



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



In the matter of:)	
)	
)	ISCR Case No. 09-06715
SSN:)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Daniel F. Crowley, Esq., Department Counsel
For Applicant: *Pro se*

July 12, 2010

Decision

LOUGHRAN, Edward W., Administrative Judge:

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

Statement of the Case

On March 9, 2010, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines F (Financial Considerations) and E (Personal Conduct). 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 on April 8, 2010 and April 16, 2010, and elected to have the case decided on the written record in lieu of a hearing. Department Counsel exercised the Government's right to request a hearing before an administrative judge.

Department Counsel's memorandums are marked Hearing Exhibit (HE) I. The case was assigned to me on May 11, 2010. DOHA issued a notice of hearing on May 18, 2010, and the hearing was convened as scheduled on June 9, 2010. The Government offered Exhibits (GE) 1 through 10, which were received without objection. Applicant testified on his own behalf and submitted Exhibits (AE) A through H, which were admitted without objection. The record was held open for Applicant to submit additional information. Applicant submitted a letter that was marked AE I and admitted without objection. Department Counsel's memorandum is marked HE II. DOHA received the transcript of the hearing (Tr.) on June 17, 2010.

Findings of Fact

Applicant is a 51-year-old employee of a defense contractor. He is seeking to retain a security clearance he has held since about 1979. He served in the United States military from 1979 until he retired in 1999 as an E-7. He has worked for his current employer since he retired from the military. He attended college for about a year and a half, but he did not obtain a degree. He married in 1994 and divorced in 1995. He married again in 1997. He has an 18-year-old stepchild, and he and his wife have an 11-year-old child.¹

Applicant's child was diagnosed with a birth defect related to the spinal cord in 1998. There was a new medical procedure which involved a surgery that had only been conducted on a handful of people at that point. Applicant was still in the military but the military insurance did not approve all the costs of this new procedure. There were also incidental expenses, such as air fare and lodging in the city where the surgery was performed. The child continues to have medical problems related to the disease and medical expenses that are not covered by insurance. Applicant's mother-in-law passed away a few months after their child was born. His wife was distraught over the two events. She decided not to return to work. She stayed at home and cared for the children. Their finances suffered as a result of the combination of these factors. They filed Chapter 7 bankruptcy, and their debts were discharged in June 2000.²

Applicant and his wife purchased a timeshare in about December 2000. He testified they purchased the timeshare in order to help rebuild their credit. His wife returned to work in about 2003. She was injured at work a short time later, requiring several surgeries. She has unrelated injuries that also require surgery. She also suffers from depression. She is now considered 100% disabled and does not work. She receives Social Security disability.³

Applicant's wife managed the finances. She developed a gambling problem and lost most of the money that was to be used to pay their debts. Applicant and his wife also took in two nieces and his wife's father for a period when they were having

¹ Tr. at 23-26, 38, 47-49; GE 1, 2.

² Tr. at 25-26; Applicant's response to SOR; GE 3, 5, 8.

³ Tr. at 26-27, 42, 59-60; Applicant's response to SOR; GE 8.

difficulties. Applicant and his wife filed Chapter 13 bankruptcy in March 2007. He stated that he discovered that his wife was not paying the bills about six months before he filed bankruptcy.⁴

The bankruptcy petition listed under Schedule D – Creditors Holding Secured Claims, two vehicle loans totaling \$39,000 and the \$1,104 mortgage on their timeshare. Under Schedule E – Creditors Holding Unsecured Priority Claims, the petition listed \$5,000 owed to the Internal Revenue Service (IRS) for tax year 2005. Under Schedule F – Creditors Holding Unsecured Nonpriority Claims, the petition listed 39 debts totaling \$116,072. Included were debts for the loans on two repossessed vehicles, the mortgage on their foreclosed home, multiple debts to military exchanges, and four debts for “bad checks.” There was only one \$30 debt that was clearly identifiable as a medical debt.⁵

The bankruptcy court approved a motion to convert the bankruptcy to a Chapter 7 bankruptcy in November 2008. The case was closed in October 2009, for failure of the debtor to file a certificate of completion of the financial management course. Applicant testified that he thought he and his wife had completed the financial management course and their debts had been discharged shortly after the case was converted to Chapter 7. He learned that had not occurred when he received material from DOHA. In April 2010, the case was reopened upon motion of Applicant’s attorney after financial management course certificates by Applicant and his wife were submitted to the court. Applicant’s debts were discharged on April 20, 2010. The bankruptcy court included an explanation that “[d]ebts for most taxes” are not discharged in a Chapter 7 bankruptcy case.⁶

The bankruptcy court records indicate that one of Applicant’s cars was repossessed in 2005. Applicant testified that he thought his cars were repossessed in 2007 or 2008, but admitted that his truck could have been repossessed in 2005. A credit report from November 2008 shows the last action on the vehicle loan occurred in October 2006. Applicant stated the repossession started a big family argument about finances. He thought afterward that “everything was back under control, and it spiraled out again.”⁷

Applicant stated that he is currently in dispute with the IRS about his taxes. He stated that the IRS informed him that he owes about \$7,000. Because his wife handles the finances, he was unsure of exactly how much is owed or why the IRS believes they owe for back taxes. He and his wife have been working the issue with IRS agents.⁸

⁴ Tr. at 27-28, 34, 39, 45, 49-51; Applicant’s response to SOR; GE 8.

⁵ GE 8, 10.

⁶ Tr. at 32-33; Applicant’s response to SOR; GE 8, 10; AE A-G.

⁷ Tr. at 51-54; GE 6-8.

⁸ Tr. at 55-58; Applicant’s response to SOR; GE 8, 10. Applicant’s IRS debt was not specifically alleged in the SOR and will not be used for disqualification purposes. It will be used in assessing his overall financial situation, in the application of mitigating conditions, and in analyzing the “whole person.”

Applicant's wife continues to gamble. He estimated that she has cut her gambling down to once a week from the seven days a week that she used to gamble. She has not received any counseling for her gambling problem, but Applicant stated that family and friends have had multiple "interventions." She continues to handle the finances, but he indicated that he now "monitor[s] it a hundred percent." They do not have a checking account. She only has access to a debit card that limits her to withdrawing a maximum of \$500 a day. Applicant indicated they are currently able to pay all their bills and with the exception of the IRS matter discussed above, they are not delinquent on any accounts.⁹

Applicant submitted a Questionnaire for National Security Positions (SF 86) on October 10, 2008. Section 27a asked "In the last 7 years, have you filed any petition under the bankruptcy code (to include Chapter 13)?" He answered "Yes," and indicated that he filed Chapter 13 bankruptcy in about March 2006, and was "Currently paying Bankruptcy off." He answered "No" to Questions 28a and 28b, which asked "In the last 7 years, have been over 180 days delinquent on any debt(s)?" and "Are you currently over 90 days delinquent on any debt(s)?" Applicant credibly denied intentionally falsifying the SF 86. He reasonably could have considered that he was not "currently over 90 days delinquent on any debt(s)," because his debts were being addressed in his Chapter 13 bankruptcy. Applicant clearly notified the Department of Defense that he had financial problems. He submitted derogatory information under a different question (Section 23).¹⁰ After considering all the evidence, I find that Applicant did not intentionally falsify his SF 86.

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 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 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

⁹ Tr. at 28-31, 39-41, 58; Applicant's response to SOR; GE 8.

¹⁰ Tr. at 46-47; Applicant's response to SOR; GE 2.

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.

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 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 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* 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. 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 for a period. The evidence is sufficient to raise the above disqualifying conditions.

Five 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;

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and

(e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

The financial problems that led to Applicant's first bankruptcy were directly related to the expenses incurred as a result of his child's medical condition. Applicant responded reasonably under the circumstances by filing bankruptcy. AG ¶ 20(b) is applicable to his 2000 bankruptcy.

Applicant attributed his recent financial problems to his wife's gambling problem. 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. Applicant relied upon his wife to handle their finances. He stated that he did not know there was a problem until about six months before he filed bankruptcy in March 2007. However, there are indications that his truck was repossessed as early as 2005. I do not find that he acted completely responsibly when, despite indicators that there were problems, he ignored the state of his financial affairs. AG ¶ 20(b) is partially applicable to Applicant's recent financial problems.

Applicant received financial counseling as part of his bankruptcy. His dischargeable debts were discharged on April 20, 2010. He still has unresolved tax issues. His wife continues to gamble, but Applicant indicated it is much less frequent.

He now monitors the finances, but she has access to \$500 per day from a debit card. Most of Applicant's current financial problems have been resolved by bankruptcy, providing mitigation under AG ¶ 20(c). Bankruptcy is a legal means of addressing burdensome debt, but it does not constitute a good-faith effort to pay or resolve his debts.¹¹ AG ¶ 20(d) is not applicable. While Applicant indicated his current financial situation is stable, he has not established a track record of fiscally responsible behavior. I am unable at this time to make a finding that financial problems are unlikely to recur. AG ¶ 20(a) is not applicable.

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

Guideline E, Personal Conduct

The security concern relating to the guideline for Personal Conduct is set out in AG ¶ 15:

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.

¹¹ 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)).

Applicant provided inaccurate information on his SF 86, but, as addressed above, it was not intentional. AG ¶ 16(a) is not applicable. Personal Conduct security concerns are concluded for Applicant.

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 honorable service for 20 years in the U.S. military. I also considered his stable work record since he retired from the military. The financial problems leading to Applicant's first bankruptcy were clearly caused by his child's medical condition. His second bankruptcy was related to his wife's gambling problem. His debts were discharged in April 2010, providing a fresh start. Despite the bankruptcy, I have lingering concerns. Applicant still has unresolved tax issues, and his wife continues to gamble, albeit at a substantially reduced rate. I am not holding his wife's gambling against Applicant, but to the extent that it impacts on his finances, it remains a factor for consideration. Since his debts were discharged less than three months ago, he does not have a post-bankruptcy track record of maintaining financial stability. I am unable to find that recurrence of financial problems is unlikely.

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 concerns, but he has not mitigated Financial Considerations security 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.l:	For Applicant
Subparagraph 1.m:	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