



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 09-06545

Appearances

For Government: Richard Stevens, Esquire, Department Counsel
For Applicant: *Pro se*

February 28, 2011

Decision

GALES, Robert Robinson, Administrative Judge:

Applicant failed to mitigate the security concerns regarding financial considerations. Eligibility for a security clearance or access to classified information is denied.

Statement of the Case

On June 30, 2009, Applicant applied for a security clearance and submitted an Electronic Questionnaire for Investigations Processing (e-QIP) version of a Security Clearance Application (SF 86).¹ On an unspecified date, the Defense Office of Hearings and Appeals (DOHA) issued him a set of interrogatories pertaining to his subject interview. He responded to the interrogatories on January 13, 2010.² On another unspecified date, DOHA issued him another set of interrogatories pertaining to his financial situation. He responded to the interrogatories on January 13, 2010.³ On

¹ Item 5 (SF 86), dated June 30, 2009.

² Item 6 (Applicant's Answers to Interrogatories, dated January 13, 2010).

November 17, 2010, DOHA issued a Statement of Reasons (SOR) to him, pursuant to Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended and modified; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended and modified (Directive); and the *Adjudicative Guidelines for Determining Eligibility For Access to Classified Information* (December 29, 2005) (AG) applicable to all adjudications and other determinations made under the Directive. The SOR alleged security concerns under Guideline F (Financial Considerations), and detailed reasons why DOHA could not make a preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant, and recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

Applicant acknowledged receipt of the SOR on November 30, 2010. In a sworn, written statement, dated December 13, 2010, Applicant responded to the SOR allegations and elected to have his case decided on the written record in lieu of a hearing. A complete copy of the file of relevant material (FORM) was provided to Applicant on January 6, 2011, and he was afforded an opportunity, within a period of 30 days after receipt of the FORM, to file objections and submit material in refutation, extenuation, or mitigation. Applicant received the FORM on January 25, 2011, and that same day, submitted a letter to Department Counsel.⁴ The case was assigned to me on February 16, 2011.

Findings of Fact

In his Answer to the SOR, Applicant admitted all of the factual allegations in ¶¶ 1.a. through 1.ee. of the SOR. Those admissions are incorporated herein as findings of fact.

Applicant is a 32-year-old employee of a defense contractor, currently serving as a managed systems engineer.⁵ He was granted a SECRET security clearance in 1999.⁶ He was married in 2003,⁷ and he and his wife have one daughter, born in 2008.⁸ Applicant was enjoying a successful military career from 1996 until he was diagnosed with cancer,⁹ and in July 2005, he was given an honorable discharge due to his condition.¹⁰ From August 2005 until September 2007, Applicant was employed by a

³ Item 7 (Applicant's Answers to Interrogatories, dated January 13, 2010).

⁴ Applicant's Response to the FORM, dated January 25, 2011, was forwarded to Department Counsel by a Legal Assistant to the Department Counsel on February 1, 2011.

⁵ Item 5, *supra* note 1, at 5.

⁶ *Id.* at 7, 12.

⁷ *Id.* at 8.

⁸ *Id.* at 9.

⁹ Applicant's Response to the FORM, *supra* note 4.

contractor as a communications system engineer,¹¹ and from September 2007 until March 2009, he was employed by another contractor.¹² In March 2009, he was laid off due to the expiration of a contract, and remained in that status until June 2009,¹³ when he assumed his position with his current employer.

Financial Considerations

There was nothing unusual about Applicant's finances until about 2004-2006. Applicant was diagnosed with cancer and had to undergo chemotherapy treatment, and after his discharge from active duty, his health insurance ended and he was unable to pay for the mounting medical bills.¹⁴ He was also unemployed during March – June 2009, but the impact of this relatively brief period of unemployment has not been explained. At some unspecified point, accounts started to become delinquent. Some of the accounts were placed for collection with a variety of collection agents, and some of the accounts were charged off.

The SOR identified 31 continuing delinquencies as reflected by credit reports from 2009¹⁵ and 2010,¹⁶ totaling approximately \$21,521. Among the delinquencies are accounts pertaining to medical providers, cable television service, satellite television service, automobile loan, clothing, department stores, jewelry and cameras, gasoline, and telephone service. Some accounts have been transferred, reassigned, or sold to other creditors or collection agents. Other accounts are referenced repeatedly in different credit reports, in many instances duplicating other accounts listed, either under the same creditor name or under a different creditor name. Some accounts are identified by complete account numbers, while others are identified by partial account numbers, in some instances eliminating the last four digits, and in others eliminating other digits.

In August 2009, while being interviewed by an investigator from the U.S. Office of Personnel Management (OPM), Applicant indicated he had made no attempts to enter into negotiations with his SOR creditors in an effort to resolve his delinquent accounts.¹⁷ The sole exception was an account with a clothing store, and Applicant contacted the creditor and arranged a settlement, which he had not yet paid.¹⁸ He stated that he

¹⁰ Item 8 (Certificate of Release or Discharge from Active Duty (DD Form 214), dated July 6, 2005).

¹¹ Item, 5, *supra* note 1, at 6.

¹² *Id.* at 5.

¹³ *Id.* at 5, 7.

¹⁴ Applicant's Response to the FORM, *supra* note 4.

¹⁵ Item 9 (Combined Experian, Trans Union, and Equifax Credit Report, dated July 14, 2009).

¹⁶ Item 10 (Equifax Credit Report, dated August 16, 2010).

¹⁷ Personal Subject Interview, dated August 3, 2009, attached to Item 6, *supra* note 2, at 1-2.

¹⁸ *Id.* at 1.

would establish payment plans with his creditors.¹⁹ He subsequently attempted to contact his creditors, and managed to pay off one non-SOR account in the amount of \$861.23.²⁰ He settled on a reduced balance for one SOR account (SOR ¶ 1.w.).²¹ To date, Applicant has produced no evidence to indicate that he has contacted his remaining creditors, established repayment plans, or commenced making any other payments.

There is no evidence that Applicant ever received financial counseling covering such topics as debt consolidation, money management, repayment plans, or budgeting.

Applicant prepared a personal financial statement, indicating a family monthly net income of \$7,768.84, monthly living expenses of \$3,086.45, and a monthly net remainder of \$4,682.39 available for discretionary spending.²² He has \$3,500 in bank savings.²³ Applicant inherited five cars, two motorcycles, and one Jet Ski.²⁴

Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security emphasizing, “no one has a ‘right’ to a security clearance.”²⁵ As Commander in Chief, the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information. The President has authorized the Secretary of Defense or his designee to grant an applicant eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.”²⁶

When evaluating an applicant’s suitability for a security clearance, the administrative judge must consider the AG. In addition to brief introductory explanations for each guideline, the AG list potentially disqualifying conditions and mitigating conditions, which are used in evaluating an applicant’s eligibility for access to classified information.

¹⁹ *Id.* at 1-2.

²⁰ Item 7, *supra* note 3, at 6.

²¹ *Id.* at 7.

²² Personal Financial Statement, dated January 13, 2010, attached to Item 7, at 4.

²³ *Id.*

²⁴ *Id.*

²⁵ *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

²⁶ Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.

An administrative judge need not view the guidelines as inflexible, ironclad rules of law. Instead, acknowledging 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. 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 meaningful decision.

In the decision-making process, facts must be established by "substantial evidence."²⁷ The Government initially has the burden of producing evidence to establish a potentially disqualifying condition under the Directive, and has the burden of establishing controverted facts alleged in the SOR. Once the Government has produced substantial evidence of a disqualifying condition, under Directive ¶ E3.1.15, the applicant has the burden of persuasion to present evidence in refutation, explanation, extenuation or mitigation, sufficient to overcome the doubts raised by the Government's case. The burden of disproving a mitigating condition never shifts to the Government.²⁸

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 as well. It is because of this special relationship that the Government must be able to repose a high degree of trust and confidence in those 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. Furthermore, "security clearance determinations should err, if they must, on the side of denials."²⁹

Clearance decisions must be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned."³⁰ Thus, nothing in this decision should be construed to suggest that I have based this decision, in whole or in part, on any express or implied determination as to Applicant's allegiance, loyalty, or patriotism. It is merely an indication the Applicant has or has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance. In reaching this decision, I have drawn only those conclusions that are

²⁷ "Substantial evidence [is] such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all contrary evidence in the record." ISCR Case No. 04-11463 at 2 (App. Bd. Aug. 4, 2006) (citing Directive ¶ E3.1.32.1). "Substantial evidence" is "more than a scintilla but less than a preponderance." See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994).

²⁸ See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

²⁹ *Egan*, 484 U.S. at 531

³⁰ See Exec. Or. 10865 § 7.

reasonable, logical, and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

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. Also, under AG ¶ 19(e), "consistent spending beyond one's means, which may be indicated by excessive indebtedness, significant negative cash flow, high debt-to-income ratio, and/or other financial analysis," is potentially disqualifying.

As noted above, there was nothing unusual about Applicant's finances until about July 2005 when he was discharged from active duty and lost his medical insurance. At some unspecified point, he failed to keep up with his monthly payments, and accounts started to become delinquent. Some accounts were placed for collection and some accounts were charged off. Applicant attributed his financial situation initially to being without medical insurance, and eventually to being unemployed. Nevertheless, the record is silent as to why Applicant's delinquent accounts remained unaddressed by him after he secured his current employment in June 2009; why with a substantial inventory of motor vehicles and several thousand dollars now in the bank; and with \$4,682.39 currently available for discretionary spending each month, he did not start paying off his delinquent debts. Likewise, he did not explain why, when he had no money to pay his those debts, he failed to reduce his expenses for such items as cable television service, satellite television service, or jewelry and cameras. AG ¶¶ 19(a), 19(c), and 19(e) apply.

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." Also, under AG ¶ 20(b), financial security concerns may be mitigated where "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." Evidence that "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" is potentially

mitigating under AG ¶ 20(c). Similarly, AG ¶ 20(d) applies where the evidence shows “the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.”³¹

Applicant’s financial problems commenced in July 2005, and still have not been resolved. While he attributed his continuing financial difficulties to his medical condition, the loss of health insurance, and the period of unemployment, he never explained how they became the primary cause of his financial problems, or why he failed to resolve or even address his delinquent accounts after June 2009. Because the financial situation is frequent and continuing in nature, and the causation is not adequately described, AG ¶ 20(a) does not apply. Applicant’s handling of his finances, under the circumstances, casts doubt on his current reliability, trustworthiness, or good judgment.

AG ¶ 20(b) partially applies because his medical condition caused him to be both discharged from active military service and to lose his health insurance coverage during a critical period that saw the proliferation of medical bills associated with his treatment. The relatively brief period of unemployment also exacerbated his financial situation. However, sufficient time has passed since he generated his medical bills and obtained employment, and he still did not address his delinquent accounts. The reasons stated do not establish he acted “responsibly under the circumstances.”

AG ¶ 20(c) does not apply because there is no evidence that Applicant received financial counseling.

Applicant receives very limited application of AG ¶ 20(d) because, with two exceptions, he ignored his delinquent accounts. The vast majority of them remain unpaid or unresolved, and while there are some indications that he intends to repay those delinquent debts eventually, as well as some indications that some debts may have been paid, partially or otherwise, he has offered little documentation to indicate the terms of his repayment agreements, or any indication from the various collection agencies that they have agreed to his proposed terms, or to confirm that such agreements exist. In the absence of such documentation, most of the evidence consists of promises to pay or unsupported contentions that some creditors may have been paid.

³¹ 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 [the “good-faith” mitigating condition], 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 [or statute of limitations]) in order to claim the benefit of [the “good-faith” mitigating condition].

(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. June 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 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.

There is some evidence in favor of mitigating Applicant's conduct. He was afflicted with a condition that caused him to be discharged from active military service and to lose health insurance at a point in his life when it was necessary to have it. His medical condition generated a substantial number of medical bills. And he was unemployed for several months. Nevertheless, after obtaining new employment, and health insurance, the vast majority of his accounts are simply on his list of things to do, eventually.

The disqualifying evidence under the whole-person concept is substantial. Applicant has a history of financial delinquencies. He ignored his financial responsibilities, and simply referred to his medical condition and his unemployment for his financial difficulties. As noted above, the record is silent as to why Applicant's delinquent accounts remained unaddressed by him after he secured his current employment in June 2009; why with a substantial inventory of motor vehicles and several thousand dollars now in the bank; and with \$4,682.39 currently available for discretionary spending each month, he did not start paying off his delinquent debts. Likewise, he did not explain why, when he had no money to pay his those debts, he failed to reduce his expenses for such items as cable television service, satellite television service, or jewelry and cameras. The period of inaction reflect traits which raise concerns about his fitness to hold a security clearance. I have evaluated the various aspects of this case in light of the totality of the record evidence and have not merely performed a piecemeal analysis.³² His limited good-faith efforts are insufficient to mitigate continuing security concerns. See AG ¶ 2(a)(1) through AG ¶ 2(a)(9).

³² See *U.S. v. Bottone*, 365 F.2d 389, 392 (2d Cir. 1966); See also ISCR Case No. 03-22861 at 2-3 (App. Bd. Jun. 2, 2006).

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: | Against Applicant |
| Subparagraph 1.b: | Against Applicant |
| Subparagraph 1.c: | Against Applicant |
| Subparagraph 1.d: | Against Applicant |
| Subparagraph 1.e: | Against Applicant |
| Subparagraph 1.f: | Against Applicant |
| Subparagraph 1.g: | Against Applicant |
| Subparagraph 1.h: | Against Applicant |
| Subparagraph 1.i: | Against Applicant |
| Subparagraph 1.j: | Against Applicant |
| Subparagraph 1.k: | Against Applicant |
| Subparagraph 1.l: | Against Applicant |
| Subparagraph 1.m: | Against Applicant |
| Subparagraph 1.n: | Against Applicant |
| Subparagraph 1.o: | Against Applicant |
| Subparagraph 1.p: | Against Applicant |
| Subparagraph 1.q: | Against Applicant |
| Subparagraph 1.r: | Against Applicant |
| Subparagraph 1.s: | Against Applicant |
| Subparagraph 1.t: | Against Applicant |
| Subparagraph 1.u: | Against Applicant |
| Subparagraph 1.v: | Against Applicant |
| Subparagraph 1.w: | Against Applicant |
| Subparagraph 1.x: | Against Applicant |
| Subparagraph 1.z: | Against Applicant |
| Subparagraph 1.aa: | Against Applicant |
| Subparagraph 1.bb: | Against Applicant |
| Subparagraph 1.cc: | Against Applicant |
| Subparagraph 1.dd: | Against Applicant |
| Subparagraph 1.ee: | 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 ROBINSON GALES
Administrative Judge