



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



In the matter of:)	
)	
-----)	ISCR Case No. 09-06725
SSN: -----)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Braden M. Murphy, Esquire, Department Counsel
For Applicant: *Pro se*

September 24, 2010

Decision

HOWE, Philip S., Administrative Judge:

On April 18, 2008, Applicant submitted his electronic Security Clearance Application (SF 86) (e-QIP). On March 9, 2010, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing security concerns 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 within the Department of Defense on September 1, 2006.

Applicant acknowledged receipt of the SOR on a date uncertain in 2010. He submitted a signed receipt dated June 25, 2010. He signed it on that date because he was home from overseas and had not signed the document until he returned on leave and obtained the receipt form from his security officer.

He attempted to answer the SOR in writing on a date unspecified in the document. He submitted a corrected answer admitting all SOR allegations on April 22, 2010, and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on June 9, 2010, and I received the case assignment on June 15, 2010.

DOHA issued a Notice of Hearing on June 18, 2010, and I convened the hearing as scheduled on June 24, 2010. The Government offered Exhibits 1 through 7, which were received into evidence without objection. Applicant testified on his own behalf and submitted Exhibits A through D, without objection. DOHA received the transcript of the hearing (Tr.) on July 7, 2010. I granted Applicant's request to keep the record open until August 2, 2010, to submit additional matters. On July 27, 2010, he stated he would not submit any additional exhibits. Applicant's declination of the opportunity to submit additional exhibits are contained in a series of electronic messages (emails) marked as Administrative Exhibit 2 (AE 2). The record closed on August 2, 2010. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

Procedural and Evidentiary Rulings

Notice

At the hearing, Applicant indicated he received the hearing notice after it was sent on June 18, 2010. (Tr. at 13) I advised Applicant of his right under ¶ E3.1.8 of the Directive to 15 days notice before the hearing. Applicant affirmatively waived his right to 15 days notice. (Tr. at 14; Administrative Exhibit 1 (AE 1))

Findings of Fact

In his Answer to the SOR, Applicant admitted all the factual of the SOR with explanations. He also provided additional information to support his request for eligibility for a security clearance.

Applicant is 40 years old, unmarried, and has worked for a defense contractor since July 2007. He received a bachelor's degree in computer science in 2004. He works overseas for his employer and returns to the United States every six months. He bought a car for \$28,000 in cash in December 2009 when he last returned to the United States on vacation and stores it with a friend. Applicant sold some stock to obtain the cash with which he bought the car. (Tr. 29-31, 40, 62-67, 72; Exhibits 4, 5)

Applicant worked for one company from 1998 to 2006, when he was laid off from that employer. He earned \$42,000 annually with that employer. He was unemployed from January to October 2006. He used his savings account to pay his rent and credit cards for other expenses. He obtained new employment in October 2006 and worked until March 2007. He was unemployed again from March to July 2007 when he started working for his current employer. He lived with a friend during that time. He uses the

friend's address as his United States address with his current employer. (Tr. 34-34; Exhibits 1, 4, 5)

Applicant's SOR lists 13 delinquent debts totaling \$45,820. The debts date from early 2006 to 2007. Applicant earns \$12,000 monthly with a net income of \$8,000. He earned this income for the past 24 months. His personal financial statement shows assets of \$108,000. (Tr. 40; Exhibits 4, 5)

Applicant paid three delinquent debts pursuant to garnishment orders served on his employer by creditors. The debts paid were a credit card debt for \$938 (SOR Para. 1.c), a judgment for \$9,242 for a credit card debt (SOR Para. 1.g), and another credit card debt for \$10,558 (SOR Para. 1.i). These debts total \$20,738. (Tr. 26-29, 68; Exhibits 2, 7, A-D)

Applicant has 10 unpaid delinquent debts totaling \$25,082. His email of July 27, 2010, to Department Counsel states he has not been able to locate any of those creditors. He admitted at the hearing that he had done nothing to resolve any of the delinquent accounts. Applicant also admitted that he has not obtained or examined any credit report about his accounts. He has not participated in credit counseling. He uses a debit card to pay his current debts or make purchases. (Tr. 46, 61, 68-75; Exhibits 2-7; AE 2)

Policies

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 useful 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 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 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, 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, and has the ultimate burden of persuasion as to obtaining a favorable clearance 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 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 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 at AG ¶ 19 contains nine disqualifying conditions that could raise security concerns. Of these nine conditions, two conditions are applicable to the facts found in this case:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant accumulated debts from January 2006 to the present time. They totaled \$45,820. He has not taken any action to resolve those debts, except through

action by his creditors to obtain judgments and use garnishment to collect his debts. AG ¶ 19 (a) and (c) apply.

The guideline in AG ¶ 20 contains six conditions that could mitigate security concerns arising from financial difficulties. One mitigating condition may be 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;

(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; and,

(f) the affluence resulted from a legal source of income.

Applicant's failure to pay his delinquent debts is recent and continuous. His repeated failure over the past three years, and in the extra time given him after the hearing, to resolve these debts demonstrates a lack of reliability, trustworthiness, and good judgment by Applicant. AG ¶ 20 (a) does not apply.

AG ¶ 20 (b) might apply because Applicant was unemployed in 2006 and again in 2007 for a total of 14 months. However, since July 2007, three years ago, he has been gainfully employed earning \$144,000 annually. That income was more than sufficient to repay all his debts. His lack of responsibility in these matters is shown by his continued failure to resolve the delinquent debts while selling stock to purchase a \$28,000 automobile in December 2009, which he can only drive every six months when he returns to the United States from his overseas assignment. In considering all the evidence, AG ¶ 20 (b) does not apply.

There is no evidence Applicant sought or received any financial counseling on how to repay his delinquent debts. These financial problems are not resolved. Therefore, AG ¶ 20 (c) does not apply.

Applicant has not done anything to repay his creditors. He has not taken any action to resolve these debts voluntarily. There is no action taken, good-faith or otherwise, to pay these debts. Therefore, AG ¶ 20 (d) does not apply.

Applicant has not taken any action to dispute these debts. He did not present a reasonable basis to dispute their legitimacy. Therefore, AG ¶ 20 (e) does not apply.

Affluence from a legal source of income is not an issue. Therefore, AG ¶ 20 (f) does not apply.

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 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.

AG ¶ 2(c) requires each case must be judged on its own merits. 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. Applicant is a mature and educated adult, who has been earning \$144,000 annually since July 2007. Despite that large salary, he has done nothing voluntarily to resolve his delinquent debts. The three paid debts were resolved through garnishment procedures by his creditors. At the hearing, he exhibited a complete lack of responsibility toward his delinquent debts over the past three years and into the future. Although he was given time after the hearing to resolve the debts, he neglected to do so. Applicant displays a lack of good judgment that calls into question his reliability. If he cannot resolve these debts on the substantial income he earns, then how can he be trusted with classified information. None of the "whole-person" factors can be counted in his favor.

Overall, the record evidence leaves me with serious questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant did not mitigate the security concerns arising from his financial considerations.

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 to 1.m: 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.

PHILIP S. HOWE
Administrative Judge