



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



In the matter of:)
)
-----) ISCR Case No. 09-01056
SSN: -----)
)
Applicant for Security Clearance)

Appearances

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

March 11, 2010

Decision

LYNCH, Noreen A., Administrative Judge:

On July 17, 2009, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) detailing 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 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.

On August 27, 2009, Applicant answered the SOR and requested a hearing. DOHA received the request and assigned the case to me on December 17, 2009. DOHA issued a Notice of Hearing on January 19, 2010, and I convened the hearing as scheduled on February 18, 2010. Department Counsel offered five exhibits, which were marked and admitted as Government Exhibits (GE) 1-5, without objection. Applicant testified and offered two exhibits, which I marked and admitted as Applicant Exhibit (AE) A and B, without objection. At Applicant's request, I held the record open until March 5,

2010. He did not submit additional information. DOHA received the transcript (Tr.) on February 25, 2010. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

Findings of Fact

In his Answer to the SOR, Applicant admitted the factual allegations in ¶¶ 1.a through 1.g of the SOR.

Applicant, who is 28 years old, worked as a security officer for a Department of Defense contractor. His employer laid him off in October 2009, but is still sponsoring him for a security clearance, because he is eligible for rehire.

After graduating from high school in 1999, Applicant enlisted in the U.S. Marine Corps. He served in the military until 2003 (GE 1). In July 2003, when Applicant left the military, he returned home to live with his widowed mother. Applicant helped his mother with all her living expenses and maintained the family home and property (Tr. 62). He used his salary, approximately \$33,000, to provide for his mother and her household expenses.

In addition to his current unemployment, Applicant did not work between October 2007 and June 2008, and July 2006 until October 2006 (Tr.110). Applicant's current financial problems arose prior to these periods of unemployment. According to his own admission, he accumulated debt while in the military (Tr. 15), used credit cards to pay for travel home to see his parents, and incurred other credit card debt in 2004 for an engagement ring (Tr. 44).

In July 2008, Applicant moved in with his girlfriend, who is the mother of his young son. They purchased a house in her name for \$189,000, but Applicant agreed to pay the monthly mortgage of approximately \$1,400 (Tr. 22).

The SOR alleges seven delinquent debts, including a 2006 vehicle repossession. The approximate total of Applicant's delinquent debts is \$27,000, as listed on his credit report (GE 3). The current status of Applicant's delinquent debts is described below.

The debt alleged in SOR ¶ 1.a for \$123 is a medical creditor. This account is unpaid.

The debt alleged in SOR ¶ 1.b for \$1,833 is a jewelry store account that is charged-off. The account is unpaid.

The debt alleged in SOR ¶ 1.c for \$2,969, is a collection account. This account is unpaid.

The debt alleged in SOR ¶ 1.d for \$2,543 is a credit card account that is charged-off. This account is unpaid.

The debt alleged in SOR 1.e for \$1,675 is a collection account for \$1,675. Applicant received an offer of settlement in the mail for the account (Tr. 70). He settled the account for \$50 in November 2009, and he provided documentation to support his claim (AE B).

The debt alleged in SOR 1.f for \$2,522 is an account that is charged-off. This account is unpaid. Applicant claimed this could be a duplicate account with SOR 1.c because he only had one account with the alleged creditor. He did not provide any documentation to support his assertion.

The debt alleged in SOR 1.g for \$15,425 is the result of an involuntary vehicle repossession that occurred in 2006. The vehicle was auctioned, but Applicant has not contacted the creditor to ascertain the amount he owes.

Applicant's net monthly income is approximately \$1,650, as a result of unemployment benefits. His girlfriend, who is a social worker, has a net monthly income of \$2,400. After daily living expenses and car payments, the net remainder is about \$320. Applicant has no budget. He did not receive financial counseling. He plans to pay his delinquent debts when he obtains another job (Tr. 103). He promised to pay some smaller accounts when he receives a tax refund this year.

Applicant's site supervisor recommends Applicant due to his dedication and duty to service. He considers him "one of the best security officers" he has worked with in the past years (AE A).

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 required 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, 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 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 (EO) 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^o is potentially disqualifying. Similarly under AG & 19(c), Aa history of not meeting financial obligations^o may raise security concerns. Applicant accumulated delinquent debts on various accounts for a period of time. His credit reports confirm the debts. He has been unable to pay his obligations. The evidence is sufficient to raise these disqualifying conditions.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Under AG ¶ 20(a), the disqualifying condition may be mitigated where 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 has experienced financial difficulties since 2003. His debts are the result of overspending, not unusual circumstances. Because they are ongoing, they are recent. This mitigating condition does not apply.

Under AG & 20(b), it may be mitigating where 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. While Applicant did have periods of unemployment and is currently unemployed, his problems arose prior to that time. He lacked sufficient income to pay his debts. Applicant was employed until October 2009, but he did not resolve the delinquent accounts. He settled one account recently (SOR 1.e). When he was employed with the defense contractor, he did not act responsibly to pay accounts or arrange for payment plans. This mitigating condition does not apply.

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). 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 has not received financial counseling. He is not actively working on resolving the financial issues. I conclude these mitigating conditions do not apply.

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 and conclude they are insufficient to overcome the government's case. Applicant served in the U.S. Marine Corps for four years. He has provided help to his mother for many years. He has worked hard but has not had any financial stability. He has not established a meaningful track record of debt payment. Applicant presented insufficient information to show that he is taking reasonable and responsible action to resolve his financial issues. Applicant's management of his finances and past obligations do not indicate he will be concerned, responsible, and careful regarding classified information. Applicant has not mitigated security concerns based on his finances.

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 the security concerns arising under financial considerations.

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: through 1.d:	Against Applicant
Subparagraph 1.e:	For Applicant
Subparagraph 1.f:-1.g:	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

NOREEN A. LYNCH
Administrative Judge