



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



In the matter of:)	
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SSN: -----)	ISCR Case No. 09-02049
)	
Applicant for Security Clearance)	

Appearances

For Government: Melvin A. Howry, Esquire, Department Counsel
For Applicant: *Pro se*

November 10, 2010

Decision

ROSS, Wilford H., Administrative Judge:

Applicant submitted his Electronic Questionnaires for Investigations Processing (e-QIP), on October 6, 2008. (Government Exhibit 3.) On June 30, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline F (Financial Considerations) about Applicant. 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 adjudicative guidelines (AG) effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant answered the SOR in writing on September 24, 2009, and requested a hearing before an Administrative Judge. Department Counsel was prepared to proceed on November 12, 2009. This case was assigned to me on December 15, 2009. DOHA issued a notice of hearing on December 16, 2009, and I convened the hearing as scheduled on January 27, 2010. The Government offered Government Exhibits 1 through 9, which were received without objection. Applicant testified and submitted

Applicant Exhibits A through F, which were also received without objection. The record was left open to allow Applicant to submit additional information. On February 18, 2010, Applicant submitted Applicant Exhibit G, which was received without objection. DOHA received the transcript of the hearing on February 12, 2010. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

Findings of Fact

The Applicant is 50 and married. He is employed by a defense contractor and seeks to obtain a security clearance in connection with his employment in the defense industry.

Guideline F, Financial Considerations

The Government alleges that Applicant is ineligible for clearance because he is financially overextended and therefore at risk of having to engage in illegal acts to generate funds. Applicant admits allegations 1.a. through 1.m. in the SOR. Those admissions are deemed findings of fact. Applicant denied allegation 1.n. He also submitted additional statements supporting his request for a security clearance.

The SOR alleges, Applicant admits, and Government exhibits substantiate, 13 delinquent debts totaling approximately \$36,997. Some of these debts have been due and owing since 2005. (Government Exhibits 4, 5, 6, 7 and 8.)

Applicant testified that has not completely paid off any of the admitted debts. His specific reasoning for ignoring his financial responsibilities was that he has always been concerned with his specific job. Regarding his debts he stated, "I have truly not been focused like I need to and there's no excuse for that." (Transcript at 45.) Applicant also stated that his wife was attempting to handle his finances and pay his bills. (Transcript at 44-45, 52, 58.) After the hearing, he submitted a copy of a letter he had sent to a law firm, stating, "Please contact the following creditors on my behalf in an attempt to settle my debts in a fair and amicable way." (Applicant Exhibit G at 4-5.) No other documentation was submitted about the current status of any of the debts. The specific debts referred to in Applicant Exhibit G are identified below.

1.a. Applicant admits this judgment in the amount of \$1,379. He stated that it is being collected by means of a garnishment. (Government Exhibit 3 at Section 27; Transcript at 59-62.) It is one of the debts included in Applicant Exhibit G.

1.b. Applicant admits this judgment in the amount of \$10,931. He stated that it is being collected by means of a garnishment. (Government Exhibit 3 at Section 27; Transcript at 59-62.) It is one of the debts included in Applicant Exhibit G.

1.c. Applicant admits this debt in the amount of \$510. He testified that he could not state with certainty whether this debt had been paid or not. (Transcript at 63.) It is not one of the debts included in Applicant Exhibit G.

1.d. Applicant admits this debt in the amount of \$4,480. He testified that this debt has not been paid. (Transcript at 63.) It is one of the debts included in Applicant Exhibit G.

1.e. Applicant admits this debt in the amount of \$11,517 for a time share. He states that his wife is negotiating with the creditor. (Transcript at 55-56.) It is one of the debts included in Applicant Exhibit G.

1.f. Applicant admits this debt in the amount of \$89. He testified that he could not state with certainty whether this debt had been paid or not. (Transcript at 63.) It is not one of the debts included in Applicant Exhibit G.

1.g. Applicant admits this debt in the amount of \$2,059. He testified that he could not state with certainty whether this debt had been paid or not. (Transcript at 63.) It is one of the debts included in Applicant Exhibit G.

1.h. Applicant admits this debt in the amount of \$1,637 for a student loan. He testified that he has been paying some amount of money on his student loans. (Transcript at 53-55, 57.) It is not one of the debts included in Applicant Exhibit G.

1.i. Applicant admits this debt in the amount of \$3,086 for a student loan. He testified that he has been paying some amount of money on his student loans. (Transcript at 53-55.) It is one of the debts included in Applicant Exhibit G.

1.j. Applicant admits this debt in the amount of \$217 for a student loan. He testified that he has been paying some amount of money on his student loans. (Transcript at 53-55.) It is one of the debts included in Applicant Exhibit G.

1.k. Applicant admits this debt in the amount of \$124 for a student loan. He testified that he has been paying some amount of money on his student loans. (Transcript at 53-55.) It is one of the debts included in Applicant Exhibit G.

1.l. Applicant admits this debt in the amount of \$421. He testified that he believed his wife had paid this debt. (Transcript at 64.) It is not one of the debts included in Applicant Exhibit G. Based on all of the available evidence, I find that this debt is still due and owing.

1.m. Applicant admits this debt in the amount of \$547. He testified that he could not state with certainty whether this debt had been paid or not. (Transcript at 64.) It is not one of the debts included in Applicant Exhibit G.

1.n. Applicant denied receiving Non-Judicial Punishment in 1996 for Larceny of Government Funds and Fraud Against the United States, for which he received a written reprimand. During the hearing, he admitted that this had taken place because he had failed to notify the Government of a change in his military status that would have reduced his pay. He acknowledged that this was a mistake on his part, but stated it was because he was concentrating on the mission, and not through any desire to defraud the Government of approximately \$3,000. (Government Exhibits 1 and 2; Transcript at 29-34.)

Mitigation

Applicant submitted letters of recommendation from an officer he serves with and a senior civilian employee of the Defense Department. Both find him trustworthy and recommend that he be granted a security clearance. (Applicant Exhibits A and B.)

Applicant is a highly decorated veteran, retiring with the rank of E-7. He received many decorations for his service of 20 years, which included over nine years of foreign service. (Applicant Exhibit C.) Since his retirement in 1999, he has held several high-ranking jobs in the civilian sector, in and out of the defense industry. (Applicant Exhibit F.) He has been in his current position since 2008, and has taken several courses in his area. (Applicant Exhibits D and E; Transcript at 24-25.)

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 must 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, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The Administrative Judge's over-arching 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. In addition, the Administrative Judge may also rely on his own common sense, as well as his knowledge of the law, human nature, and the ways of the world, in making a reasoned decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "Any 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, and 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 about potential, rather than actual, risk of compromise of classified information.

Finally, as emphasized by President Eisenhower in Section 7 of Executive Order 10865, "Any determination under this order adverse to an applicant shall be a determination 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

It is the Government's responsibility to present substantial evidence to support the finding of a nexus, or rational connection, between the Applicant's conduct and the continued holding of a security clearance. If such a case has been established, the burden then shifts to the Applicant to go forward with evidence in rebuttal, explanation or mitigation which is sufficient to overcome or outweigh the Government's case. The Applicant bears the ultimate burden of persuasion in proving that it is clearly consistent with the national interest to grant him or her a security clearance.

In this case the Government has met its initial burden of proving by substantial evidence that the Applicant has financial difficulties which may affect his ability to safeguard classified information. The Applicant, on the other hand, has not successfully mitigated the Government's case.

Guideline F, Financial Considerations

The security concern 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, by his own admission, has over \$36,000 in past due debts, all of which have been due and owing for several years. The evidence is sufficient to raise these potentially disqualifying conditions.

The guideline also includes 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's financial difficulties arose recently, starting about 2005, and continue to the present. In addition, Applicant has failed to provide any evidence that he is paying any of his debts, or has any reasonable plan to do so. He states that his wife is handling his debts, and submitted a letter showing that he may be retaining a law firm to resolve them. However, he submitted no other evidence. I have considered those facts, but find them wanting due to a lack of forward movement. A mere statement of intent to pay or resolve his debts in the future is insufficient evidence to conclude that he has acted responsibly towards his debts. It is Applicant's burden to submit evidence showing that his financial situation has improved. He has not done so. This mitigating condition is not applicable to this case.

Applicant has not initiated a good-faith effort to pay off his creditors. There is no track record of his making payments, even for the smallest debts. Accordingly, AG ¶ 20(d) is not applicable. Finally, given the fact that he is \$36,000 in debt, I cannot find that "there are clear indications that the problem is being resolved or is under control," as required by AG ¶ 20(c).

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. Applicant is under financial strain, and has been so for several years. His debt situation is not yet under control. I have also considered the positive references he submitted, and his laudatory military career. Those facts are insufficient to support a finding for the Applicant.

Under AG ¶ 2(a)(3), Applicant's conduct is recent. Based on the state of the record, I cannot find that there have been permanent behavioral changes under AG ¶ 2(a)(6). Accordingly, at the present time, I find that there is the potential for pressure, coercion, exploitation, or duress (AG ¶ 2(a)(8); and that there is a high likelihood of recurrence (AG ¶ 2(a)(9).

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 financial situation. If the Applicant is able to resolve his debt situation successfully, he may be eligible for a security clearance in the future. He is not eligible now.

On balance, I conclude that Applicant has not successfully overcome the Government's case opposing his request for a DoD security clearance. Accordingly, the evidence supports a denial of his request for a security clearance.

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 THE APPLICANT
Subparagraphs 1.a. through 1.n.:	Against the 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.

WILFORD H. ROSS
Administrative Judge