



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



In the matter of:)
)
-----) ISCR Case No. 09-00847
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Ray T. Blank, Jr., Esquire, Department Counsel
For Applicant: *Pro Se*

November 13, 2009

Decision

HOWE, Philip S., Administrative Judge:

On September 22, 2008, Applicant submitted his electronic version of the Security Clearance Application (SF 86) (e-QIP). On June 12, 2009, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guidelines F and E. 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 answered the SOR in writing on July 12, 2009. Applicant requested his case be decided on the written record in lieu of a hearing.

On August 3, 2009, Department Counsel submitted the Department's written case. A complete copy of the file of relevant material (FORM) was provided to the Applicant on August 3, 2009. He was given the opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant received the FORM on August 11, 2009. Applicant did not file a Response to the FORM within the 30-day time allowed that would have expired on September 10, 2009. I received the case assignment on October 9, 2009. Based upon a review of the complete case file, pleadings, and exhibits, eligibility for access to classified information is denied

Findings of Fact

Applicant admitted all of the allegations in the SOR. He explained that his delinquent debts listed in Paragraph 1 were current or paid, and the failure to disclose his financial delinquencies in the SF 86, as alleged in Paragraph 2, was an "oversight."

Applicant is 52 years old and married. He works for a defense contractor. He has worked for this employer since June 2008. (Items 2 and 4)

The SOR lists eight delinquent debts. These debts total \$24,955. The earliest delinquency date is 2003. Applicant's Answer states his credit card debt of \$1,644 is current (subparagraph 1.a); his mortgage payment of \$1,000 is current (subparagraph 1.b); his two loan debts to the same creditor of \$4,015 and \$5,201 are current (subparagraphs 1.c and 1.d); his bank debt payment of \$48 is paid and the account is repaid (subparagraph 1.e); his bank debt of \$5,927 is current (subparagraph 1.f); his debt to a large department store chain of \$2,100 is current (subparagraph 1.g); and his \$5,000 debt on a military credit is current (subparagraph 1.h). Applicant did not submit any documents to verify that his Answers were supported by objective financial evidence. The credit reports from October 11, 2008, and May 28, 2009, list all these delinquent debts as due and owing. (Items 6-9)

Applicant was sent two sets of interrogatories asking for further information on his delinquent debts. The March 18, 2009, interrogatories requested information about a debt consolidation loan Applicant stated he obtained six years ago. Applicant did not disclose the requested information about the debts included in the loan or proof that his payments were current on that loan. Applicant also failed to provide copies of canceled checks paying these delinquent debts, recent statements from creditors, verification of all sources of income, and other items requested in the interrogatories. Applicant did provide a personal financial statement. This statement showed Applicant has a net remainder income monthly of \$1,051.16, and owned two late model expensive automobiles. It did not list the individual delinquent debts as set forth in the SOR or their current status. The personal financial statement did refer to an attachment concerning a "debt consolidation" debt in the amount of \$11,265.52. However, there was no attachment to Applicant's personal financial statement which explained the "debt consolidation" debt. Applicant has not provided any documents verifying the current status of his delinquent debts. (Items 6-9)

Applicant answered the SF 86 Question 28, subsections (a) and (b), with “No” responses on September 22, 2008. Question 28.a asked Applicant if he had been more than 180 days delinquent on any debt in the past seven years. Question 28.b inquired if Applicant currently was delinquent more than 90 days on any debt. Applicant admitted the allegations in subparagraph 2.a of the SOR, but claimed it was a mere “oversight” that he did not answer the questions with full disclosure of his delinquent debts. Applicant certified at the end of the SF 86 that his answers to all questions, including Question 28, are “true, complete, and correct to the best of” his knowledge. His answers were not true and correct as they pertain to his delinquent debts. (Items 2, 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 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, the administrative judge applies 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.

According to 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 the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance 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

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 at AG ¶ 19 contains nine disqualifying conditions that could raise security concerns. From these nine conditions, two conditions are applicable to the facts found in this case:

- (a) inability or unwillingness to satisfy debts; and

- (c) a history of not meeting financial obligations.

From 2003 to the present, Applicant accumulated eight delinquent debts totaling \$24,955 that are unpaid or unresolved.

The guideline in AG ¶ 20 contains six conditions that could mitigate security concerns arising from financial difficulties. None of the mitigating conditions have any applicability because Applicant continuously and deliberately failed to provide any requested documentation except his personal financial statement. That document did not show that he resolved by any means the specific debts set forth in the SOR. He did not meet his burden of proof to show he resolved his delinquent debts.

Guideline E, Personal Conduct

AG ¶ 15 expresses the security concern pertaining to Personal Conduct:

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.

The following will normally result in an unfavorable clearance action or administrative termination of further processing for clearance eligibility:

(a) refusal, or failure without reasonable cause, to undergo or cooperate with security processing, including but not limited to meeting with a security investigator for subject interview, completing security forms or releases, and cooperation with medical or psychological evaluation; and,

(b) refusal to provide full, frank and truthful answers to lawful questions of investigators, security officials, or other official representatives in connection with a personnel security or trustworthiness determination.

AG ¶ 16 describes seven disqualifying conditions under the Personal Conduct guideline. One of them could raise a security concern and be disqualifying in this case:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities.

Applicant did not disclose his financial delinquencies. Applicant admitted the allegations as set forth in subparagraph 2.a of the SOR. Then, in his Answer he claims it was a mere oversight on his part when he did not make the requested disclosure. When compared to his lack of disclosure in the interrogatories, his explanation is not persuasive or believable.

In AG ¶ 17 seven mitigating conditions are listed. After a careful review of the facts, I conclude none of them apply to Applicant's case. Reviewing those conditions, I compared them to the facts in this case. I concluded Applicant did not make a prompt and good-faith effort to disclose he debts. His lack of disclosure was not done on the advice of counsel. These omissions are not minor or infrequent. Applicant has not taken

steps to reduce vulnerability to coercion, nor obtained counseling to relieve stress or change his behavior on this issue. The information about his delinquent debts is substantiated. There is no relevance to the mitigating condition about association with persons involved in criminal activities. Therefore, none of the seven mitigating conditions have any relevance or applicability to Applicant's case.

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 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.

I considered the potentially disqualifying and mitigating conditions in light of all facts and circumstances surrounding this case. Applicant was an adult when he incurred the debts. He was an adult when asked to disclose information about the debts. He has not disclosed any persuasive objective documentary evidence to address each of the delinquent debts specifically listed in the SOR. He ignored repeated requests in the interrogatories submitted to him to supply such proof. Furthermore, he failed to disclose his delinquent debts in answering Question 28 on the SF 86. Applicant shows a pattern of refusing to disclose his delinquent debts in the SF 86 and in his uninformative responses to the two interrogatories sent to him. He seeks a security clearance from the government, but will not cooperate and provide requested information.

What action, if any, Applicant has taken to resolve his delinquent debt is not known from the available evidence. His refusal to answer questions about these matters leaves him vulnerable to pressure, coercion, exploitation, or duress based on the magnitude of his financial obligations and his desire for secrecy. His lack of action continues to this day, and is obviously voluntary. His inaction will continue based on his past performance. Applicant displayed a lack of good judgment incurring the debts while purchasing two expensive late-model cars. Applicant now compounds his predicament

by willfully refusing to disclose financial information the government needs to make an informed decision on his security clearance request. The burden of proof is on Applicant to show why the mitigating conditions under both guidelines should apply to him. He failed in that effort. Any doubt is resolved against him and in favor of national security, in accordance with the Directive ¶ E2.2.2.

Overall, the record evidence leaves me with questions and substantial doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant did not mitigate the security concerns arising under the guideline for Financial Considerations. He did not mitigate the security concerns under the guideline for Personal Conduct. I conclude the "whole- person" concept against Applicant.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a to 1.h:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a:	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.

PHILIP S. HOWE
Administrative Judge