



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



In the matter of:)	
)	
SSN:)	ISCR Case No. 09-04481
)	
Applicant for Security Clearance)	

Appearances

For Government: Braden M. Murphy, Esq., Department Counsel
For Applicant: *Pro se*

May 26, 2010

Decision

COACHER, Robert E., 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.

Statement of the Case

On November 27, 2009, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) detailing security concerns 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 adjudicative guidelines (AG), effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant answered the SOR in writing on December 31, 2009, and elected to have his case decided on the written record. This answer was incomplete and Applicant filed a subsequent, complete answer on February 1, 2010. Department Counsel submitted the Government's File of Relevant Material (FORM) on March 5, 2010. The FORM was mailed to Applicant, and it was received on March 16, 2010. Applicant was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant provided additional information. On April 26, 2010, Department Counsel noted no objections to the additional submissions by Applicant. The case was assigned to me on April 30, 2010.

Findings of Fact

In Applicant's answer to the SOR, he denied ¶¶ 1.a, 1.b, 1.d, 1.g, and 1.i, and admitted the remaining allegations. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 46 years old. He is married and has no children. Since 2003, he has worked as a refrigeration technician for a defense contractor.¹ In Applicant's interview with an Office of Personnel Management (OPM) investigator on February 19, 2009, he stated he performed the same duties earlier in his career, up to 1998 (although at that time the company went by a different name), when he was laid off.² Between 2000 and 2003, he worked for another commercial business, but for about one-half the pay he had been making.³ In December 2008, Applicant went on disability from his job because of a degenerative disc in his lower back. While on disability, he received disability income that amounted to two-thirds of his regular pay. He remained on disability until February 23, 2009, when he was cleared to return to work to perform light duties.⁴ His wife was laid off her job in June 2008 and remained unemployed for two months.⁵ There was no information indicating what subsequent employment his wife obtained.

The federal tax lien debt (SOR ¶ 1.a) was due to an amount owed for Applicant's 2007 income taxes.⁶ He provided proof of satisfaction for this debt.⁷ Likewise, the state tax debt to New Mexico (SOR ¶ 1.b) has been paid.⁸ Although Applicant denies owing

¹ Item 6.

² Item 8.

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ Response to FORM.

⁸ Item 11.

SOR ¶¶ 1.d and 1.i, other than stating he still receives service from both creditors, he does not provide any proof that these debts were paid and they are both listed on his credit reports.⁹ Likewise, he denied owing the debt listed in SOR ¶ 1.g (\$1,342), but he failed to provide proof showing otherwise and it still appears on his credit report.¹⁰

Applicant admitted the remainder of the debts (SOR ¶ 1.c \$327; SOR ¶ 1.e \$71; SOR ¶ 1.f \$432; SOR ¶ 1.h \$14,549; SOR ¶ 1.j \$13,000).¹¹ They all still appear on his credit reports, and there is no proof showing resolution.

Applicant's current financial picture shows that his net income (\$3,400 per month) equals his net expenses (\$3,400 per month) leaving nothing left as discretionary income.¹²

Applicant provided in a statement that he saw an attorney about the possibility of filing bankruptcy; however, before any action occurred the attorney closed his practice and Applicant did not follow up with anyone else. He did not consult with any debt consolidation service or financial counselor.¹³

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are 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, these guidelines are applied 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

⁹ Items 7, 9.

¹⁰ Item 9.

¹¹ Items 7, 9.

¹² Item 8.

¹³ Item 8.

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, 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, and 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 that an 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 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 under AG ¶ 19 and especially considered the following:

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

Applicant has approximately \$29,900 in delinquent debt that remains unpaid or unresolved. I find both disqualifying conditions have 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 under AG ¶ 20 and especially considered the following:

- (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; and
- (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.

Except for the debts in SOR ¶¶ 1.a and 1.b, Applicant did not provide evidence that he has paid or resolved any of his delinquent debts. Therefore, his behavior is recent and the delinquent debts remain a concern. I find mitigating condition AG ¶ 20(a) does not apply because Applicant's debts remain owed and unresolved. Applicant provided some information that he experienced periods of unemployment and being on disability. However, I am unable to determine that his financial problems were beyond his control, or if he acted responsibly under the circumstances. I find AG ¶ 20(b) does not apply. There is some evidence Applicant sought bankruptcy advice from an attorney, but failed to follow-up with any action. There is not clear evidence that Applicant's financial problems are being resolved or under control. Other than paying his federal and state tax debts, he did not provide evidence that he has made a good-faith effort to pay his delinquent debts or attempt to resolve them. I find AG ¶¶ 20(c) and 20(d) apply to SOR debts ¶¶ 1.a and 1.b, but not to the remainder of the SOR debts. Applicant disputed the debts in SOR ¶¶ 1.d, 1.g, and 1.i, but did not provide any proof to show he paid the debts or resolved them. I find AG ¶ 20 (e) does not apply.

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 considered that the Applicant experienced periods of unemployment and periods of disability. I have also considered his wife's period of unemployment. Except for the tax debts, he did not provide documentation to show he paid any of his delinquent debts. He did not provide information that he has a repayment plan or settlement agreement with any of the creditors. He failed to provide sufficient evidence to mitigate the security concerns.

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 failed to mitigate the security concerns arising under Guideline F, Financial Considerations.

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.b.:	For Applicant
Subparagraphs 1.c.-1.j.:	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.

Robert E. Coacher
Administrative Judge