



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



In the matter of:)	
)	
)	ISCR Case No. 09-00112
SSN:)	
)	
Applicant for Security Clearance)	

Appearances

For Government: James F. Duffy, Esq., Department Counsel
For Applicant: *Pro Se*

January 12, 2010

Decision

LOUGHRAN, Edward W., Administrative Judge:

Applicant mitigated Personal Conduct concerns but has not mitigated Financial Considerations security concerns. Eligibility for access to classified information is denied.

On July 27, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines F and E, Financial Considerations and Personal Conduct. The action was taken under Executive Order (EO) 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 answered the SOR in writing on August 17, 2009, and elected to have the case decided on the written record in lieu of a hearing. Department Counsel submitted the government's written case on September 14, 2009. A complete copy of

the file of relevant material (FORM) was provided to Applicant, who was afforded an opportunity to file objections and submit material to refute, extenuate, or mitigate the security concerns. Applicant received the FORM on September 22, 2009. As of November 25, 2009, he had not responded. The case was assigned to me on December 7, 2009.

Findings of Fact

Applicant is a 37-year-old engineer for a defense contractor. He attended college for a period, but it is unclear if he has a degree. He is single, with a nine-year-old child.¹

The SOR alleges four delinquent debts and that Applicant misused his corporate credit card in 2006 and 2007, to make personal purchases in violation of company policy. The SOR further alleges that he voluntarily terminated his employment and made restitution. He admitted the debts totaling about \$15,225 alleged in SOR ¶¶ 1.a and 1.b. He denied the remaining allegations, with explanations.

Applicant admitted that he violated company policy when he used his corporate credit card for personal reasons in 2007. He used the corporate card because he was having financial difficulties. He informed his manager of his actions before the company discovered them. He was told that he would not be terminated, and a restitution plan was put in place. The charges were paid. Applicant voluntarily left the company in December 2007, for a position with another company.²

Applicant has experienced financial problems for a number of years. He listed a number of delinquent debts when he submitted a Questionnaire for National Security Positions (SF 86) in December 2005. He told an investigator from the Office of Personnel Management (OPM) in August 2008, that his debts became delinquent because he was paying arrears on child support and had a large truck loan payment. He stated that he would pay his delinquent debts through a home equity loan. He was unable to obtain a home equity loan because of his credit history. No payments have been made on the debts alleged in SOR ¶¶ 1.a and 1.b.³

Applicant stated that he settled the \$529 debt alleged in SOR ¶ 1.c, with a payment of \$381 on August 2009. He disputed owing the \$159 debt to a collection company on behalf of a telephone services company, as alleged in SOR ¶ 1.d. He

¹ Item 5.

² Items 4, 6, 10.

³ Items 5-7. Any delinquent debts or financial issues that were not alleged in the SOR will not be used for disqualification purposes, but will be considered in assessing Applicant's overall financial situation, in the application of mitigating conditions, and in evaluating the "whole person."

admitted that he had an account with the company but indicated the account was paid when he relocated.⁴

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 to be used 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, administrative judges apply the guidelines 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, the applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the 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 EO 10865 provides that adverse decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the

⁴ Items 4, 6.

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. Three are potentially applicable in this case:

- (a) inability or unwillingness to satisfy debts;
- (c) a history of not meeting financial obligations; and
- (d) deceptive or illegal financial practices such as embezzlement, employee theft, check fraud, income tax evasion, expense account fraud, filing deceptive loan statements, and other intentional financial breaches of trust.

Applicant accumulated a number of delinquent debts and was unable or unwilling to pay his obligations for a period of time. He misused his corporate credit card to make personal purchases in violation of company policy. The evidence is sufficient to raise the above disqualifying conditions.

Five Financial Considerations mitigating conditions under AG ¶ 20 are potentially applicable:

- (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; and

(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.

Applicant has not resolved the two largest debts alleged in the SOR. His financial issues are recent and ongoing. AG ¶ 20(a) is not applicable.

Applicant stated that his debts became delinquent because he was paying arrears on child support and had a large truck loan payment. That does not qualify as conditions that were outside his control. AG ¶ 20(b) is not applicable.

There is no evidence that Applicant received financial counseling. He informed his company about the corporate credit card, and he paid the charges. AG ¶ 20(c) is applicable to SOR ¶ 1.e. There is insufficient evidence for a determination that his overall financial problems are being resolved or under control. AG ¶ 20(c) is not applicable to the other allegations.

Applicant settled one debt for \$381. AG ¶ 20(d) is applicable to the debt alleged in SOR ¶ 1.c. That payment does not support a finding that he made a good-faith effort to pay or resolve all his delinquent debts. AG ¶ 20(d) is not applicable to the unpaid debts.

Applicant denied owing the \$159 debt to a telephone services provider. He told his company about his misuse of the credit card, and he admitted to owing two much larger debts. Applicant established that he has a reasonable basis to dispute the legitimacy of the debt alleged in SOR ¶1.d. AG ¶ 20(e) is applicable to that debt.

Guideline E, Personal Conduct

The security concern relating to the guideline for Personal Conduct is set out in AG ¶ 15:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. The following disqualifying conditions are potentially applicable:

(c) credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information; and

(e) personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress, such as . . . engaging in activities which, if known, may affect the person's personal, professional, or community standing.

Applicant's misuse of his corporate credit card was also alleged under the Financial Considerations guideline. That behavior, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, and unwillingness to comply with rules and regulations. It is also conduct that could create a vulnerability to exploitation, manipulation, or duress. AG ¶¶ 16(c) and 16(e) are applicable.

AG ¶ 17 provides conditions that could mitigate security concerns. The following are potentially applicable:

(e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress.

Applicant informed his company about the credit card, and he made restitution. He voluntarily left the company more than two years ago for another job. He has taken positive steps to reduce his vulnerability to exploitation, manipulation, and duress. Applicant has mitigated the Personal Conduct concerns.

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 have incorporated my comments under Guidelines F and E in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but some warrant additional comment. Applicant has experienced financial difficulties for a number of years, which he attributed to his paying arrears on child support and a large truck loan payment. He misused his corporate card because of his financial problems. He informed his company about the credit card and paid the charges. He was honest about his delinquent debts. However, two large debts remain unpaid. There is not enough evidence in the record for me to conclude that his finances are in order.

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 mitigated Personal Conduct concerns but has not mitigated Financial Considerations security concerns.

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.b:	Against Applicant
Subparagraphs 1.c-1.e:	For Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraph 2.a:	For 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.

Edward W. Loughran
Administrative Judge