



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



In the matter of:)	
)	
)	ISCR Case No. 09-00554
SSN:)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Melvin A. Howry, Esquire, Department Counsel
For Applicant: *Pro Se*

February 4, 2010

Decision

HENRY, Mary E., Administrative Judge:

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

Applicant completed his Electronic Questionnaire for Investigations Processing (e-QIP) on October 23, 2008. The Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F on August 28, 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 September 9, 2009. He submitted a notarized, written response to the SOR allegations on September 23, 2009, and requested a decision on the written record in lieu of a hearing.

Department Counsel prepared a File of Relevant Material (FORM) and mailed Applicant a complete copy on November 11, 2009. Applicant received the FORM on December 1, 2009. He had 30 days from receipt of the FORM to file objections and submit material in refutation, extenuation, or mitigation. He did not submit a response. DOHA assigned this case to me on February 1, 2010. The government submitted 12 exhibits, which have been marked as Item 1-12 and admitted into the record. Applicant's response to the SOR has been marked and admitted as Item 3.

Findings of Fact

In his Answer to the SOR, Applicant admitted all the factual allegations in the SOR, except the factual allegation at ¶ 1.c, which he denied.¹ He did not provide any additional information to support his request for eligibility for a security clearance.

Applicant, who is 52 years old, works as a project manager for a Department of Defense contractor. He has worked for this contractor for four years. Applicant attended college, but did not complete his degree.²

Applicant married in 1982 and divorced in 1985. He has not married a second time. He has a 26-year-old daughter.³

Applicant's employer laid him off in 2001. He worked as a consultant for a time. According to his eQIP, he began working full-time in July 2001. He indicated that he paid his bills until the fall of 2003, but stopped when he could not continue his payments. He does not explain the reason he stopped paying his bills.⁴

The SOR alleged 16 debts, totaling \$30,401. Applicant admitted owing all these debts, except for one \$142 medical bill. Applicant has not provided information

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 at 4 (App. Bd. Feb. 18, 2009), (concurring and dissenting, in part) (citations omitted).

²Item 4.

³*Id.*

⁴*Id.*; Item 6.

indicating this bill is paid. The November 9, 2009 credit report reflected that the \$16 medical bill in SOR allegation 1.a is paid.⁵

In his answers to interrogatories, Applicant indicated that he was paying several debts through an agreed-upon payment plan. The payment plans have not been provided. He provided copies of five checks, showing a total payment of \$121 in June 2009 on his debts. He has not provided any additional information regarding his debt payment, his compliance with the established payment plans, or debt counseling.⁶

Applicant also indicated in his answers to interrogatories that he was investigating several debt consolidation services, with the intent to hire one service to help with payment of his old debts. Applicant has not provided any information showing that he hired a debt consolidation firm or that he has developed a payment plan for his debts.⁷

Applicant has not provided documentation showing his income and expenses each month.

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the revised AG. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are 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, 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

⁵SOR; Item 5; Item 9, Item 10.

⁶Item 8.

⁷*Id.*

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 that 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. Applicant accumulated significant delinquent debt, which he has been unable or unwilling to pay for a long time. The evidence is sufficient to raise these potentially disqualifying conditions.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Under AG ¶ 20(a), mitigation may occur when “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 did not provide any evidence which indicated that his debts arose under unusual circumstances or that his debt problems are so old that it is unlikely that he will incur unpaid debts in the future. This potentially mitigating condition is not applicable.

Under AG ¶ 20(b), mitigation may occur when “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.” Applicant was unemployed for a period of time in 2001. His e-QIP reflects that he has worked regularly since July 2001. Applicant has not provided any other information which shows that conditions beyond his control created his financial problems. This mitigating condition is not applicable.

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 has not attended financial counseling nor has he provided information which indicates that his past debts and current finances are under control.

Similarly, AG ¶ 20(d) applies where the evidence shows “the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.” Applicant contacted several creditors and established a payment plan. He made one payment. He did not provide any information to show that he continued with his payment plans. His income and expenses are unknown. Thus, I cannot determine if his current monthly expenses are being paid. He provided no information to show that he retained a debt consolidation company to help resolve his past debts. I conclude this potentially mitigating condition does not apply.⁸

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

⁸AG ¶¶ 20(e) and 20(f) are not applicable in this case.

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's financial problems are more than six years old. He and his wife divorced nearly 25 years ago. His current debts are unrelated to his divorce. His daughter is an adult and not dependent on him for financial support. While Applicant was laid off in 2001, his e-QIP reflects that he has worked steadily since July 2001. Applicant has not paid his debts for a long period of time and has not provided any reason for his failure to pay his debts. He has not provided any relevant and probative evidence which shows that he is paying his old debts, either through a payment plan or a debt consolidation company. The record contains little evidence which will support the grant of a security clearance.

Overall, the record evidence leaves me with questions or 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:	For Applicant
Subparagraphs 1.b-1:p:	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