



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



In the matter of:)	
)	
)	ISCR Case No. 08-11525
SSN:)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Candace Le'i, Esquire, Department Counsel
For Applicant: *Pro Se*

September 18, 2009

Decision

HENRY, Mary E., Administrative Judge:

Based upon a review of the case file, pleadings, exhibits, and testimony, I conclude that Applicant's eligibility for access to classified information is denied.

Applicant submitted his Security Clearance Application (SF 86) on April 15, 2008. The Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing security concerns under Guideline F on April 6, 2009. 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 April 10, 2009. He answered the SOR in writing, which DOHA received on May 6, 2009, and requested a hearing before

an administrative judge. Department Counsel was prepared to proceed on June 9, 2009, and I received the case assignment on June 11, 2009. DOHA issued a notice of hearing on June 16, 2009, and I convened the hearing as scheduled on July 16, 2009. The government offered eight exhibits (GE) 1 through 8, which were received and admitted into evidence without objection. Applicant testified on his own behalf. He submitted three exhibits (AE) A through C, which were received and admitted into evidence without objection. DOHA received the transcript of the hearing (Tr.) on July 22, 2009. I held the record open until August 17, 2009, for the submission of additional matters. The government timely submitted one additional document, GE 9, and the Applicant timely submitted six documents, AE D through AE I. All were admitted without objection. The record closed on August 17, 2009.

Findings of Fact

In his Answer to the SOR, Applicant admitted the factual allegations in ¶¶ 1.a, 1.f, 1.h -1.l, 1.n, 1.o, 1.s, 1.u, and 1.v of the SOR. He denied the factual allegations in ¶¶ 1.b -1.e, 1.m, 1.p - 1.r, and 1.t of the SOR.¹ He failed to admit or deny the allegation in ¶ 1.g. At the hearing, he denied any knowledge of this account.

Applicant, who is 43 years old, works as a senior electronic engineer for a Department of State contractor. He has worked in his current position for more than 8 years. His supervisors praise his work skills, knowledge and performance. They describe him as reliable and dependable. His work has provided significant savings to the government.²

Applicant served on active duty in the United States Air Force for 10 years and three years in the Air Force reserves. The Air Force honorably discharged him in December 2000. He married in 1988 and separated from his wife in 2004. His divorce is not final. He has one step-daughter, who is 23 years old. He provides sporadic financial support to her while she is in graduate school.³

He and his wife encountered financial problems in 1999 and 2000. They obtained a home equity loan for \$40,000. They decided that they would split this money equally. He does not know how she used her share of this loan. He used his money to pay bills, including the debts to creditors identified in SOR allegations 1.c and 1.n. Applicant provided documentation, which reflected he paid \$2,200 in 2001 to the creditor listed in

¹When SOR allegations are controverted, the government bears the burden of producing evidence sufficient to prove controverted allegations. Directive, ¶ E3.1.14. That burden has two components. First, the government must establish by substantial evidence that the facts and events alleged in the SOR indeed took place. Second, the government must establish a nexus between the existence of the established facts and events and a legitimate security concern. See ISCR Case No. 07-18525 (App. Bd. Feb. 18, 2009), (concurring and dissenting, in part).

²GE 1; AE A; AE C; Tr. 20.

³GE 1; GE 3; Tr. 27-29, 51-50.

allegation 1.c, but the information does not contain an account number or other information which would show that these are the same debts. In his post-hearing submission, Applicant advised that this debt will be removed from his credit report. He did not provide any information which shows he paid the debt in allegation 1.n.⁴

After he and his wife separated in June 2004, Applicant lived with his parents until April 2007, almost three years. He paid them \$500 in rent and continued to pay his mortgage on the house where his wife lived. He also commuted a long distance to work, which resulted in gasoline bills of \$600 a month. He moved into an apartment closer to his job in April 2007. He found it difficult to pay the rent and utilities for his apartment, and pay the mortgage on his house. He moved out of the apartment in December 2007 and now lives in a hotel suite for less money. He transferred title to the house to his wife, who has assumed all the expenses for the house.⁵

Applicant earns \$5,600 in gross income and approximately \$4,000 in net income each month. His monthly expenses total \$2,350, leaving approximately \$1,650 a month to resolve his debts. His truck developed mechanical problems in October 2007 and could not be driven. He finally repaired the truck at a cost of \$4,000 in June 2009.⁶

As previously noted, Applicant denied several debts listed in the SOR. The credit reports of record reflected that Applicant disputed the debts listed in SOR allegations 1.b, 1.i, 1.k, and 1.m. At the hearing, Applicant acknowledged he owed the debts in allegations 1.i and 1.k. As a result of his dispute, the credit reporting agencies removed allegation 1.b from his credit report. Concerning the other debts he denied, Applicant has not provided proof he paid the debts, challenged the debts, or otherwise resolved the debts as he believes. He has not paid the remaining debts he admitted owing. Applicant contended that allegations 1.o and 1.t are the same; however, the evidence of record does not support his belief.⁷

Applicant denied the debt in allegation 1.g., which is a debt held by a collection agency unknown to Applicant. The original creditor is not identified in any of the credit reports. Given that Applicant does not know this creditor, allegation 1.g is found in favor of the Applicant because the government has not provided sufficient information for Applicant to identify the actual creditor and pay the debt.

⁴AE G; AE I; Tr. 31-32, 55.

⁵Tr. 52-54, 103-104, 118.

⁶AE E; Tr. 54, 59-61, 111-116.

⁷GE 6; GE 7; GE 8; Tr. 38, 44.

Applicant recently hired a credit counseling service agency. Through this service, he plans to pay the debts in SOR allegations 1.h, 1.i, 1.m, 1.u, and two other debts not listed in the SOR. He did not provide proof of any payments made to this service.⁸

Applicant failed to file his income tax returns for the tax years 2004 through 2008. He has no explanation for his failure other than to say he was irresponsible. He recently contacted a tax service to help him resolve his tax issues. He submitted an unsigned copy of the retainer agreement provided to him by this company on July 31, 2009. The agreement required an initial payment of \$500 and a second \$500 payment by July 17, 2009. Applicant did not provide proof that he signed the agreement and made the first two required payments.⁹

Throughout the hearing, Applicant acknowledged that he has been irresponsible with his finances since his separation. He indicated that he planned to resolve his debts over time. He also indicated that he contacted several creditors after the hearing and would be paying two bills by September 30, 2009 and had a payment plan for a third bill, which will be resolved by December 31, 2009.¹⁰

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

⁸AE F.

⁹AE B; AE H; Tr. 48.

¹⁰AE G; AE I; Tr. 38, 89.

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. . . .” An 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 an 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” is potentially disqualifying. Similarly under AG ¶ 19(c), “a history of not meeting financial obligations” may raise security concerns. Following his separation in 2004, Applicant accumulated significant delinquent debt, which he has not paid. He also failed to file his federal and state income tax returns, starting in 2004. The evidence is sufficient to raise 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 problems began in 2004 when he separated from his wife. His financial problems continue to the present; thus, this mitigating condition does not apply.

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.” As noted above, Applicant’s financial problems arose when he and his wife separated. He paid bills for two residences for a period of time. He ignored his duty to file his federal and state taxes and allowed his debts to accumulate. This mitigating condition has minimal application.

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). Applicant recently retained the services of a credit counseling agency. Because he just retained this agency, he has not developed a track record of payment, nor has he provided any evidence which indicated that his finances are under control. This mitigating condition has minimal application.

AG ¶ 20(d) applies where the evidence shows “the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.” Applicant expressed an intent to repay his bills, but he has not shown either a good faith effort to repay his debts or a track record of debt payment. This mitigating condition does not apply.

Finally, AG ¶ 20(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” applies to allegation 1.b. Applicant disputed this debt because he believed that he previously resolved it. As a result of his dispute, the credit reporting agency removed the debt from its records.

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 an 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.

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. The decision to grant or deny a security clearance requires a careful weighing of all relevant factors, both favorable and unfavorable. In so doing, an administrative judge must review all the evidence of record, not a single item in isolation, to determine if a security concern is established and then whether it is mitigated. A determination of an applicant's eligibility for a security clearance should not be made as punishment for specific past conduct, but on a reasonable and careful evaluation of all the evidence of record to decide if a nexus exists between established facts and a legitimate security concern.

In reaching a conclusion, I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant performs his job extremely well and his supervisors think highly of him. His separation from his wife in 2004 placed a strain on his finances for a period of time. This strain has been alleviated. He has sufficient income each month to pay his normal living expenses and to resolve his unpaid debts. He, however, did not take any action to address his debts until very recently. He has not established a track record for debt repayment or prudent fiscal management. His failure to file his income returns for five years is inexcusable, and as he admits, irresponsible.

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 finances under Guideline F.

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:	For Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	Against Applicant
Subparagraph 1.f:	Against Applicant
Subparagraph 1.g:	For Applicant

Subparagraph 1.h:	Against Applicant
Subparagraph 1.i:	Against Applicant
Subparagraph 1.j:	Against Applicant
Subparagraph 1.k:	Against Applicant
Subparagraph 1.l:	Against Applicant
Subparagraph 1.m:	Against Applicant
Subparagraph 1.n:	Against Applicant
Subparagraph 1.o:	Against Applicant
Subparagraph 1.p:	Against Applicant
Subparagraph 1.q:	Against Applicant
Subparagraph 1.r:	Against Applicant
Subparagraph 1.s:	Against Applicant
Subparagraph 1.t:	Against Applicant
Subparagraph 1.u:	Against Applicant
Subparagraph 1.v:	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.

MARY E. HENRY
Administrative Judge