



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



In the matter of:)
)
) ISCR Case No. 09-02469
)
)
Applicant for Security Clearance)

Appearances

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

January 20, 2010

Decision

RIVERA, Juan J., Administrative Judge:

Applicant is financially overextended and lacks a track record of financial responsibility. He failed to mitigate financial considerations security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On December 15, 2008, Applicant submitted an Electronic Questionnaires for Investigations Processing (SF 86). On June 10, 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), dated January 2, 1992, as modified and revised; and the revised adjudicative guidelines (AG) implemented on August 30, 2006.

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 him, and recommended referral to an administrative judge to determine whether a clearance should be granted, denied, or revoked.

On June 30, 2009, Applicant responded to the SOR allegations and requested a hearing before an administrative judge. The case was assigned to another administrative judge on July 29, 2009. DOHA issued a notice of hearing on August 7, 2009. Because of scheduling considerations, it was reassigned to me on September 10, 2009. The hearing was convened as scheduled on September 24, 2009. The government offered Government Exhibits (GE) 1 through 3, which were admitted without objection. Applicant testified and submitted Applicant Exhibit (AE) 1, post-hearing, which was admitted without objection. DOHA received the transcript of the hearing (Tr.) on September 29, 2009.

Procedural Issue

At the hearing, Applicant testified that the government contractor was sponsoring his security clearance, but he expressed concerns about the possibility of not being hired because of the company's downsizing (Tr. 28). Department counsel indicated that, to her knowledge, the government contractor was sponsoring Applicant's security clearance. She produced a Joint Personnel Adjudication System (JPAS) document, dated September 23, 2009, showing that Applicant had not been separated and his sponsorship was still active (Appellate Ext. 1).

After the hearing, department counsel produced another JPAS document, dated October 9, 2009, showing that the government contractor "Separated" Applicant as of October 10, 2009. Additionally, the government contractor submitted a letter (dated October 9, 2009) indicating that, due to the company's downsizing, Applicant would not be hired even if he was to receive a clearance (Appellate Ext. 2). I find that Applicant's employment with the defense contractor was terminated because of the security concerns alleged in the SOR. I also find that Applicant's hearing commenced before Applicant's "Separation" from his employment. Based on the foregoing information, I concluded I had jurisdiction to conduct the hearing and that I have jurisdiction to issue a decision. Directive ¶ 4.4; ISCR Case No. 05-04831 at 3-4 (App. Bd. Nov. 29, 2006).

Findings of Fact

Applicant denied the factual allegations in SOR ¶¶ 1.a, 1.d, 1.f, and 1.h through 1.k. He admitted SOR ¶¶ 1.b, 1.c, 1.e, and 1.g. His admissions are incorporated herein as findings of fact. After a thorough review of the evidence of record, and having considered Applicant's demeanor and testimony, I make the following additional findings of fact.

Applicant is a 41-year-old personal security officer who was employed by a defense contractor. He served honorably in the U.S. Air Force from 1988 to 1997. His military occupational specialty (MOS) was firefighter and he achieved the pay grade of E-4. Because of his MOS, Applicant held a secret clearance during most of his service. Between 2000 and 2001, Applicant attended college for some time; however, he did not complete a degree.

He married his first wife in 1994, they were separated in 1999, and divorced in 2006. He has two children from this relationship, ages 14 and 12, for whom he provides \$852 monthly in financial support. He married his current spouse in July 2009, and he has a stepchild from this marriage.

After leaving the service in 1997, Applicant was employed from January 1998 to November 2002. He was laid off and unemployed from November 2002 to March 2003. He was employed from November 2002 to July 2006, and unemployed from July 2006 to July 2007. In July 2007, he was hired by a government contractor. His employer lost its government contract, and in December 2008, the new contractor required Applicant to submit a security clearance application. Under the sponsorship of his new employer, Applicant was issued an interim security clearance at the secret level. In June 2009, his interim security clearance was terminated because of the financial concerns alleged in the pending SOR and Applicant was laid off. He is currently employed as a personal security guard by the military attaché office of a Middle Eastern country in the United States. Additionally, Applicant has a part-time job as a travelling security officer providing security for ATM technicians. He is working a part-time job to earn additional income to pay his debts.

In his security clearance application, Applicant disclosed having financial problems (being over 180 days delinquent on some of his debts) because of a period of unemployment. His background investigation addressed his financial status and included the review of January and April 2009 credit bureau reports (CBRs) and Applicant's security clearance application.

The SOR alleges 11 delinquent and/or charged off accounts, totaling approximately \$27,000, which have been delinquent for a number of years. Applicant denied SOR ¶ 1.a claiming he paid that debt when he closed the account. He denied SOR ¶ 1.d claiming that SOR ¶ 1.d and SOR ¶ 1.e alleged the same student loan, that the correct amount owed was \$2,889, and that the student loan was in deferment. He denied SOR ¶¶ 1.f and 1.h claiming that both debts were paid in full. And he denied SOR ¶¶ 1.i through 1.k, because he did not recognize these debts.

Applicant was allowed additional time to submit documentary evidence to support his claims. He failed to submit documentary evidence showing that he paid the debts in SOR ¶¶ 1.a., 1.f, and 1.h. Based on his credit reports I find these are his accounts and they are not resolved.

I find that SOR ¶¶ 1.b and 1.g alleged the same debt, accrued because of child support arrearages resulting from Applicant's periods of unemployment. Applicant is now current on this debt and has paid all but \$74 of this judgment (AE 1).

The debt in SOR ¶ 1.c is still outstanding. Applicant claimed that in July 2009, he attempted to settle this debt, but the creditor refused to accept less than full payment. He claimed he is trying to pay this debt as soon as possible, but failed to document what efforts he has taken or intends to take to resolve this debt.

I find that SOR ¶¶ 1.d and 1.e alleged the same student loan, and that he owes approximately \$6,426 (GEs 2 and 3, and AE 1). Applicant failed to present any documentary evidence to show he has made any payments on this loan or that the student loans have been deferred.

Applicant disputed through the credit bureaus the debts in SOR ¶¶ 1.i and 1.j. Both accounts have been verified as Applicant's debts. I also find SOR ¶ 1.k is Applicant's debt based on his credit reports.

Applicant attributed his current financial problems to three main causes: his periods of unemployment; his separation and divorce; and his lack of money management skills. He never followed a budget until his recent marriage, and his earnings are not sufficient to pay for his old debts and current living expenses. At his hearing, Applicant claimed he and his wife follow a budget; however, he did not present documentary evidence of his budget or that he is following one. He also claimed he is seeking financial counseling through his credit union; however, as of his hearing date he had not scheduled an appointment to speak with a financial counselor.

Applicant was earning approximately \$3,200 a month, and his wife was earning around \$2,600 a month. To correct his financial situation he and his wife are living with his parents. He does not pay rent, but contributes by paying some of the household expenses. He averred he is doing everything he can do under the circumstances to pay his creditors.

Applicant expressed remorse for his financial problems. He claimed that he was overwhelmed by his financial and personal problems and ignored his financial obligations because he was not making enough money to pay his delinquent debts and his day-to-day expenses. After starting his current job, he claimed he has been making efforts to resolve his financial problems. He presented little documentary evidence of such efforts. Applicant highlighted his service to his country, and that he served government contractors well in prior jobs. There is no evidence that Applicant ever compromised or caused others to compromise classified information.

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 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."¹ 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).

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

¹ 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).

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 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.

The SOR alleged 11 delinquent and/or charged off debts that have been delinquent for a number of years. Applicant resolved SOR ¶¶ 1.b, 1.e, and 1.g. The remaining SOR debts are Applicant’s delinquent debts as established by the admitted CBRs and his testimony at the hearing.

Other than paying SOR ¶ 1.b, Applicant presented little documentary evidence that he has paid, settled, or resolved the alleged debts. Other than contesting some of the debts, he did he present documentary evidence of efforts to resolve his financial obligations. It is not clear from his testimony whether Applicant has the financial means to pay his legal obligations, delinquent debts, and his day-to-day living expenses. AG ¶ 19(a): inability or unwillingness to satisfy debts; and AG ¶ 19(c): a history of not meeting financial obligations, apply.

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 established circumstances beyond his control, which contributed to his inability to pay his debts, i.e., his periods of unemployment and his separation and divorce. I find AG ¶ 20(b) partially applies, but does not fully mitigate the financial concerns. Applicant's evidence is not sufficient to show he acted responsibly under the circumstances. He presented little evidence of debt payments, contacts with creditors, and settlement or negotiations to resolve his SOR debts. Because of his failure to address several small SOR debts, I also find he is not financially responsible. Considering the evidence as a whole, his financial problems are not under control. Applicant does not seem to have a viable financial plan to resolve his financial predicament or to avoid similar financial problems in the future.

AG ¶¶ 20(a), (c), (d), and (e) do not apply because Applicant's financial problems are not yet under control, and he has not participated in financial counseling. He also failed to show he made good-faith efforts to resolve his debts. His actions cast doubt on his current reliability, trustworthiness, and judgment. AG ¶ 20(f) does not apply.

Despite partial applicability of AG ¶ 20(b), financial considerations concerns are not mitigated. Applicant has not demonstrated his financial responsibility by taking sufficient actions to resolve his debts.

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 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.

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 honorably served nine years in the Air Force. He is a mature man and a good worker. There is no evidence he has ever compromised or caused others to compromise classified information. Applicant expressed remorse for his financial mistakes and promised to pay his creditors. He established some circumstances beyond his control, which contributed to his inability to pay his debts. These factors show some responsibility, good judgment, and mitigation.

Notwithstanding, Applicant's evidence is not sufficient to show he acted responsibly under the circumstances. He presented little documentary evidence of debt payments, contacts with creditors, and settlement or negotiations of debts. Applicant has been employed since 1998, except for the previously mentioned periods of unemployment from November 2002 to March 2003, and from July 2006 to July 2007.

Applicant's favorable information fails to show financial responsibility and good judgment. It appears that he has either made inadequate efforts to resolve his financial obligations or he is financially overextended. His recent efforts to resolve his debts are not sufficient to establish a track record of financial responsibility. His financial problems are not under control. He has not participated in financial counseling, and he does not seem to have a viable plan to avoid similar financial problems in the future.

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.c, 1.d, 1.f, and 1.h – 1.k:	Against Applicant
Subparagraphs 1.b, 1.e, and 1.g:	For 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.

JUAN J. RIVERA
Administrative Judge