurrence is close to nil (AG ¶ 2(a)(9)).

Overall, the record evidence leaves me with questions and/or doubts as to Applicant’s eligibility and suitability for a security clearance. For all these reasons, I conclude the Applicant has not mitigated the security concerns arising from his financial considerations at this time. If he resolves this major debt in an acceptable, legal, way he may be eligible for a clearance in the future. He is not eligible now.

On balance, it is concluded that the Applicant has not successfully overcome the Government's case opposing his request for a DoD security clearance. Accordingly, the evidence supports a finding against the Applicant as to the factual and conclusory allegations expressed in Paragraph 1 of the Government's Statement of Reasons.

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 THE APPLICANT**

Subparagraph 1.a: **Against the 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.

WILFORD H. ROSS
Administrative Judge