



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



In the matter of:)	
)	
-----)	ISCR Case No. 09-05504
SSN: -----)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Tovah A. Minster, Esq., Department Counsel
For Applicant: *Pro se*

April 27, 2010

Decision

LYNCH, Noreen, A. Administrative Judge:

On December 4, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) enumerating security concerns arising 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 for SORs issued after September 1, 2006.

In a response notarized on December 29, 2009, Applicant admitted all 23 of the allegations set forth in the SOR and requested an administrative determination. Department Counsel submitted a File of Relevant Material (FORM), dated January 28, 2010. Applicant received the FORM on February 5, 2010, but declined to respond to its contents. On April 20, 2010, the Director, DOHA, forwarded the case for assignment to an administrative judge. The case was assigned to me on the same day. Based on a review of the case file, submissions, and exhibits, I find Applicant failed to meet his burden regarding the security concerns raised. Security clearance is denied.

Findings of Fact

Applicant is a 33-year-old employee of a defense contractor. He is single and has no children. He worked as a data management analyst from October 2007 through April 2009, the same month in which he completed the security clearance application for his present employment. (Item 5.)

He acknowledged that he experienced financial difficulties because he was young and naive. He failed to pay his credit cards when he was 19 years of age. His May 2009 credit report lists delinquencies and judgments as recent as 2006. (Item 6.)

Applicant's security clearance application notes that he worked in several temporary positions for a period of approximately six months (April 2007-October 2007). Applicant has had steady employment since October 2007.

His annual income in 2009 was approximately less than \$30,000. After expenses and deductions, Applicant has a monthly negative net remainder in the amount of \$357. (Item 4.)

In choosing an administrative determination, Applicant chose to rely on the written record. The facts he submitted with regard to his past and his financial situation are limited to admissions to each of the 23 financial allegations noted in the SOR. The only other facts submitted were contained in his answer to the October 2009 DOHA interrogatories, in which he stated:

I am currently in the process of filing Chapter 7 Bankruptcy. This was a last resort as I cannot under any circumstances pay off my debt and be able to pay my living expenses under the current salary that I am making. I have not filed my bankruptcy as of yet, I met with my attorney to make an initial payment to start the bankruptcy procedure. I could not afford to pay the \$1,300 retainer fee at one time so I am working with the attorney on a payment plan of \$300 a month (or sooner, if I can pay more) and the filing will conclude once full payment is received. The retainer agreement is attached, I will obtain credit counseling class.

Applicant's admitted delinquent debts amount to approximately \$42,000. They are comprised of debts referred for collection or charged off, a vehicle repossession, a 2005 judgment in the amount of \$1,772, and a 2006 judgment in the amount of \$4,116. Applicant did not disclose information as to what kind of expenses gave rise to these obligations. No indication is given as to whether he ever obtained the financial counseling or has made any efforts to address the debts at issue since the October 2009 retainer agreement. Applicant did not provide any evidence regarding his current 2010 financial situation.

Policies

When evaluating an applicant's suitability for a security clearance, an administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, they are applied in conjunction with the factors listed in the adjudicative process. An administrative judge's over-arching adjudicative goal is a fair, impartial and commonsense decision. Under AG ¶ 2(c), this process is a conscientious scrutiny of a number of variables known as the "whole-person concept." An 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.

The United States Government (Government) must present evidence to establish controverted facts alleged in the SOR. 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. . . ." ¹ The burden of proof is something less than a preponderance of evidence. ² The ultimate burden of persuasion is on the applicant. ³

A person seeking access to classified information enters into a fiduciary relationship with the Government based on 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

¹ See also ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

² *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

³ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

applicant concerned.”⁴ “The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”⁵ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such information.⁶ The decision to deny an individual a security clearance does not necessarily reflect badly on an applicant’s character. It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense established for issuing a clearance.

Guideline (Financial Considerations) is the most pertinent to the case. Applicable conditions that could raise a security concern and may be disqualifying, as well as those which would mitigate such concerns, are set forth and discussed below.

Analysis

Under Guideline F:⁷ “Failure or an 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.” It also states that “an individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.”

Here, Applicant admitted that he has approximately \$42,000 in delinquent debts. To date, those debts remain unaddressed. He consulted with an attorney in October 2009, concerning the filing of a Chapter 7 bankruptcy petition. He has started to pay the attorney’s retainer fee, but there is no indication that a filing has occurred. Consequently, Financial Considerations Disqualifying Condition (FC DC) AG ¶ 19(a) (inability or unwillingness to satisfy debts) and FC DC AG ¶ 19(c) (a history of not meeting financial obligations) apply. With such conditions raised, it is left to Applicant to overcome the case against him and mitigate security concerns.

Applicant’s temporary employment might have complicated Applicant’s ability to meet his obligations, but he provided no information about his efforts to otherwise meet those obligations during this period. Consequently, neither his financial circumstances at the time, nor how he acted during this time period can be analyzed. Financial Considerations Mitigating Condition (FC MC) AG ¶ 20(b) (the conditions that resulted in the behavior were largely beyond the person’s control (e.g., loss of employment, a

⁴ See also EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information), and EO 10865 § 7.

⁵ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

⁶ *Id.*

⁷ Adjudicative Guideline (AG) ¶ 18.

business downturn, unexpected medical emergency, or a death, divorce or separation) and the individual acted responsibly under the circumstances) does not apply.

Applicant's delinquent debts are multiple in number and remain unpaid. Amounting to approximately \$42,000, the amount at issue is significant. Lacking information regarding any other relevant facts regarding either how the debts at issue became delinquent or why they remain delinquent, neither Financial Considerations Mitigating Condition (FC MC) 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) nor FC MC AG ¶ 20(d), (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts) applies. Applicant's failure to disclose whether he ever received financial counseling obviates the applicability of FC MC AG ¶ 20(c) (the person has received or is receiving counseling for the problem and there are clear indications that the problem is being resolved or is under control).

Applicant attributes his delinquent debts to being young and not responsible with credit cards at age 19. He is now 33 years of age. He provided no recent information concerning what he has paid, if anything, in the intervening years. The record only notes temporary employment for six months in 2007. Lacking additional facts, particularly with regard to his bankruptcy action, Applicant failed to meet his burden in mitigating financial considerations security concerns.

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 an 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. As noted above, the ultimate burden of persuasion is on the applicant seeking a security clearance.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case, as well as the “whole-person” factors. Applicant is a mature, single man who has maintained his current employment for the past several years. He apparently faced difficulty when young with credit card debt. He has stated that he intends to file for bankruptcy and take counseling class but he has not presented evidence to show that he has filed or received financial counseling. Applicant has not demonstrated that his financial problems are resolved, or under control.

In requesting an administrative determination, Applicant chose to rely on the written record. In so doing, however, he failed to submit sufficient information or evidence to supplement the record with relevant and material facts regarding his circumstances, articulate his position, and carry his burden in this process. He failed to offer evidence of financial counseling. He failed to provide documentation regarding either his past efforts toward addressing his delinquent debts or his future plans for satisfying those obligations through a bankruptcy. By failing to provide such information, and in relying on only a scant paragraph of explanation, financial considerations security concerns remain. Clearance is denied.

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 through 1.w:	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 a security clearance. Clearance is denied.

NOREEN A. LYNCH.
Administrative Judge