



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



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| In the matter of: |) | |
| |) | |
| ----- |) | ISCR Case No. 09-02521 |
| SSN: ----- |) | |
| |) | |
| Applicant for Security Clearance |) | |

Appearances

For Government: Francisco Mendez, Esq., Department Counsel
For Applicant: *Pro Se*

February 18, 2010

Decision

MARSHALL, Jr., Arthur E., Administrative Judge:

Applicant signed a security clearance application (SF-86) on July 29, 2008. On October 2, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) enumerating security concerns arising 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 for SORs issued after September 1, 2006.

In a response notarized on October 23, 2009, Applicant admitted all seven of the allegations set forth in the SOR and requested an administrative determination. Department Counsel submitted a File of Relevant Material (FORM), dated December 23, 2009. Applicant received the FORM on December 28, 2009. Applicant responded to the FORM on January 25, 2010. The case was assigned to me on February 4, 2010. Based on a review of the case file, submissions, and exhibits, I find Applicant failed to meet his burden regarding the security concerns raised. Security clearance is denied.

Findings of Fact

Applicant is a 56-year-old driver for a defense contractor. Prior to a career as a driver, Applicant owned a printing company for two decades. He has a diploma from business college. Applicant is a divorced father of two grown children. In choosing an administrative determination, Applicant chose to rely on the written record. The facts he submitted with regard to his past and his financial situation are brief. He admitted each of the seven financial allegations noted in the SOR. Each admission noted that the delinquent debt at issue is currently being resolved by a credit repair agency.

In 2004, after about 23 years of marriage, Applicant and his wife separated. At the time, she handled the family accounts. Not having reviewed his credit report since 1986, he assumed his finances were in order when he successfully refinanced his home in 2005. In 2006, Applicant formally closed his printing company after it was adversely affected by Hurricane Katrina in 2005. He then started working with his brother, towing emergency vehicles involved in post-hurricane recovery and restoration. With the exception of a three-month period of unemployment in 2007, he has been employed as a driver ever since. Applicant was divorced in the summer of 2007. He was unaware that he had any delinquent debts or mishandled accounts until he received the SOR in October 2009.¹

At issue are seven delinquent debts, noted in the SOR under allegations ¶1.a-¶1.g. In sum, they amount to about \$17,160. With regard to the debts noted at allegations ¶¶ 1.b-1d, Applicant only noted that his ex-wife controlled his accounts at the time the debts were acquired or became delinquent.² All of those accounts are now handled by a credit repair agency, which is working “to resolve and remove the delinquent accounts from [his] record.”³ He stated that all the “outstanding debts should be resolved in approximately 36 months.”⁴ No accounts have been independently paid. There is no evidence Applicant has formally disputed any of the accounts at issue.

In discussing his finances, Applicant stated that his “credit reports show a consistency with [his] finances over the past 15 years. His only bad debts are those [his] ex-wife was in charge of and the two that are related to [his] business [for] \$988 [allegation ¶ 1.f] and \$155 [allegation ¶ 1.g].”⁵ He also noted that his financial history otherwise “has a high of \$84,000, paid as agreed, and as low as \$400 paid as agreed.”⁶

¹ Response to the FORM, dated Jan. 25, 2010, at 2.

² Response to the SOR, notarized on Oct. 23, 2009.

³ Response to the FORM, note 1, above, at 1; Response to the SOR, note 2, above.

⁴ Response to the FORM, note 1, above, at 1.

⁵ *Id.*

⁶ *Id.*

Policies

When evaluating an applicant's suitability for a security clearance, an 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. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, they are applied in conjunction with the factors listed in the adjudicative process. An administrative judge's over-arching adjudicative goal is a fair, impartial and commonsense decision. Under AG ¶ 2(c), this process is a conscientious scrutiny of a number of variables known as the "whole person concept." An 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.

The United States Government (Government) must present evidence to establish controverted facts alleged in the SOR. 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. . . ." ⁷ The burden of proof is something less than a preponderance of evidence. ⁸ The ultimate burden of persuasion is on the applicant. ⁹

A person seeking access to classified information enters into a fiduciary relationship with the Government based on 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

⁷ See also ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

⁸ *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

⁹ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

applicant concerned.”¹⁰ “The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”¹¹ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such information.¹² A security clearance denial does not necessarily reflect badly on an applicant’s character. It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense established for issuing a clearance.

Guideline (Financial Considerations) is the most pertinent to the case. Applicable conditions that could raise a security concern and may be disqualifying, as well as those which would mitigate such concerns, are set forth and discussed below.

Analysis

Under Guideline F: “failure or an 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.”¹³ It also states that “an individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.”¹⁴ Here, Applicant admitted that he has approximately \$17,160 in delinquent debts. To date, those debts remain unpaid. Currently handled by a credit repair agency, he believes they may not be “resolved” for at least 36 months. Therefore, Financial Considerations Disqualifying Condition (FC DC) AG ¶ 19(a) (inability or unwillingness to satisfy debts) and FC DC AG ¶ 19(c) (a history of not meeting financial obligations) apply. With such conditions raised, it is left to Applicant to overcome the case against him and mitigate security concerns.

Applicant’s printing business closed as a result of Hurricane Katrina. Some of the debts at issue are apparently the result of his ex-wife’s management of the family books during their estrangement. To the extent these factors gave rise to SOR allegations ¶2.b–¶2.d and ¶2.f–¶2.g, Financial Considerations Mitigating Condition (FC MC) AG ¶ 20(b) (the conditions that resulted in the behavior were largely beyond the person’s control (*e.g.*, loss of employment, a business downturn, unexpected medical

¹⁰ See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information), and EO 10865 § 7.

¹¹ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

¹² *Id.*

¹³ Revised Adjudicative Guideline (AG) ¶ 18.

¹⁴ *Id.*

emergency, or a death, divorce or separation) and the individual acted responsibly under the circumstances) applies.¹⁵

Applicant's delinquent debts are multiple in number and remain unpaid. While he stated he is using a credit repair agency, there is no indication he has received financial counseling. Given the fact he appears to be unable to address these delinquent debts in under three years and no other circumstances are noted,¹⁶ neither Financial Considerations Mitigating Condition (FC MC) AG ¶ 20(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), FC MC AG ¶ 20(d), (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts), nor FC MC AG ¶ 20(c) (the person has received or is receiving counseling for the problem and there are clear indications that the problem is being resolved or is under control) applies.

Applicant attributes his delinquent debts to Hurricane Katrina and his ex-wife's mismanagement of the family accounts. No other relevant facts are provided. While these facts help mitigate the creation of most of the delinquent debts at issue, they do not mitigate the fact there is no evidence that any of the debts have been paid, formally disputed, or otherwise addressed. Additionally, no documentation was submitted indicating what efforts, if any, have been undertaken, thus far, by the credit repair agency. Based on the few facts presented by the Applicant, he failed to meet his burden in mitigating financial considerations security concerns.

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 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.

¹⁵ Applicant was also unemployed for a three-month period in 2007. No mention is made, however, as to whether this contributed to the delinquency of any of the accounts at issue.

¹⁶ In choosing an administrative determination in lieu of a hearing, the record is limited to the scant information submitted by Applicant.

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. As noted above, the ultimate burden of persuasion is on the applicant seeking a security clearance.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case, as well as the “whole person” factors. Applicant is a mature father of two grown children. He changed careers when his company was adversely affected by Hurricane Katrina. Around the same time, he separated from his wife of over two decades. The hurricane and his ex-wife’s apparent mismanagement of their accounts contributed to the creation of most of the delinquent debts at issue. While those debts are now managed by a credit repair agency, there is no evidence of the agency’s progress resolving his debts, and no facts were presented explaining why those debts are not expected to be resolved in less than three years.

In requesting an administrative determination, Applicant chose to rely on the written record. In so doing, he failed to submit sufficient information or evidence to supplement the record with relevant material regarding his circumstances, articulate his position, and carry his burden. He failed to offer evidence of financial counseling. He failed to provide documentation regarding any efforts to address his delinquent debts, except his expectation that they will be resolved by a credit repair agency in the next three years. The clearly consistent standard indicates that security clearance determinations should err on the side of denials. By failing to provide additional information, financial considerations security concerns remain. Clearance is denied.

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:

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| Paragraph 1, Guideline F: | AGAINST APPLICANT |
| Subparagraph 1.a - 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 the national interest to grant Applicant a security clearance. Clearance is denied.

ARTHUR E. MARSHALL, JR.
Administrative Judge