



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



In the matter of:)	
)	
)	ISCR Case No. 09-00033
SSN:)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Fahryn Hoffman, Esquire, Department Counsel
For Applicant: *Pro se*

May 10, 2010

Decision

HOGAN, Erin C., Administrative Judge:

Applicant submitted a security clearance questionnaire (e-QIP) on August 6, 2008. On September 11, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the 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 adjudicative guidelines (AG) which became effective within the Department of Defense on September 1, 2006.

On September 27, 2009, Applicant answered the SOR and requested a hearing before an administrative judge. Department Counsel was ready to proceed on November 3, 2009. The case was assigned to me on November 17, 2009. The hearing was originally scheduled for February 10, 2010, but was cancelled because of inclement weather. On February 24, 2010, a Notice of Hearing was issued scheduling the hearing for March 19, 2010. The case was heard on that date. The Government offered seven exhibits which were admitted as Government Exhibits (Gov) 1 – 7. The Applicant testified and offered two exhibits which were admitted as Applicant Exhibits (AE) A - B. The record was held open until April 2, 2009, to allow Applicant to submit additional

documents. He timely submitted six documents that were admitted as AE C - H. Department Counsel's response to the post-hearing submissions is marked as Hearing Exhibit (HE) I. The transcript (Tr.) was received on March 30, 2010. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

Preliminary Matters

The SOR was amended to correct the misspelling of Applicant's last name on the SOR. (Tr. 10)

Findings of Fact

In his Answer to the SOR, Applicant admits SOR allegations 1.a – 1.d, 1.j -1.n, 1.q – 1.y, and 1.aa. He denies SOR allegations 1.e – 1.i, 1.o, 1.p, and 1.z.

Applicant is a 38-year-old employee with a Department of Defense contractor applying for a security clearance. He has worked for his current employer for approximately a year and a half. He held a security clearance when he served on active duty in the U.S. Army from 1993 to 2004. He separated as an E-4 with an honorable discharge. He has one year of college. He is married and has three daughters from a previous marriage, age 11 and 12-year-old twins. (Tr at 6-7, 26, 28-29; Gov 1; AE G)

Applicant's security clearance background investigation revealed that he has 27 delinquent accounts which total approximately \$86,707. His two largest debts consist of \$37,848 in past-due child support (SOR ¶ 1.w: Gov 2 at 6; Gov 7 at 10) and \$21,399 related to an automobile repossession in 2000. (SOR ¶ 1.u: Gov 1 at 39) Applicant also owes \$7,414 related to an automobile repossession in 2004. (SOR ¶ 1.j: Gov 5 at 2; Gov 6 at 2; Gov 7 at 2) Between 1997 to 2006, five judgments have been filed against Applicant, an approximate total of \$8,429. The judgments include a \$3,817 judgment owed to a furniture store in July 2006 (SOR ¶ 1.a: Gov 4 at 5-6; Gov 6 at 1-2; Gov 7 at 4); a \$392 judgment for a bad check in August 2006 (SOR ¶ 1.n: Gov 4 at 4; Gov 7 at 4); a \$2,356 judgment owed to an individual in June 2005 (SOR ¶ 1.r: Gov 4 at 7); a \$1,229 judgment owed to a townhouse community in January 2001 (SOR ¶ 1.s: Gov 4 at 8); and a \$635 judgment owed to an apartment complex in 1997. (SOR ¶ 1.t: Gov 4 at 1)

Applicant has eighteen delinquent consumer debts, an approximate total of \$14,617. (SOR ¶¶ 1.b – 1.i, 1.k – 1.m, 1.o – 1.q, 1.v, 1.x – 1.aa) These debts are listed in Applicant's credit reports. (Gov 5; Gov 6; Gov 7). During the hearing, Applicant indicated that he owes \$4,000 in federal income taxes for 2009. He also owed \$6,780 for delinquent federal income taxes for tax year 2006. He has been paying \$105 a month to the Internal Revenue Service (I.R.S) during the past year for the 2006 tax debt. The I.R.S. also claims Applicant did not file his federal income tax returns for 2007. (Tr. 54-55)

In November 2008, Applicant consulted an attorney about filing for Chapter 7 bankruptcy. He did not file because he could not afford to pay the fees. (Tr. 33; Gov 2) Approximately half of Applicant's net salary goes towards his past-due child support. His wages were garnished to collect the child support. The child support arrearage has been reduced from \$37,848 to \$22,355. The state will not reduce the amount of Applicant's child support because of the high amount of his past-due child support. (Tr. 56-59, 65; Gov 2; AE B)

Applicant's financial problems began when he separated from active duty in 2004. He was unable to find suitable employment. In 2005, he made a foolish decision to leave his full-time job to start his own business. The business was not successful. He and his wife experienced some financial problems from 2006 to 2008. He was unemployed from March 2008 to August 2008. He worked at a temporary employment agency for six months but quit when his pay check was garnished for child support. (Tr. 37-48; Gov 3 at 5)

Aside from his child support payment, Applicant has not resolved any of the other debts alleged in the SOR. He claims all of his extra money goes towards child support. (Tr. 83) He has not contacted any of his remaining creditors. (Tr. 83-102)

After the hearing Applicant submitted a budget. His total monthly income after the child support is taken out is \$1,644. His wife's total monthly income is \$1,406. Their combined total monthly income is \$3,050. Their total monthly expenses are \$2,686. They have approximately \$364 left over after expenses. (AE E) Applicant indicated that he is in the process of consulting a debt management program and a bankruptcy attorney. (AE C; AE D)

A performance evaluation dated March 22, 2010, indicates Applicant meets performance expectations. The evaluation states Applicant is "highly motivated while teaching" and has "outstanding potential." (AE F)

Applicant's pastor wrote a letter on his behalf noting that Applicant is a faithful, committed, and loyal leader in the church. His faithfulness, loyalty, character, and integrity is without blemish. (AE A at 1)

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the revised adjudicative guidelines. 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.

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

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 disqualifying conditions that could raise security concerns. I find AG ¶19(a) (an inability or unwillingness to satisfy debts); and AG

¶19(c), (a history of not meeting financial obligations) apply to Applicant's case. Applicant has had financial difficulties since at least 2004. The SOR alleged Applicant had over \$86,000 in delinquent accounts.

The Government's substantial evidence and Applicant's own admissions raise security concerns under Guideline F. The burden shifted to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the security concerns. (Directive ¶E3.1.15) An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the government. (See ISCR Case No. 02-31154 at 5 (App. Bd. September 22, 2005))

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. AG ¶ 20(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) is not applicable. Applicant has encountered financial problems for a number of years. The SOR alleges 27 delinquent accounts. It was also discovered during the hearing that Applicant owes the I.R.S. for past due taxes. While Applicant is working with the I.R.S. on this issue, his past due tax debts further demonstrate Applicant's irresponsibility towards his finances. Applicant's unresolved debts raise questions about his reliability, trustworthiness, and good judgment.

AG ¶ 20(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) partially applies. When Applicant separated from the military in 2004, he encountered several periods of unemployment or under employment. In 2006, he quit his job to pursue his own business which was not successful. Several factors beyond Applicant's control contributed to his financial situation. However, for AG ¶ 20(b) to apply the individual must have acted responsibly under the circumstances. I cannot conclude Applicant acted responsibly under the circumstances. His decision to quit his full-time to job to open a business was questionable. He admits to quitting one job when he discovered his wages were being garnished for child support. While Applicant is making his child support payments through garnishment at present, he neglected his child support responsibilities for years which resulted in the high child support arrearages. One of his larger accounts, the \$21,399 automobile repossession occurred in 2000. While he consulted a bankruptcy attorney in November 2009, he did not follow through with either filing for bankruptcy or resolving his delinquent accounts. Several of the debts have low balances and could have been gradually paid off over time. While circumstances beyond his control contributed to his financial problems, he has not acted responsibly with regard to resolving his delinquent accounts.

AG ¶ 20(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) does not apply. While Applicant consulted a company to assist him in resolving his debts after the hearing, he has not attended a financial counseling course. After the

hearing, he is reconsidering whether or not to file for bankruptcy but took no steps to file for bankruptcy. It is unlikely his financial problems will be resolved in the near future.

AG ¶ 20(d) (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts) applies with respect to the child support debt alleged in SOR ¶ 1.w. Applicant has been regularly paying on his child support allegations and the balance has been reduced from \$37,858 to \$22,355. However, he has not resolved any of the other delinquent accounts. AG ¶ 20(d) only applies to the debt alleged in SOR ¶ 1.w.

Overall, Applicant's financial situation remains a security concern. Applicant has not mitigated the concerns raised under Guideline F.

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. I considered Applicant's active duty service in the U.S. Army. I considered his subsequent periods of unemployment and underemployment. I considered Applicant's high monthly child support payments. I also considered if Applicant had planned better, his financial situation would have been more stable. While Applicant presented mitigating evidence, doubts remain. Mindful of my responsibility to rule in favor of the national interest in cases where there is doubt, I find Applicant did not mitigate the concerns raised under financial considerations and did not meet his ultimate burden of persuasion to obtain a favorable clearance decision.

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 – 1.v:	Against Applicant
Subparagraph 1.w:	For Applicant
Subparagraph 1.x -1.aa:	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.

ERIN C. HOGAN
Administrative Judge