



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



In the matter of:)	
)	
XXXXXXXXXX, XXXXX)	ISCR Case No. 09-02019
SSN: XXX-XX-XXXX)	
)	
Applicant for Security Clearance)	

Appearances

For Government: James F. Duffy, Esq., Department Counsel
For Applicant: *Pro Se*

February 4, 2010

Decision

TUIDER, Robert J., Administrative Judge:

Applicant’s available information is not sufficient to mitigate the security concerns arising from financial considerations. Eligibility for access to classified information is denied.

Statement of the Case

On September 22, 2008, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP).¹ On July 27, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to him, pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive),

¹ FORM Item 5.

dated January 2, 1992, as amended, modified, and revised.² The SOR alleges security concerns under Guideline F (Financial Considerations). The SOR detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for her, and recommended referral to an administrative judge to determine whether a clearance should be denied or revoked.

On August 11, 2009. Applicant acknowledged receipt of the SOR, and on September 2, 2009, he submitted his Answer to the SOR.³ He elected to have his case decided on the written record in lieu of a hearing.⁴ A complete copy of the file of relevant material (FORM), dated September 17, 2009, was provided to him by letter dated September 18, 2009. Applicant received the FORM on October 2, 2009. He was afforded a period of 30 days to file objections and submit material in refutation, extenuation, or mitigation. He did submit material in refutation, extenuation, or mitigation in response to the FORM. On November 17, 2009, Department Counsel reviewed Applicant's material in response to FORM, without objection. The case was assigned to me on November 21, 2009.

Findings of Fact

Applicant admitted all of the factual allegations in SOR. His admissions are incorporated herein as findings of fact. After a thorough review of the evidence of record, I make the following additional findings of fact.

Applicant is a 48-year-old senior data monitor, who has been employed by a defense contractor since May 2007.⁵ The FORM does not contain any information about Applicant's educational background except for his having attended Warrant Officer Candidate School from January 1997 to February 1997 while in the U.S. Army. Applicant separated from his current wife in June 2006 (estimated). He was previously married two times. Both marriages ended by divorce. He has three children, ages 16, 21, and 27, and two stepchildren, ages 18 and 24.

Applicant served in the Army from June 1985 to October 2006, and was discharged as a Chief Warrant Officer 3. After his Army service, he worked at an overseas post exchange as a new car salesman/trainee from October 2006 to

² On Aug. 30, 2006, the Under Secretary of Defense (Intelligence) directed application of revised Adjudicative Guidelines to all adjudications and other determinations made under the Directive and Department of Defense (DoD) Regulation 5200.2-R, *Personnel Security Program* (Regulation), dated Jan. 1987, as amended, in which the SOR was issued on or after Sep. 1, 2006.

³ Items 3 and 4.

⁴ Item 4.

⁵ Item 5 (September 2008 e-QIP) is the source for background information in this decision, unless stated otherwise.

December 2006, then as logistics instructor/controller for a defense contractor from December 2006 to May 2007, and then to his current position. He held a security clearance for the majority of his military service.

In his September 2008 e-QIP, Applicant disclosed having financial problems, i.e., debts over 180 days delinquent during the last seven years, and currently having debts over 90 days delinquent. Applicant's background investigation addressed his financial problems and included the review of his July 2009 and October 2008 credit bureau reports (CBRs).

The SOR alleges 11 delinquent and/or charged-off accounts totaling \$48,131. As noted, Applicant admitted all of these debts. In his Response to FORM, he provided documentation that he has worked out a settlement with one of his creditors, but did not provide proof of payment, and that he was making payments to another creditor through withholding of his retirement check. He did not indicate what his balance was or when the withholding began. He did not identify which two debts on the SOR these payments applied to. He also stated he sought financial counseling on post and had established monthly payment plans. He did not provide any documentation that he made any payments to these creditors after seeking financial counseling.

I find that the alleged delinquent debts are established by Applicant's admissions and evidence presented. Most of the debts have been delinquent for many years. Applicant explained in his Response to Form:

I realize that I am totally responsible for my financial situation, and even though the circumstances were beyond my control at the time, I am making an attempt to rectify the debts incurred. These debts are not indicative of my financial situation and will not recur. It may look as though I had over extended my financial capabilities at that time, but payments were being made until I had all my mail forwarded back to the United States in November 2001 in preparation for my return in February 2002.

It will be a slow process to satisfy these debts, but I fully plan to do so. I was not financially prepared to retire from the military, and difficulty in finding decent employment set me back financially enough to where I am just now stabilizing financially enough to start to satisfy the debts.

I sincerely ask that the determination goes to my favor and grants (sic) my request for a security clearance so that I may continue to be employed and settle these financial debts.

In light of his financial history, Applicant's uncorroborated statements are not sufficient to show that he contacted creditors, settled debts, or has been making payments on his debts for which he is responsible.

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 to be considered 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 controlling 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.

In the decision-making process, the government has the initial burden of establishing controverted facts alleged in the SOR by "substantial evidence,"⁶ demonstrating, in accordance with the Directive, that it is not clearly consistent with the national interest to grant or continue an applicant's access to classified information. Once the government has produced substantial evidence of a disqualifying condition, the burden shifts to applicant to produce evidence "to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by department counsel, and [applicant] has the ultimate burden of persuasion as to obtaining a favorable clearance decision." Directive ¶ E3.1.15. The burden of disproving a mitigating condition never shifts to the government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).⁷

⁶ See Directive ¶ E3.1.14. "Substantial evidence [is] such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the contrary evidence in the record." ISCR Case No. 04-11463 at 2 (App. Bd. Aug. 4, 2006) (citing Directive ¶ E3.1.32.1). "Substantial evidence" is "more than a scintilla but less than a preponderance." See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994).

⁷ "The administrative judge [considers] the record evidence as a whole, both favorable and unfavorable, evaluate[s] Applicant's past and current circumstances in light of pertinent provisions of the Directive, and decide[s] whether applicant ha[s] met his burden of persuasion under Directive ¶ E3.1.15." ISCR Case No. 04-10340 at 2 (App. Bd. July 6, 2006).

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* Executive Order 12968 (Aug. 2, 1995), Section 3.

Analysis

Guideline F, Financial Considerations

Under Guideline F, the security concern is that an applicant’s 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. AG ¶ 18.

Applicant has accumulated 11 delinquent accounts totaling \$48,131, most of which have been outstanding for many years. Applicant admitted all of these debts. He claimed he has settled one debt and is making payments on one debt through his military retirement check. As noted, he did not show proof of payment of the settled debt nor is it clear from his evidence which of the two SOR debts these purported efforts apply to. He presented no documentary evidence of efforts to pay or resolve any of the financial obligations alleged in the SOR. AG ¶ 19(a): inability or unwillingness to satisfy debts, and AG ¶ 19(c): a history of not meeting financial obligations, apply in this case.

AG ¶ 20 lists six conditions that could mitigate the financial considerations security concerns:

- (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;

(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; and

(f) the affluence resulted from a legal source of income.

Applicant's sparse favorable evidence fails to fully raise the applicability of any mitigating condition. His financial problems are ongoing and his evidence fails to show they occurred under such circumstances that they are unlikely to recur and do not cast doubt on Applicant's current reliability, trustworthiness, or good judgment. AG ¶ 20(a) does not apply.

Applicant presented some evidence to establish circumstances beyond his control contributing to his inability to pay his debts, i.e., his difficult transition from the military to civilian life. Applicant presented little evidence of efforts to resolve his financial obligations since he acquired the debts. Applicant presented little or insufficient corroborating documentary evidence of efforts to pay or resolve any of the financial obligations alleged in the SOR.

Applicant has been employed in some capacity since he retired from the Army. He offered the explanation that he was current on his payments until he had his mail forwarded back to the United States in November 2001 in preparation for his return in February 2002. Yet, he does not explain how this event precluded him from making any payments to creditors since then. Notwithstanding his difficulty transitioning from military to civilian life, Applicant presented insufficient documentary evidence of any efforts to resolve his financial obligations. His favorable information fails to establish a track record of financial responsibility. AG ¶ 20(b) does not apply.

Partial application of AG ¶ 20(c) is appropriate. Applicant recently sought financial counseling, but there are no clear indications that his financial problem is being resolved or is under control. He presented limited evidence that he has received financial counseling. Considering the number of delinquent debts, the date the debts were acquired, the aggregate value of the debts, and the lack of corroborating documentary evidence of efforts to resolve his legal financial obligations, Applicant's information is insufficient to establish that his financial problems are unlikely to recur. The remaining mitigating conditions are not reasonably raised by the facts in this 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 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.

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. AG ¶ 2(c).

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant receives credit for his years of active duty in the Army, years of successfully holding a security clearance, and years working for government contractors.

Notwithstanding, security concerns remain about Applicant's current financial responsibility, reliability, and judgment. Applicant has failed to show good-faith efforts to resolve his financial problems in a timely manner. The sparse mitigating record evidence fails to convince me of Applicant's suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the security concerns arising from his 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 - 1.k

Against Applicant

Conclusion

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

ROBERT J. TUIDER
Administrative Judge