



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



In the matter of:)	
)	
SSN:)	ISCR Case No. 09-01709
)	
Applicant for Security Clearance)	

Appearances

For Government: Gregg A. Cervi, Esquire, Department Counsel
For Applicant: *Pro Se*

March 9, 2010

Decision

HENRY, Mary E., Administrative Judge:

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

Applicant executed and signed his Security Clearance Application (SF 86) on November 1, 2008. The Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F on August 20, 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 received the SOR and submitted a notarized, written response to the SOR allegations on September 3, 2009. He 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 October 19, 2009. Applicant received the FORM on November 10, 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 or additional evidence. DOHA assigned this case to me on March 5, 2010. The government submitted nine exhibits, which have been marked as Item 1-9 and admitted into the record. Applicant's response to the SOR is Item 4.

Findings of Fact

In his Answer to the SOR, Applicant admitted the factual allegations in ¶¶ 1.a, 1.b, and 1.c of the SOR, with explanations. He did not provide additional information to support his request for eligibility for a security clearance.

Applicant, who is 58 years old, worked as a program manager for a Department of Defense contractor. He does not currently work, as his employer laid him off in May 2009. His employer is still sponsoring him for a security clearance, because he is eligible for rehire.¹ Applicant enlisted in the United States Army in 1971. He retired from the Army in 2000 at the rank of Chief Warrant Officer after serving 20 years on active duty and seven years as an active reservist. He receives a military retirement and veteran's disability benefits.²

Applicant has been married several times. He is currently single, but living with his last wife. He has two adult children and a stepchild.³

In addition to his current unemployment, Applicant did not work between April 2008 and October 2008, and August 2001 and November 2001. Applicant's current financial problems began when he and his last wife separated in 2006 and divorced in 2007. During this marriage, he and his wife accumulated debt, including significant credit card debt to pay for many items, including vacations. When they divorced, he assumed responsibility for all their credit card debt and mortgage.⁴

In the last few years, Applicant paid a number of credit card debts, using an equity line of credit and other credit cards. He then closed the paid accounts. After his divorce, Applicant lacked sufficient funds to pay his mortgage, line of credit, and credit

¹Brief, Department Counsel, footnote 1, p.2.

²Item 5; Item 6.

³Item 6.

⁴*Id.*

card bills. He could not make the regular monthly payments on his debts. Instead, he paid these debts periodically. In August 2007, he placed his house for sale, but he was unable to sell the house immediately. In early 2008, the mortgagor began foreclosure proceedings. Before these proceedings concluded, an investor offered to pay Applicant \$1,000 for his house and to assume the mortgage. Applicant accepted this offer and signed the deed over to the investor. He does not have any debts related to the mortgage.⁵

Applicant currently owes \$27,000 on one credit card (card 1), \$10,000 on a second credit card (card 2), and \$35,000 on an equity line of credit (line of credit). He contacted the card 1 creditor to develop a repayment plan. The card 1 creditor requested a payment of \$7,000 and a high monthly payment. Applicant could not pay the money requested or meet the monthly payment. In November 2008, the card 2 creditor offered to settle Applicant's debt in exchange for one \$4,500 payment. Applicant could not pay this amount in one payment. The card 2 creditor has declined to work with Applicant on a payment plan. Applicant provided no information on his efforts to repay the line of credit.⁶

Applicant contacted a debt settlement company in February 2008, which offered to negotiate a settlement with each of his creditors for less than he owed. Initially, he did not retain this company's services, but changed his mind. He retained the services of this company for six months. He terminated the company's services after credit companies contacted him, offering settlements lower than the debt counseling service intended to negotiate on his behalf.⁷

The debts listed in the SOR remain unpaid. Applicant plans to save his money to pay his debts when he returns to work. His current monthly income is \$2,228 from his military retirement and disability income. His monthly expenses, including other debt payment, total approximately \$2,300 a month. His former spouse currently lives with him, but her income is not mentioned. He did indicate she was willing to help pay his debts, but did not explain how much she would contribute to the resolution of these debts. During his meeting with the investigator and in his response to the SOR, he indicated that he would save money to pay these debts. Both times he made this statement, he was not working.⁸

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the revised adjudicative guidelines (AG). In addition

⁵*Id.*

⁶Item 2; Item 6.

⁷Item 6.

⁸Item 2; Item 6.

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 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 for 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 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 debt during his last marriage. He has been unable to pay some obligations for a period of time. The evidence is sufficient to raise these potentially disqualifying conditions.

In assessing whether an Applicant has established mitigation under Guideline F, the Appeal Board provided the following guidance in ISCR Case No. 07-06482 at 3 (App. Bd. May 21, 2008):

In evaluating Guideline F cases, the Board has previously noted that the concept of "meaningful track record" necessarily includes evidence of actual debt reduction through payment of debts." See, e.g., ISCR Case No. 05-01920 at 5 (App. Bd. Mar. 1, 200). However, an applicant is not required, as a matter of law, to establish that he has paid off each and every debt listed in the SOR. See, e.g., ISCR Case No. 02-25499 at 2 (App. Bd. Jun. 5, 2006). All that is required is that an applicant demonstrate that he has ". . . established a plan to resolve his financial problems and taken significant actions to implement that plan." See, e.g., ISCR Case No. 04-09684 at 2 (App. Bd. Jul. 6, 2006). The Judge can reasonably consider the entirety of an applicant's financial situation and his actions in evaluating the extent to which that applicant's plan for the reduction of his outstanding indebtedness is credible and realistic. See Directive ¶ E2.2(a) ("Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination.") There is no requirement that a plan provide for payments on all outstanding debts simultaneously. Rather, a reasonable plan (and concomitant conduct) may provide for the payment of such debts one at a time. See, e.g., ISCR Case No. 06-25584 at 4 (App. Bd. Apr. 4, 2008). Likewise, there is no requirement that the first debts actually

paid in furtherance of a reasonable debt plan be the ones listed in the SOR.

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’s financial worries occurred within the last five or six years. His debts are the result of overspending, not unusual circumstances. Because his debts 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’s financial problems arose during his marriage, his problems became severe when he and his wife separated and divorced, and he assumed responsibility for all their household debt after their divorce. He lacked sufficient income to pay all their debts. Since his divorce in 2007, Applicant has experienced two periods of unemployment, with his last unemployment beginning in May 2009 and continuing. In 2006 and 2007, Applicant resolved many outstanding debts. However, he resolved credit card debt through the use of other credit cards and an equity line of credit. These resolved accounts are closed, and thus, not in use. However, he has not resolved the large debts created by his use of credit to pay other credit debts. I find this mitigating condition partially 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). Similarly, AG ¶ 20(d) applies where the evidence shows “the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.” Although Applicant did not receive financial counseling, he did contact a debt resolution company. He retained the services of this company for six months. However, the company did not pay any debts on his behalf. Applicant’s debts remain unresolved. Applicant pays his current expenses, but lacks sufficient income to pay his old debts. AG ¶ 20(c) is partially applicable, but AG ¶ 20(d) does not apply as there is no evidence of a good faith resolution of his debts.⁹

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):

⁹AG ¶¶ 20(e) and 20(f) are not relevant in this case.

(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. 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.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant served in the military for more than 25 years. With his retirement and disability income, he pays his usual monthly expenses and several debts. This income does not provide him with sufficient money to pay the debts listed in the SOR or to save money to pay these large debts. Applicant's future intentions to pay his debts, while laudable, are insufficient to establish mitigation of the security concerns raised by his debts. Applicant has been unemployed for much of the last two years. Again, because he is not working, he cannot pay his old and substantial debts. Applicant's unpaid debts remain a security concern.

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 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:	Against Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	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