



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



In the matter of:)
)
) ISCR Case No. 09-03765
)
)
Applicant for Security Clearance)

Appearances

For Government: Braden Murphy, Esquire, Department Counsel
For Applicant: *Pro Se*

February 26, 2010

Decision

RIVERA, Juan J., Administrative Judge:

Applicant 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 February 14, 2009, Applicant submitted a security clearance application. On June 30, 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 Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as revised; and the revised adjudicative guidelines (AG) promulgated by the President on December 29, 2005.

The SOR alleges security concerns under Guideline F (Financial Considerations) and Guideline E (Personal Conduct). 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 July 31, 2009, Applicant responded to the SOR allegations and requested a hearing before an administrative judge. The case was assigned to me on September 28, 2009. DOHA issued a notice of hearing on September 29, 2009. The hearing was convened as scheduled on October 21, 2009. The government offered Government Exhibits (GE) 1 through 3, which were admitted without objection. Applicant testified and submitted Applicant Exhibit (AE) 1, which was admitted without objection. DOHA received the transcript of the hearing (Tr.) on October 29, 2009.

Findings of Fact

Applicant admitted all the SOR allegations, except SOR ¶ 1.d, which he denied. 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 35-year-old internet security engineer and communications technician employed by a defense contractor. He graduated from high school in 1993. He married his wife in May 1998. They have four children, ages 13, 12, 3, and 2. His wife works as an administrative assistant. She contributes financially to the household.

Applicant has been consistently employed since January 1994. However, he did not hold a full-time job through all this period. He explained that, during most of his working life, he has held both a full-time job and a part-time job. Applicant has worked for his part-time employer, a government contractor, from January 2002 to present. His part-time employer is sponsoring his security clearance.

In late 2006, Applicant resigned from his then full-time job. He was involved in numerous traffic violations and lost too many points off his driver's license.¹ His employer demoted him because he was not allowed to drive a company vehicle with so many traffic violations. He resigned to look for a better-paying job. He has worked for his current full-time employer since October 2008. He believes his full-time employer will also assign him to a position that requires a security clearance sometime in the near future.

¹ Between 2001 and 2007, Applicant committed four speeding violations, and in 2005 he drove with a suspended or revoked license. In 2009, he also was cited for Improper/Registration/Unauthorized Transfer and Noise Violation.

In Applicant's February 2009 security clearance application, he indicated that he had debts that were over 180 days delinquent within the last seven years and that he had no debts 90 days delinquent at the time he completed his application. He also indicated that in the last seven years he had property repossessed, wages garnished, and unpaid judgments. His background investigation addressed his financial status and included the review of February and June 2009 credit bureau reports (CBRs) and his security clearance application.

The SOR alleges that Applicant's debts were discharged after filing for bankruptcy protection in 1998. It also alleges 11 delinquent or charged off accounts, totaling approximately \$52,044, most of which have been delinquent for a number of years. Applicant admitted all the SOR allegations, except SOR ¶ 1.d. The debt alleged in SOR ¶ 1.d (\$468) concerns an unidentified medical creditor. The record evidence does not allow for the identification of the unlisted medical creditor. I find this allegation for Applicant.

Concerning his 1998 bankruptcy filing, Applicant explained that he filed for bankruptcy because of his financial inexperience and immaturity. At age 24, he purchased a car, acquired a large credit card debt, and lent \$8,000 to a friend. He was overextended financially and sought bankruptcy protection as a quick way to get rid of his debt (Tr. 40).

Applicant testified he had no financial problems from 1998 until sometime in 2006, when he and his wife made a number of financial mistakes. He attributed his current financial problems to the following factors. In June 2006, he and his wife bought a \$475,472 home, took a \$17,000 loan to purchase things for the home (SOR ¶ 1.g, \$17,357), and purchased a Ford Explorer for his wife (SOR ¶ 1.k, \$9,465). Applicant had purchased a Buick in 2003. In June-August 2006, the Buick engine died and he returned the car to the dealership. In August 2006, Applicant bought a \$30,000 Lincoln Navigator for himself to replace the Buick he returned to the dealership (SOR ¶ 1.i, \$13,510). Applicant failed to continue making payments on the Buick note (SOR ¶ 1.h, \$8,977) because he did not have sufficient income to pay for all of his debts.

Around August 2006, Applicant's wife lost her job while she was pregnant with their third child. She was not able to find full-time employment for the next two years until after the birth of their fourth child. Applicant and his wife currently make a total of approximately \$7,600. Notwithstanding, Applicant's and his wife's earnings are not sufficient to pay for his day-to-day living expenses and his current debts, even without considering their delinquent debts (Tr. 63-67). Additionally, Applicant owes approximately \$9,500 to family members from whom he borrowed money to purchase his current vehicle, a used Chevy Uplander van.

In his answer to the SOR and at his hearing, Applicant stated he has attended several financial management seminars, that he and his wife follow a budget, and that they enrolled in a consumer credit consolidation program. He presented no documentary evidence to support any of these claims.

Applicant considers himself to be honest and forthcoming about his past and present financial situation. He highlighted that he has performed well for government contractors and is a valued employee. There is no evidence that Applicant has compromised or caused others to compromise classified information.

Applicant expressed remorse for his financial problems and averred he has always intended to pay for his delinquent debts. He claims he understands the importance of having and maintaining financial responsibility. He promised to make satisfactory payment arrangements with all his creditors sometime in the future. However, at the present time, he does not have the financial means to pay for his day-to-day living expenses, his current debts, and his delinquent debts. He does not have the financial means to pay for even the smallest of his delinquent debts.

Since 2006, Applicant has made no effort to contact any of his creditors or to resolve any of the alleged delinquent debts, because he did not have the financial means to do so. Based on Applicant's credit reports, his testimony, and his statements, I find that Applicant is responsible for all the delinquent debts alleged in the SOR, except SOR ¶ 1.d. These 10 debts total approximately \$51,576, and they are not resolved.

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.”² 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 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 debts, many of which have been delinquent for a number of years. Applicant and his spouse are responsible for all their delinquent debts, except for SOR ¶ 1.d. These 10 debts total approximately \$51,576, and they are not resolved.

Applicant presented no documentary evidence to show that he has paid, settled, or attempted to resolve any of the alleged debts since 2006. Based on his testimony, he

² 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).

does not have 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. His failure to pay even the smallest debt shows he is financially overextended.

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 some circumstances beyond his control, which contributed to his inability to pay his debts, i.e., his and his wife's periods of unemployment. 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. The evidence clearly shows Applicant and his wife were living beyond their financial means when they purchased a \$475,472 home, obtained a \$17,000 loan, and purchased two vehicles for approximately \$45,000. He presented no evidence of debt payments, contacts with creditors, or negotiations to resolve his SOR debts. Because of his failure to address even the 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 it is questionable whether he has 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 action to resolve his debts.

Personal Conduct

AG ¶ 15 explains why personal conduct is a security concern stating: “Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual’s reliability, trustworthiness and ability to protect classified information.”

Between 2001 and 2007, Applicant committed four speeding violations, and in 2005 he drove with a suspended or revoked license. In 2009, he also was cited for Improper/Registration/Unauthorized Transfer and Noise Violation. His behavior triggers the applicability of disqualifying condition AG ¶ 16(d):

Credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations.

AG ¶ 17 lists three conditions that could mitigate the personal conduct security concerns:

(c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;

(d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that caused untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur; and

(e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress.

After considering the totality of the circumstances, I find that AG ¶¶ 17(c), 17(d), and 17(e) apply. Applicant has not been cited for speeding since 2007. He expressed sincere remorse for his numerous traffic violations and promised to abstain from similar

behavior in the future. He seems to have learned from his mistakes and behaves now as a mature adult. Applicant's numerous traffic violations constituted civil infractions and could be considered minor violations. Notwithstanding, his civil violations do show an inability or unwillingness to comply with rules and regulations. On balance, I find his questionable behavior to be somewhat remote and unlikely to recur. I find this guideline for Applicant.

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 is a mature man and a good worker. There is no evidence he has ever compromised or caused others to compromise classified information. These factors show some responsibility, good judgment, and mitigation. Applicant also established some circumstances beyond his control, which contributed to his inability to pay his debts.

Notwithstanding, Applicant's evidence is not sufficient to show he acted responsibly under the circumstances. His financial problems are due primarily to his living beyond his financial means. He presented little documentary evidence of debt payments, contacts with creditors, or negotiations of debts. His favorable information fails to show financial responsibility and good judgment. He has made no effort to resolve his financial obligations. His financial problems are not under control. He does not 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, and 1.e - 1.l:	Against Applicant
Subparagraph 1.d:	For Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraphs 1.a - 1.f:	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 eligibility for a security clearance for Applicant. Eligibility for a security clearance is denied.

JUAN J. RIVERA
Administrative Judge