



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



In the matter of:)
)
) ISCR Case No. 09-00968
)
 SSN:)
)
)
 Applicant for Security Clearance)

Appearances

For Government: Jeff Nagel, Esq., Department Counsel
For Applicant: *Pro se*

August 27, 2010

Decision

GOLDSTEIN, Jennifer I., Administrative Judge:

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

Statement of the Case

On January 11, 2010, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, Financial Considerations. 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 adjudicative guidelines (AG) effective for cases issued after September 1, 2006.

Applicant answered the SOR on February 3, 2010, and requested a hearing before an administrative judge. The case was assigned to me on May 21, 2010. DOHA issued a notice of hearing on June 3, 2010, scheduling the hearing for June 28, 2010. Applicant requested a continuance. Based upon good cause, the continuance was

granted, and the hearing was rescheduled on June 30, 2010, for July 26, 2010. The hearing was convened as scheduled. The Government offered Exhibits (GE) 1 through 11, which were admitted without objection. The Applicant no offered Exhibits and called no witnesses, but did testify on his own behalf. The record was held open for Applicant to submit additional information until close of business August 8, 2010. Applicant failed to submit any post-hearing exhibits. DOHA received the transcript of the hearing (Tr.) on August 5, 2010.

Procedural Ruling

At the hearing on July 26, 2010, Department Counsel made a motion to amend the SOR, in order to conform to the evidence, by adding ¶¶1.n. through 1.q., pursuant to Directive ¶ E3.1.17. Applicant had no objections to the amendment. The motion to amend was granted. (Tr. 49-52.)The allegations are as follows:

1.n. You willfully failed to file your Federal income tax return for the tax year 2008. As of the date of this hearing, you had not filed.

1.o. You willfully failed to file your [state] income tax return for the tax year 2008. As of the date of this hearing, you had not filed.

1.p. You willfully failed to file your Federal income tax return for the tax year 2009. As of the date of this hearing, you had not filed.

1.q. You willfully failed to file your [state] income tax return for the tax year 2009. As of the date of this hearing, you had not filed.

Findings of Fact

Applicant is a 58-year-old employee of a defense contractor. He served in the Army from 1972 to 1974 as a Sergeant. He received a Meritorious Service Medal and two Army Commendation Medals during his service. He had a secret clearance while in the Army. He possesses an associate's degree in chemical engineering. He is divorced and has one daughter, age 25, who is in graduate school. Applicant provided no letters of support, performance evaluations, or other evidence of his character. (GE 1; Tr. 24-30.)

Applicant has experienced significant financial problems since at least 1994. In 1994, he purchased a home and "over the next few years, [he] was overextended and was having trouble meeting [his] bills." His financial problems continued in 2001, when he withdrew \$40,000 from his 401K to purchase a car and take care of some other debts. As a result of withdrawing money from his 401K, he incurred both state and Federal tax debts, which were eventually garnished from his wages. The garnishments caused him to fall behind on his mortgage in September of 2002. His home was foreclosed upon in 2003. As a result of the foreclosure, Applicant received \$42,000 profit from the sale. He used the profit from the house for his daughter's education and to support an academic team she participated in. Applicant attributes his current

financial problems to his financial support of that academic team from 1995 through 2005. For approximately one year during that time frame, he was giving his daughter's team \$500 to \$1,200 per month in financial support. (GE 2; GE 3; Tr. 30-35, 55, 63.)

The SOR alleges seven delinquent debts as listed on credit reports obtained in 2007 through 2010. (GE 7; GE 8; GE 9; GE 10; GE 11.) They are as follows:

Allegation 1.a. alleges that Applicant is indebted on a collections account for the approximate amount of \$107. Applicant admitted this debt in his Answer to the SOR. Applicant claims that this debt has been paid, although he presented no documentation to support his claim. Applicant's credit report dated July 25, 2010, reflects this debt as "unpaid." (GE 11; Tr. 35-36.)

Allegation 1.b. alleges that Applicant is indebted on a collections account for the approximate amount of \$156. Applicant admitted this debt in his Answer to the SOR. Applicant claims that this debt has been paid, although he presented no documentation to support his claim. Applicant's credit report dated July 25, 2010, reflects this debt as "unpaid." (GE 11; Tr. 36-37.)

Allegation 1.c. alleges that Applicant is indebted on a past due account for the approximate amount of \$765. Applicant denied this debt in his Answer to the SOR, because he claims he paid it off. Applicant's credit report dated July 25, 2010, reflects this debt as a "paid charge off" and supports Applicant's claim. (GE 11; Tr. 37-38.)

Allegation 1.d. alleges that Applicant is indebted on credit card account for the approximate amount of \$2,501. Applicant denied this debt in his Answer to the SOR, because he was making \$200 payments on this account for over a year. He claimed that he has repaid all but \$381. Applicant's credit report dated July 25, 2010, reflects the current balance on this debt is \$381, which supports Applicant's claim that he has been making payments on this account. (GE 11; Tr. 38-40.)

Allegation 1.e. alleges that Applicant is indebted on a collections account for the approximate amount of \$1,392. Applicant admitted this debt in his Answer to the SOR. Applicant claims that this debt has been paid, although he presented no documentation to support his claim. Applicant's credit report dated July 25, 2010, reflects this debt as an unpaid collections account. (GE 11; Tr. 41-42.)

Allegation 1.f. alleges that Applicant is indebted to a telephone company for the approximate amount of \$184. Applicant denied this debt in his Answer to the SOR, because he had made arrangements to pay this debt. Applicant claims that this debt has been paid, although he presented no documentation to support his claim. Applicant's credit report dated February 27, 2009, reflects this debt with an unpaid balance. (GE 8; Tr. 36-37.)

Allegation 1.g. alleges that Applicant is indebted on Federal tax debt for the approximate amount of \$13,435. Applicant admitted this debt in his Answer to the SOR. Applicant testified that he hired an agent to negotiate a settlement with the IRS. He

failed to provide documentation showing he hired an agent in January 2009, to assist him with this debt or that he has successfully negotiated payment on this debt with the IRS. (GE 4; Tr. 42-44, 47, 53.)

Allegations 1.h. through 1.q. allege that Applicant failed to file both his Federal Income Tax return and his state tax return for the tax years 2005-2009. Applicant denied these allegations in his Answer to the SOR. At hearing, he claimed that he filed both state and Federal income tax returns for 2005-2007, electronically through a popular tax preparation computer program. He claims the agent he hired in January 2010, was assisting him with his 2005-2007 taxes, as well. When asked if he filed his 2008 and 2009 state and Federal income tax returns, he indicated he had not, but planned to complete them. (GE 3; Tr. 44-49.)

Applicant is current on his two car payments. He purchased a BMW for himself and a Mercedes for his daughter. He pays the insurance of both vehicles. (Tr. 57-58.)

Policies

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

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 to obtain 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 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 for Financial Considerations is set out in AG ¶ 18, as follows:

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 concern 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
- (g) failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same.

Applicant accumulated delinquent debts and has been unable or unwilling to pay his obligations. His delinquencies have been on-going for several years, and he has failed to establish resolution of the majority of his delinquent accounts. He has a history, dating back to approximately 1994, of financial irresponsibility. Further, the Government established that Applicant failed to file his Federal and state income tax returns for tax years 2005-2009. 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 satisfied one of his debts (SOR allegation 1.c.) and is successfully making payments on one debt (SOR allegation 1.d.), but he has failed to establish he has taken action on his other delinquent accounts. His debt is current and on-going. Further, financial difficulties have plagued Applicant for a number of years and are likely to recur. AG ¶ 20(a) is not applicable.

Applicant's financial difficulties were partly caused by his poor financial decisions. These decisions do not qualify as conditions that were outside his control. Further, AG ¶ 20(b) also requires that the individual act responsibly under the circumstances. Applicant has not made a significant attempt to responsibly address his remaining debts. AG ¶ 20(b) is not applicable.

Applicant presented no evidence of financial counseling. AG ¶ 20(c) does not apply.

Applicant has satisfied one of his debts (SOR allegation 1.c.) and is making payments on another (SOR allegation 1.d.). However, he has not made payment arrangements with any of his other creditors. There is no showing he has initiated a good-faith effort to repay his remaining overdue creditors or otherwise resolve his debts. In addition, he failed to show he has acted in good faith with respect to resolving his unfiled state and Federal income tax returns. AG ¶ 20(d) is not mitigating.

Finally, Applicant has not contested his outstanding debts. AG ¶ 20(e) is not mitigating.

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 the facts and circumstances surrounding this case. I have incorporated my comments under Guidelines F, in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but some warrant additional comment.

Applicant failed to demonstrate good judgment when it comes to satisfying his financial delinquencies. His choices, with respect to his debts, do not demonstrate the judgment, reliability, or trustworthiness needed to hold a security clearance. There are significant unresolved concerns about Applicant's finances and judgment.

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 Financial Considerations security concern.

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

Subparagraph 1.f.:	Against Applicant
Subparagraph 1.g.:	Against 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

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.

Jennifer I. Goldstein
Administrative Judge