



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



In the matter of:)	
)	
)	ISCR Case No. 09-03724
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: John B. Glendon, Esq., Department Counsel
For Applicant: *Pro Se*

January 12, 2010

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the government’s security concerns under Guideline F, Financial Considerations. Applicant’s eligibility for a security clearance is denied.

On September 4, 2009, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) detailing the security concerns under Guideline F. 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 within the Department of Defense for SORs issued after September 1, 2006.

Applicant answered the SOR in writing on September 20, 2009, and requested a hearing before an administrative judge. The case was assigned to me on November 3, 2009. DOHA issued a notice of hearing on the same day, and I convened the hearing as scheduled on November 23, 2009. The government offered Exhibits (GE) 1 through 6. Applicant did not object and they were admitted. Applicant testified and offered

Exhibits (AE) A through D. Department Counsel did not object and they were admitted. DOHA received the transcript of the hearing (Tr.) on December 2, 2009.

Findings of Fact

Applicant's admitted the single allegation in the SOR. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is 26 years old and has worked as accountant for a government contractor since November 2008. He graduated from college in 2007. He is engaged and is planning a wedding in July 2010. Prior to working at his present job he worked in the banking business.¹

In June or July 2006, Applicant's brother and his fiancé purchased a house. The house was owned jointly and was financed based on their two incomes. The relationship ended and the fiancé wanted her name taken off of the house documents. Applicant's brother attempted to refinance the house in his name only, but could not get a new loan. Applicant agreed to help him refinance the house. Due to his brother's credit rating they would be able to get a better rate if Applicant refinanced the home in his name alone. He felt an obligation to help his brother, so he agreed to the plan. A mortgage was secured for approximately \$498,000 and a home equity loan was secured for \$124,000, both in Applicant's name alone. His brother obtained about \$4,000 in cash from the refinancing.²

Applicant's brother was to pay the mortgage payments and Applicant would pay the utilities on the house, which were about \$400 to \$500 a month. Applicant had been living at home with his parents, but when he bought the house, he lived there with his brother beginning in August 2006 until approximately June 2008. Applicant's brother worked as an auto mechanic and at the time was earning about \$100,000 annually. Applicant was earning between \$45,000 and \$50,000 annually, at that time. In about November 2007, due to a slowing economy, his brother's income was reduced, and he could no longer pay the mortgage payments. Applicant had other expenses he was paying and could not make the payments on either loan. He attempted to "short sale" the house, but was unsuccessful. They attempted to take in a renter, but they still could not meet the payments. The house was foreclosed in June 2008. It was sold and the mortgage was paid. There was a deficiency of about \$80,000 to \$90,000 on the debt that was forgiven. No debt is owed on the first mortgage. The home equity loan was not paid.³

¹ Tr. 28.

² Tr. 20-24, 30, 35-45.

³ Tr. 20-24, 32, 35-49, 52, 54.

Applicant testified that he has attempted to negotiate a payment plan with the collection company, but they want a large down payment of approximately \$20,000. They will not accept monthly payments until a down payment is made. He has contacted them a couple of times, but has not negotiated a settlement plan.⁴

Applicant returned to his parents home and pays between \$300 and \$500 a month rent. He now earns approximately \$41,000 a year. He works a second job and earns about \$400 a month. Applicant owes \$22,000 for student loans and is making \$300 monthly payments. He has approximately \$8,000 to \$9,000 in credit card debts and is making monthly payments. He received \$1,500 to \$1,600 from his 2008 income tax return. He borrowed about \$4,000 from a friend to pay for an engagement ring and other expenses associated with his engagement. He has about a \$1,500 balance remaining to be paid on this loan.⁵

Applicant understands he is responsible for the home equity loan. He explained has other expenses at this time and can not make the down payment. Since moving back to his parent's home he has not saved money to pay off this debt. His brother does not have the money. They have not made a plan together to pay the debt. His brother does not work a second job. Applicant's fiancé is in law school and will graduate in 2012. She has student loans to cover her school expenses. When they marry in 2010, Applicant stated he will support her. He will move out of his parents' house and find a place a different place to live. He hopes to start a master's degree program sometime next year and attend school part-time. He hopes to get a better job after completing his master's degree. Applicant stated that he plans on paying the debt, but he did not provide any details on how he plans to do so. He has not had any financial counseling. He does not have a written budget.⁶

Applicant testified he has been working since he was 16 years old and paid his way through college. He had been diligent paying all of his other expenses and debts. He never asked his parents for financial help. He understands the debt is his responsibility and he took it on because he felt obligated to help his brother. He explained he is not able to fulfill his obligation for repaying this debt at this time. He did not provide any information as to when he will be able to pay the debt.⁷

Applicant's brother provided a letter confirming the arrangements he made with his brother when the mortgage was refinanced. His letter stated he is trying to work out an affordable arrangement with the mortgage company. No other evidence was provided regarding the debt.⁸

⁴ Tr. 21-24, 49-52.

⁵ Tr. 25-26, 29, 49, 55, 61-68.

⁶ Tr. 56-60, 63-64, 70, 76-78.

⁷ Tr. 56-60, 63-64, 70, 75-76.

⁸ AE A.

Applicant provided two character letters. One letter from his supervisor describes him as reliable, conscientious, and determined. He also has demonstrated leadership qualities. The other letter, from his fiancé, describes him as having exceptional ethical and moral character.⁹

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 useful 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 common sense 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, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." The applicant 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 as to potential, rather than actual, risk of compromise of classified information.

⁹ AE B and C.

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* EO 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. I have considered all of them and especially considered the following under AG ¶ 19:

(a) inability or unwillingness to satisfy debts.

Applicant owes more than \$136,000 for a defaulted home equity loan. He is unable and unwilling to pay the loan. I find the above disqualifying condition has been raised.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. I have considered all of the mitigating conditions and especially considered the following under 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;

(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 individual 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's behavior is recent because the debt remains delinquent and he has not made arrangements to resolve it. I find mitigating condition (a) does not apply. Applicant knowingly agreed to help his brother refinance his mortgage. He accepted this financial obligation knowing he was binding himself to a contract to ensure the payments were made. The debt is in Applicant's name and he acknowledges he is responsible for its repayment. His brother's income was reduced and he could not longer afford to pay the mortgage. I find the conditions were somewhat beyond Applicant's control. However, I find he did not act responsibly under the circumstances. He has not worked out an arrangement with his brother or saved his money to address this debt. I find mitigating condition (b) only partially applies. Applicant has not received any financial counseling. It has been two years since he defaulted on the debt. He stated the collection company will only accept a lump sum down payment, yet he has not saved any money to put towards paying the debt. Rather he has other financial priorities he is focusing on. He has taken out a loan to pay for his engagement, he is saving to move out of his parents' house after he is married, and he is planning on getting his master's degree. He did not provide evidence that he has a plan on how he is going to resolve this debt. There are no clear indications the problem is being resolved nor has he made a good-faith effort to repay the debt.

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 common sense 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 a young man who has worked hard to put himself through school. He paid his bills on time and never asked his parents' for financial help. He felt obligated to help his brother. He is also obligated to

