



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



In the matter of:)
)
) ISCR Case No. 09-04845
)
 SSN:)
)
)
 Applicant for Security Clearance)

Appearances

For Government: Alison O'Connell, Esq., Department Counsel
For Applicant: *Pro se*

April 27, 2010

Decision

LOUGHRAN, Edward W., Administrative Judge:

Applicant mitigated Personal Conduct security concerns, but he has not mitigated the Financial Considerations concerns. Eligibility for access to classified information is denied.

Statement of the Case

On November 2, 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 adjudicative guidelines (AG).

Applicant answered the SOR in an undated response and requested a hearing before an administrative judge. On January 4, 2010, Department Counsel amended the SOR, adding an allegation under Guideline E, Personal Conduct. Applicant answered

the amended SOR on January 19, 2010. The case was assigned to me on January 15, 2010. DOHA issued a notice of hearing on January 22, 2010, and the hearing was convened as scheduled on February 23, 2010. The Government offered Exhibits (GE) 1 through 6, which were received without objection. Applicant testified on his own behalf and submitted Exhibit (AE) A, which was admitted without objection. The record was held open for Applicant to submit additional information. Applicant submitted documents, which were marked AE B and C and admitted without objection. Department Counsel's memorandum is marked Hearing Exhibit (HE) I. DOHA received the transcript of the hearing (Tr.) on March 2, 2010.

Findings of Fact

Applicant is a 51-year-old employee of a defense contractor. He has worked for his current employer, or a predecessor company, for more than 30 years. He is seeking to retain his security clearance. He has an associate's degree. He is married with two children, ages 21 and 19.¹

The SOR alleges eight delinquent debts, with balances totaling about \$84,426. Applicant admitted owing all the debts alleged in the SOR.

Applicant's wife managed the family's finances. She has not worked for an employer since 2004. She had an unsuccessful business venture selling Christmas items at a kiosk in a mall, which she started in about 2003. It was a seasonal business running from about October through the end of December. Her overhead included her inventory and the rent for the kiosk, which was about \$16,000 for the season. She operated the business from 2003 to 2007. The business was financed using Applicant's credit, including credit cards. Applicant stated that, according to their accountant who did their taxes, the business never made a profit and did not cover the expenses. Applicant's wife attempted to keep the business afloat with credit cards. The balances increased to a point where she stopped paying the minimum monthly payments, and a number of debts became delinquent. Applicant was unaware that his bills were not being paid.²

Applicant submitted a Questionnaire for National Security Positions (SF 86) on April 14, 2009. He answered "No" to Questions 26m and 26n, which asked "Have you been over 180 days delinquent on any debt(s) [in the last 7 years]?" and "Are you currently over 90 days delinquent on any debt(s)?" Applicant denied intentionally falsifying the SF 86. He stated that he did not know about his delinquent debts because his wife handled the finances and she kept their financial issues from him. Applicant discussed his finances with his wife shortly after he submitted the SF 86. His wife informed him of the dismal state of their finances. Applicant brought the information to the attention of his facility security officer. Applicant submitted an SF 86C on May 19, 2009, amending the financial information to reflect "Yes" answers. He wrote, "Failed

¹ Tr. at 19-21; GE 1.

² Tr. at 17-18, 24-29; GE 2.

business forced to declare Chapter 11,” and “Several months behind on credit loans.” He was questioned about his finances for his background investigation on May 19, 2009. He admitted his delinquent debts and described how he got into financial difficulties.³ After considering all the evidence, I find there is insufficient evidence for a determination that Applicant intentionally falsified his SF 86.

Applicant and his wife filed Chapter 7 bankruptcy in November 2009. Under Schedule B – Personal Property, the petition listed, among other items, \$200 in cash, \$835 in the bank and credit union, \$55,000 in a 401(k) retirement account, four vehicles with a total value of \$24,525, and a \$6,000 travel trailer. Under Schedule D – Creditors Holding Secured Claims, the petition listed Applicant’s mortgage and four vehicle loans totaling \$36,947. There were no Unsecured Priority Claims under Schedule E. Under Schedule F – Creditors Holding Unsecured Nonpriority Claims, the petition listed \$157,799 in debts and included debts ranging from \$30 to \$34,960. The petition listed Applicant’s net Current Income of Individual Debtor(s) under Schedule I as \$4,034 per month. The income included estimated monthly overtime pay of \$249. Applicant’s actual overtime pay is much higher. He estimated that he makes about \$15,000 annually in overtime pay. His pay statement from September 18, 2009, indicated that he had earned \$5,385 year-to-date (YTD) in overtime pay. Current Expenditures of Individual Debtor(s) under Schedule J were listed as \$4,297 per month.⁴

Applicant testified that the bankruptcy is being converted to Chapter 13. The plan has not been approved, and he has made no payments to the trustee. He has received counseling as required for his bankruptcy. He stated that his wife still manages the family finances, but he is “watching it a little bit closer.”⁵

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 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

³ Tr. at 17-19, 29, 43, 47-48; GE 1, 2; AE C.

⁴ Tr. at 22, 32-34; GE 2, 6.

⁵ Tr. at 33-34, 43-45; AE A.

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 the applicant or proven by Department Counsel.” The applicant has the ultimate burden of persuasion to obtain a favorable 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. 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 attributed the financial problems that led to his bankruptcy to his wife's failed business. That qualifies as a condition that was outside his control. To be fully applicable, AG ¶ 20(b) also requires that the individual act responsibly under the circumstances. Appellant relied upon his wife to handle their finances. He knew her business was not making money, but he did not inquire as to the status of their finances. I do not find that he acted completely responsibly when, despite indicators that there could be problems, he ignored the state of his financial affairs. AG ¶ 20(b) is partially applicable.

Applicant filed Chapter 7 bankruptcy, which he stated was being converted to Chapter 13. A plan has not been approved, and there have been no payments to a trustee. Applicant received financial counseling as part of his bankruptcy. While there are some indications Applicant's finances are being resolved, invoking some mitigation under AG ¶ 20(c), the bankruptcy has not progressed sufficiently for a finding that the problems are resolved or under control. His financial issues are current and ongoing.

AG ¶ 20(a) is not applicable. He has not made a good-faith effort to pay or resolve his debts.⁶ AG ¶ 20(d) is not applicable.

At this point, Applicant's finances remain a concern despite the presence of some mitigation.

Guideline E, Personal Conduct

The security concern for Personal Conduct is set out in AG ¶ 15, as follows:

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. The following disqualifying condition is potentially applicable:

(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 submitted inaccurate information on his SF 86, but as discussed above, there is insufficient evidence for a determination that it was intentional. AG ¶ 16(a) is not applicable. SOR ¶ 2.a is concluded for Applicant.

⁶ The Appeal Board has previously explained what constitutes a "good-faith" effort to repay overdue creditors or otherwise resolve debts:

In order to qualify for application of Financial Considerations Mitigating Condition 6, an applicant must present evidence showing either a good-faith effort to repay overdue creditors or some other good-faith action aimed at resolving the applicant's debts. The Directive does not define the term "good-faith." However, the Board has indicated that the concept of good-faith "requires a showing that a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation." Accordingly, an applicant must do more than merely show that he or she relied on a legally available option (such as bankruptcy) in order to claim the benefit of Financial Considerations Mitigating Condition 6.

(internal citation and footnote omitted) ISCR Case No. 02-30304 at 3 (App. Bd. Apr. 20, 2004) (quoting ISCR Case No. 99-9020 at 5-6 (App. Bd. Jun. 4, 2001)).

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 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.

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 Guidelines F and E in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but some warrant additional comment.

I considered Applicant's long and stable employment history. He let his spouse handle the family finances. She did not tell him that she had stopped paying their debts. Applicant knew his wife's business was losing money. He should have been more proactive in at least periodically checking on the state of their financial affairs. He filed bankruptcy, which is a legal means to address one's unduly burdensome debts. A plan has not been approved, and no payments have been made to the trustee. His wife continues to manage the finances, but he is "watching it a little bit closer." He is not far enough along in the process for me to determine that his finances are in 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 mitigated Personal Conduct security concerns, but he has not mitigated the Financial Considerations 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.h:	Against Applicant

Paragraph 2, Guideline E:

FOR APPLICANT

Subparagraph 2.a:

For 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 continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Edward W. Loughran
Administrative Judge