



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



In the matter of:)	
)	
-----)	ISCR Case No. 09-06206
)	
Applicant for Security Clearance)	

Appearances

For Government: Marc G. Laverdiere, Esquire, Department Counsel

For Applicant: *Pro se*

March 8, 2011

DECISION

ROSS, Wilford H., Administrative Judge:

Applicant submitted his Electronic Questionnaire for Investigations Processing (e-QIP), on April 7, 2009. (Item 5.) On April 14, 2010, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline F concerning Applicant. 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 revised guidelines (AG) effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant submitted an Answer to the SOR on June 4, 2010, and requested a decision be made without a hearing. Department Counsel submitted a File or Relevant Material (FORM) to the Applicant on August 5, 2010. Applicant received the FORM on August 11, 2010, and was given 30 days to submit any additional information. Applicant submitted additional information. Department Counsel did not object to Applicant's information and it is admitted into evidence as Applicant's Exhibit A. The case was

assigned to me on October 28, 2010. Based upon a review of the case file, pleadings, and exhibits, eligibility for access to classified information is denied.

Findings of Fact

Applicant is 62, and married. He is employed by a defense contractor and seeks to retain a security clearance in connection with his employment.

Guideline F, Financial Considerations

The Government alleges in this paragraph that Applicant is ineligible for clearance because he is financially overextended and therefore at risk of having to engage in illegal acts to generate funds. Applicant admitted subparagraphs 1.a., 1.b., 1.c., 1.d., 1.e., 1.f., 1.g., 1.h., 1.i., 1.k., 1.l., 1.o., and 1.p. Those admissions are deemed findings of fact. He denied subparagraphs 1.j., 1.m., and 1.n. He also submitted additional information to support his request for a continued security clearance.

1.a. Applicant admits that he filed bankruptcy in 1992, and that it was discharged in 1993. This occurred almost 20 years ago, none of the debts alleged in the SOR are that old, and there is no allegation of fraud or illegality by Applicant. This action has no current security significance. Accordingly, this subparagraph is found for Applicant.

1.b. Applicant admits that he is indebted to a creditor for a delinquent debt in the amount of \$10,337. He indicated in his November 2009 Interrogatories that he was making a payment arrangement with the collection agent handling the account. (Item 7 at 27-28.) However, Applicant submitted no additional information as to how many payments may have been made, or the amount of his current balance. This debt is unresolved.

1.c. Applicant admits that he is indebted to a creditor for a delinquent debt in the amount of \$654. He indicated in his November 2009 Interrogatories that he has not yet contacted the collection agent handling the account. (Item 7 at 38-39.) In his Answer, Applicant states he made a voluntary payment on this account in December 2009 to another collection agent, but that he had no further contact with the creditor or collection agents. (Item 4 at 1.) This debt is unresolved.

1.d. Applicant admits that he is indebted to a creditor for a delinquent debt in the amount of \$6,187. The Applicant has made no recent payments on this debt, and there is no evidence that he is going to make payments on this debt.

1.e. Applicant admits that he is indebted to a creditor for a delinquent debt in the amount of \$4,961. He indicated in his November 2009 answers to Interrogatories that he was attempting to make a payment arrangement with the collection agent handling the account. (Item 7 at 27-28.) However, Applicant submitted no information as

to how many payments may have been made, or the amount of his current balance. This debt is unresolved.

1.f. Applicant admits that he is indebted to a creditor for a delinquent debt in the amount of \$25,893. The Applicant has made no recent payments on this debt, and there is no evidence that he is going to make payments on this debt.

1.g. Applicant admits that he is indebted to a creditor for a delinquent debt in the amount of \$2,494. (Item 7 at 24-25.) Applicant has made no recent payments on this debt, and there is no evidence that he is going to make payments on this debt.

1.h. Applicant admits that he is indebted to a creditor for a delinquent debt in the amount of \$13,189. He indicated in his November 2009 answers to Interrogatories and in his Answer that he was attempting to make a payment arrangement with the collection agent handling the account. (Item 7 at 15-16, and Item 4 at 2.) However, Applicant submitted no information as to how many payments may have been made, or the amount of his current balance. This debt is unresolved.

1.i. Applicant admits that he is indebted to a creditor for a delinquent debt in the amount of \$2,520. (Item 7 at 21-23.) Applicant has had no recent contact with the creditor, made no recent payments on this debt, and there is no evidence that he is going to make payments on this debt.

1.j. Applicant denies that he is indebted to a creditor in the amount of \$588. He states in his Answer, "This bill was paid through arrangements of my Auto Insurance agency and [Creditor's] Total Loss department due to an accident. Account paid in full." (Item 4 at 2.) A review of the available credit reports show irreconcilable inconsistencies in reporting the account in the period from May 2009 to December 2009. (Items 8, 9, and 10.) Under the particular circumstances of this case, I cannot find that Applicant continues to owe this debt, and the subparagraph is found for Applicant.

1.k. Applicant admits that he is indebted to a creditor for a delinquent debt in the amount of \$2,687. He indicated in his November 2009 answers to Interrogatories and in his Answer that he was attempting to make a payment arrangement with the collection agent handling the account. (Item 7 at 29-30, and Item 4 at 2.) However, Applicant submitted no information as to how many payments may have been made, or the amount of his current balance. This debt is unresolved.

1.l. Applicant admits that he is indebted to a creditor for a delinquent debt in the amount of \$1,890. He indicated in his November 2009 answers to Interrogatories and in his Answer that he was attempting to make a payment arrangement with the collection agent handling the account. (Item 7 at 32-33, and Item 4 at 2.) However, Applicant submitted no information as to how many payments may have been made, or the amount of his current balance. This debt is unresolved.

1.m. Applicant denies that he is indebted to a creditor for a delinquent debt in the amount of \$765. He indicated in his Answer that he had made a full payment to the

collection agent handling the account. (Item 4 at 2.) However, Applicant submitted no documentary evidence to support his statement. This debt is unresolved.

1.n. Applicant denies that he is indebted to a creditor for a delinquent debt in the amount of \$1,001. He indicated in his Answer that he had made a full payment to the collection agent handling the account. (Item 4 at 2.) However, Applicant submitted no documentary evidence to support his statement. This debt is unresolved.

1.o. Applicant admits that, because of a job-related move, he did not file his 2005, 2006 and 2007 Federal income tax forms in a timely manner. He supplied documentary information showing that he has filed all the appropriate taxes, all back taxes have been paid, and he received a refund. (Item 12 at 1-2.) Under the particular circumstances of this case, this act has no current security significance and the allegation is found for Applicant.

1.p. Applicant admits that, because of a job-related move, he did not file his 2006 and 2007 state income tax forms in a timely manner. He supplied documentary information showing that he has filed all the appropriate taxes, and his back taxes are being paid to the satisfaction of the state. (Item 12 at 3-7.) Under the particular circumstances of this case, this act has no current security significance and the allegation is found for Applicant.

Applicant states that he has been unable to pay his debts, at least in part, because of medical issues that have affected his family. These issues began in 2007 and 2008, with medical issues concerning two of his children and his wife. (Item 7 at 40.) Applicant states that these issues were exacerbated in 2010 when his mother-in-law was diagnosed with Stage IV cancer. His family made the decision to move his wife and children to a different state at their own expense, so she could be with her mother. He submitted documentary evidence showing the cost of the move and that he had been unable to receive hardship vacation pay from his employer. (Applicant Exhibit A.) That being said, Applicant did not submit a budget, a statement of current debts, or any plan to show how he would resolve his delinquencies.

Applicant provided no evidence concerning the quality of his professional performance, the level of responsibility his duties entail, or his track record with respect to handling sensitive information and observation of security procedures. He submitted no character references or other evidence tending to establish good judgment, trustworthiness, or reliability. I was unable to evaluate his credibility, demeanor, or character in person since he elected to have his case decided without a hearing.

Policies

Security clearance decisions are not made in a vacuum. When evaluating an applicant's suitability for a security clearance, the 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, which are to be used as appropriate 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 over-arching 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. In addition, the administrative judge may also rely on his or her own common sense, as well as knowledge of the law, human nature, and the ways of the world, in making a reasoned 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. Security clearance decisions include, by necessity, consideration of the possible risk that 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.

Finally, as emphasized in Section 7 of Executive Order 10865, "Any determination under this order . . . shall be a determination 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. Under AG ¶ 19(a), an "inability or unwillingness to satisfy debts" is potentially disqualifying. Similarly under AG ¶ 19(c), "a history of not meeting financial obligations" may raise security concerns. The Applicant, by his own admission, has approximately \$70,000 in past due debts, all of which have been due and owing for several years. The evidence is sufficient to raise these potentially disqualifying conditions.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Under AG ¶ 20(a), the disqualifying condition may be mitigated where "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." Applicant's financial difficulties arose in about 2005 and continue to date. In addition, the evidence is meager as to how much he has paid to any of his creditors. It is the Applicant's burden to submit evidence showing that his financial situation has improved. He has not done so. This mitigating condition is not applicable to this case.

AG ¶ 20(b) states that the disqualifying conditions may be mitigated where "the conditions that resulted in the financial problem were largely beyond the person's control (e.g., . . . unexpected medical emergency . . .), and the individual acted responsibly under the circumstances." Applicant submits that the medical problems within his family have made it impossible to pay his debts. However, he failed to support that statement with sufficient documentary evidence to support the issue, or to show that he has otherwise acted responsibly in trying to pay his debts.

The Applicant has barely initiated a good-faith effort to pay off his creditors. There is no track record of his making payments for a consistent period of time. Accordingly, AG ¶ 20(d) is not applicable. Finally, given the fact that he is \$70,000.00 in debt, I cannot find that "there are clear indications that the problem is being resolved or is under control," as required by AG ¶ 20(c).

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. 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. The administrative judge must 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.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. The Applicant is under financial strain, and has been for several years. His debt situation is not yet under control. Under AG ¶ 2(a)(3), the Applicant's conduct is recent. Based on the state of the record, I cannot find that there have been permanent behavioral changes under AG ¶ 2(a)(6). Accordingly, at the present time, I find that there is the potential for pressure, coercion, exploitation, or duress (AG ¶ 2(a)8));and that there is a high likelihood of recurrence (AG ¶ 2(a)9)).

Overall, the record evidence leaves me with questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude the Applicant has not mitigated the security concerns arising from his financial situation at this time. If he continues to pay down his debts, and is able to document these payments, he may be eligible for a clearance in the future. He is not eligible now.

On balance, it is concluded that the Applicant has not successfully overcome the Government's case opposing his request for a DoD security clearance. Accordingly, the evidence supports a finding against the Applicant as to the factual and conclusionary allegations expressed in Paragraph 1 of the Government's Statement of Reasons.

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 THE APPLICANT
Subparagraph 1.a:	For the Applicant
Subparagraph 1.b.:	Against the Applicant
Subparagraph 1.c.:	Against the Applicant
Subparagraph 1.d.:	Against the Applicant
Subparagraph 1.e.:	Against the Applicant
Subparagraph 1.f.:	Against the Applicant
Subparagraph 1.g.:	Against the Applicant
Subparagraph 1.h.:	Against the Applicant
Subparagraph 1.i.:	Against the Applicant
Subparagraph 1.j.:	For the Applicant
Subparagraph 1.k.:	Against the Applicant
Subparagraph 1.l.:	Against the Applicant
Subparagraph 1.m.:	Against the Applicant
Subparagraph 1.n.:	Against the Applicant
Subparagraph 1.o.	For the Applicant
Subparagraph 1.p.	For the 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.

WILFORD H. ROSS
Administrative Judge