



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



In the matter of:)	
)	
)	ISCR Case No. 09-04564
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Gregg A. Cervi, Esquire, Department Counsel
For Applicant: *Pro se*

August 24, 2010

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the government's security concerns under Guideline F, Financial Considerations, and Guideline E, Personal Conduct. Applicant's eligibility for a security clearance is denied.

On March 24, 2010, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, Financial Considerations, and Guideline E, Personal Conduct. 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 on April 3, 2010, and elected to have his case decided on the written record. Department Counsel submitted the Government's File Of Relevant Material (FORM) on May 25, 2010. The FORM was mailed to Applicant and it

was received on June 1, 2010. Applicant was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant did not object to the FORM and did not submit additional material. The case was assigned to me on August 11, 2010.

Findings of Fact

Applicant admitted all of the SOR allegations. After a thorough and careful review of the pleadings, exhibits, and statements submitted, I make the following findings of fact.

Applicant is 37 years old. He married in 2004 and has one child. He has worked for a federal contractor since June 2007.

Applicant admitted that he owes the seven debts alleged in the SOR totaling \$57,675. He has not paid any of the delinquent debts. In September 2002, Applicant was employed, but quit his job because he believed he had a better offer. The job prospect fell through and he was unemployed. He used credit cards to pay for his bills. He resumed working in February 2003, but was living paycheck to paycheck. He received statements from creditors and collection notices, but threw them away because he could not pay the delinquent debts. Sometime in 2008, he began to pay some of his smaller delinquent debts.

In his answer to interrogatories, Applicant indicated that he had begun working overtime and his wife who had not been employed in the past was now working. His personal financial statement dated December 15, 2010, indicated that their monthly income is \$4,370; net expenses are \$1,890; and their net monthly remainder is \$2,208. It also indicated he was making a loan payment of \$271 a month for a vehicle. No other payments for delinquent debts were listed.¹ In response to questions in the interrogatory asking what he had done to resolve each of the alleged delinquent debts, Applicant replied "nothing."² Applicant has offered no evidence as to his current efforts to resolve the \$57,675 in delinquent debts. He did not provide information as to why he has not used his net remaining income to begin resolving his delinquent debts.

When Applicant was interviewed by an Office of Personnel Management investigator, he indicated that he did not list all of his delinquent accounts on his security clearance application (SCA) because he did not know all of the information for each account when he was completing it. He stated he was not trying to hide anything or be deceptive. On the SCA Applicant disclosed he had a charged-off account for approximately \$870 that was paid; another debt for telephone services for \$270 that was paid; a repossession that he made monthly payments on until it was paid in full; and a debt for \$221 to a gas company that he still owed. He failed to indicate on his SCA that he also had numerous other delinquent debts totaling more than \$57,000 that

¹ Item 6.

² *Id.*

were unpaid or resolved. I did not find Applicant's statement that he was not trying to be deceptive believable.

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 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 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.

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 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 conditions that could raise security concerns. I have considered all of the disqualifying conditions under AG ¶ 19 and especially considered:

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

Applicant has seven delinquent debts totaling more than \$57,000 that are not paid. He began accumulating delinquent debt in 2002, when he was unemployed. He has been working since February 2003. He has \$2,208 of monthly expendable income, but has not begun repaying any of the debt in the SOR. I find there is sufficient evidence to raise these disqualifying conditions.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. I have considered the following mitigating conditions 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 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 admits he owes all seven delinquent debts alleged and has not made efforts to pay them. The debts remain delinquent. Applicant's lack of action to resolve the delinquent debts cast doubt on his current reliability, trustworthiness, and good judgment. AG ¶ 20(a) does not apply. Applicant was unemployed for a six-month period in September 2002 to February 2003. He quit his job because he thought he could get a better job. He has been steadily employed since 2003. His period of unemployment was largely beyond his control because he believed he would get the better paying job. For the application of AG ¶ 20(b) the circumstances must have been beyond Applicant's control and he must have acted responsibly under the circumstances. Applicant did not act responsibly over the next seven years because he did not take action to resolve his delinquent debts. He has offered no evidence to show that once he began working he paid any of the delinquent debts he owes or what he has done to resolve them. I find AG ¶ 20(b) only partially applies. Applicant offered no evidence that he received financial counseling or that there are clear indications he is acting in a responsible way to resolve his debts. He has not made good-faith payments to his creditors or taken other action to resolve his delinquent debts. I find AG ¶¶ 20(c) and 20(d) do not apply.

Guideline E, Personal Conduct

AG ¶ 15 expresses the security concern pertaining to personal conduct.

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. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. I have specifically considered

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities.

Applicant was aware that he had many delinquent debts. He received statements from creditors and notices from collection companies that he discarded for many years

until 2008, when he began to pay some of his smaller debts. He indicated on his SCA that he resolved three delinquent debts and had one he still owed. He did not indicate he also had numerous others that totaled more than \$57,000 that were delinquent. I did not find Applicant's statement credible that because he did not have specific information he did not indicate all of his debts on his SCA. Applicant listed one delinquent debt for \$221, giving the impression that all of his other debts were current. I find Applicant intentionally omitted and concealed relevant facts from his SCA. The above disqualifying condition applies.

The guideline also includes examples of conditions that could mitigate security concerns arising from personal conduct. I have considered all of the mitigating conditions and especially considered the following under AG ¶ 17:

- (a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts; and
- (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.

Applicant did not make a prompt, good-faith effort to correct his omission and concealment before being confronted with the facts. The omission is serious and not minor. Applicant disclosed that he paid or resolved three overdue debts and had only one remaining that he owed \$221. In actuality he had numerous debts that he owed more than \$57,000 that he did not disclose. His deliberate and intentional omission and concealment of his true financial situation casts doubt on his reliability, trustworthiness, and good judgment. I find AG ¶¶ 17(a) and 17(c) do 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. Applicant is 37 years old. He had a six month period of unemployment in 2002 to 2003 when he got behind in paying his bills. He has not paid any of the delinquent debts on the SOR. He has expendable monthly income, but provided no information that he is using it to begin resolving his delinquent debts. He was aware of the magnitude of his delinquencies when he completed his SCA, but indicated he had only one pending debt for \$221 that was unpaid. His concealment of his true financial picture was intentional and deliberate. Overall, the record evidence leaves me with serious questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to meet his burden of persuasion and mitigate the security concerns arising under the guidelines for Financial Considerations and Personal Conduct.

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
Subparagraph 1.a:	For Applicant
Subparagraphs 1.b-1.g:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Carol G. Ricciardello
Administrative Judge