



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



In the matter of: )  
 )  
 ) ISCR Case No. 09-03394  
 SSN: )  
 )  
 Applicant for Security Clearance )

**Appearances**

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

March 29, 2010

**Decision**

---

LOUGHRAN, Edward W., Administrative Judge:

Applicant has not mitigated the Financial Considerations security concerns. Eligibility for access to classified information is denied.

**Statement of the Case**

On October 28, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, Financial Considerations. The action was taken under Executive Order (EO) 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).

Applicant answered the SOR on November 13, 2009. Applicant did not specify whether he wanted a hearing before an administrative judge or a decision on the written record. Department Counsel verified that he wanted a hearing. The case was assigned to another administrative judge on January 28, 2010, and reassigned to me on February

25, 2010. DOHA issued a notice of hearing on February 18, 2010, and the hearing was convened as scheduled on March 9, 2010. The government offered Exhibits (GE) 1 through 4, which were received without objection. Applicant testified on his own behalf but did not submit any documentary evidence. The record was held open until March 23, 2010, for Applicant to submit additional information. Applicant submitted documents that were marked Exhibits (AE) A and B. Department Counsel had no objection to the contents of the documents, but objected to the "timeliness of the submission," because the documents were received on March 24, 2010. The objection is overruled, and AE A and B are admitted. DOHA received the transcript of the hearing (Tr.) on March 17, 2010.

### **Findings of Fact**

Applicant is a 49-year-old employee of a defense contractor. He is seeking to obtain a security clearance. He attended college for several years but did not earn a degree. He is married with two children, ages 25 and 8.<sup>1</sup>

The SOR alleges three delinquent debts, with balances totaling \$28,428. Applicant admitted owing the three debts alleged in the SOR. The debts are for three credit card accounts.

Applicant attributed his financial difficulties to several events. His wife took an unpaid leave of absence to care for their baby in December 2001. He had steady employment as the manager of a fast food restaurant since 1997. The stress from the job caused him health problems. He left the job in 2003. Finding another job was more difficult than he expected. He had extended periods of unemployment and underemployment until he was hired as a security officer in 2006. He has worked consistently since then as a security officer for various companies. He does not earn as much income as when he worked for the fast food restaurant.<sup>2</sup>

Applicant contracted with a debt resolution/consumer counseling company to address his delinquent debts in about 2003. He entered into the company's debt settlement program. He paid \$397 per month into the program until about June 2007. He stopped paying into the program in order to pay other bills. Several debts were paid through the program. The debts in the SOR were not paid through the program or were incurred after he left the program.<sup>3</sup>

Applicant was interviewed for his background investigation by an investigator from the Office of Personnel Management (OPM) on December 18, 2008. He was asked about his finances and the delinquent debts that were listed on his credit report. He discussed the three debts listed in the SOR. He admitted owing the debts alleged in

---

<sup>1</sup> Tr. at 18-19, 23-24, 46-47; GE 1.

<sup>2</sup> Tr. at 16-32; GE 1, 2.

<sup>3</sup> Tr. at 34-38; GE 2.

SOR ¶¶ 1.a (\$9,226) and 1.b (\$17,999). He did not recognize the account alleged in SOR ¶ 1.c (\$1,203). He discussed another delinquent debt of between \$500 and \$600 dollars. That debt is not alleged in the SOR. He told the investigator that he obtained financial counseling, had a budget, and destroyed his credit cards. He stated that he expected to receive royalties from a company that leased the rights to natural resources on his property. He planned on settling his debts with the royalties.<sup>4</sup>

Applicant is paying \$91 per month toward a loan that is not alleged in the SOR. He received a \$1,200 royalty check in December 2009. He paid about \$400 to a debt that is not listed on the SOR, and used the rest for other expenses. He has made no payments on any of the debts alleged in the SOR. He stated he plans on paying the debts, but has not yet been capable of doing so. He received financial counseling in 2008. He has also attended financial seminars and received financial counseling through his church. He maintains a written budget.<sup>5</sup>

### **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 to 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, administrative judges apply the guidelines 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, the applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate,

---

<sup>4</sup> GE 2.

<sup>5</sup> Tr. at 38-46; GE 2; AE B.

or mitigate facts admitted by the applicant or proven by Department Counsel.” The applicant has the ultimate burden of persuasion to obtain 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 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 EO 10865 provides that adverse 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, 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. Two are potentially applicable in this case:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant accumulated a number of delinquent debts and was unable or unwilling to pay his obligations for a period. The evidence is sufficient to raise the above disqualifying conditions.

Four Financial Considerations mitigating conditions under AG ¶ 20 are potentially applicable:

(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; and

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant still owes the debts alleged in the SOR. His financial issues are current and ongoing. AG ¶ 20(a) is not applicable.

Applicant's wife took an unpaid leave of absence to care for their baby in December 2001. The stress from Applicant's job as the manager of a fast food restaurant was causing health problems, and he resigned from the position in 2003. He had extended periods of unemployment and underemployment until he was hired as a security officer in 2006. These events do not completely qualify as conditions that were outside his control, because he left his managerial position voluntarily. AG ¶ 20(b) also requires that the individual act responsibly under the circumstances. Applicant contracted with a debt resolution/consumer counseling company in about 2003, and entered into the company's debt settlement program. He paid \$397 per month into the program until about June 2007. He is paying \$91 per month to a loan that is not alleged in the SOR. He has not made any payments on the debts alleged in the SOR. Applicant has not submitted sufficient evidence for a determination that he has acted responsibly under the circumstances. AG ¶ 20(b) is partially applicable.

Applicant has received financial counseling. His efforts at paying his delinquent debts are not yet sufficient to qualify as a good-faith effort to pay or resolve his debts. He has not established clear indications that the problem is being resolved or is under control. AG ¶ 20(c) is partially applicable. AG ¶ 20(d) is not applicable.

In sum, I conclude that financial concerns are still present despite the presence of some mitigation.

### **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. I have incorporated my comments under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment. Applicant was honest and forthright at his hearing. However, he did not present enough evidence for me to conclude that his finances are in good order.

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 Financial Considerations security concerns.

### **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:                      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.

---

Edward W. Loughran  
Administrative Judge