



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



In the matter of:)
)
) ISCR Case No. 09-07091
)
)
Applicant for Security Clearance)

Appearances

For Government: Jeff A. Nagel, Esquire, Department Counsel
For Applicant: *Pro se*

May 17, 2010

Decision

DAM, Shari, Administrative Judge:

Based upon a review of the record evidence, eligibility for access to classified information is denied.

On September 10, 2008, Applicant submitted a Questionnaire for Sensitive Positions (SF 86). On October 28, 2009, 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 effective within the Department of Defense for SORs issued after September 1, 2006.

On November 18, 2009, Applicant answered the SOR in writing and elected to have the case decided on the written record in lieu of a hearing. On January 4, 2010, Department Counsel prepared a File of Relevant Material (FORM) containing 11

Government Exhibits (GE), and mailed Applicant a complete copy on January 11, 2010. Applicant received the FORM on February 1, 2010, and had 30 days from its receipt to file objections and submit additional information. On February 25, 2010, he submitted three exhibits that I subsequently marked as Applicant Exhibits (AE) A through C. On March 24, 2010, DOHA assigned the case to me.

Findings of Fact

In his response to the SOR, Applicant admitted all allegations. Those admissions are incorporated in the following findings.

Applicant is a 30-year-old employee of a defense contractor. He enlisted in the U.S. Army in June 2001. He was honorably discharge in the paygrade E-4, in May 2004. He attended college from December 2005 to September 2008 and earned a bachelor's degree in computer science. He was unemployed from August 2006 to May 2007 and from March 2008 to September 2008, at which time he began working for his current employer.

Applicant was in a relationship with a woman, who gave birth to a child in December 2000. He married the woman in August 2002. His wife later told him that he was not the father of her child. In May 2003, they divorced. In June 2004, a paternity test determined that he was not the biological father of the child (GE 3.) He had been paying child support and then stopped. A garnishment order for child support was entered in 2005. Based on his attorney's advice, he did not file state and federal tax returns for the years 2005, 2006, and 2007, although he knew that he was entitled to a refund. The attorney told him to wait until the paternity issues were resolved because his tax refunds could be confiscated for unpaid child support. (GE 3.) In early 2009, he resolved the paternity issue and filed all outstanding tax returns. (*Id.*) After receiving about \$8,600 in refunds for those years, he paid any outstanding child support obligations and some other debts.¹ (GE 3.)

Applicant will file a Chapter 7 bankruptcy to discharge his delinquent debts because he does not earn enough money to pay them.² (*Id.*) His attorney intends to file the petition in early spring. (AE B.) Applicant completed an online and telephone counseling session in February 2010, as required under bankruptcy law. (AE C.)

Prior to the issuance of the SOR in October 2009, a government investigator interviewed Applicant about his delinquent debts in November 2008. Applicant indicated that his financial delinquencies accumulated as the result of the garnishment order for child support and periods of unemployment, which left him with insufficient money to

¹There is insufficient evidence in the record to clarify the amount of child support Applicant was required to pay and when his obligation for support terminated. Two states were involved in the child support issue.

²Applicant did not submit a copy of his budget or Leave and Earnings statement to verify his assertions.

pay them. He admitted that he had not communicated with most of his creditors and did not have knowledge of several debts listed on credit bureau reports. (GE 5.)

Based on credit bureau reports (CBR) from October 2008, January 2009, April 2009, June 2009, and January 2010, the SOR alleged 29 delinquent debts totaling approximately \$52,000. The debts became delinquent between August 2004 and December 2009, and are owed to medical providers, department stores, credit card companies, and utility companies. (GE 7 through 11.)

Applicant offered no corroborating evidence of any payment toward, or other attempt to resolve these debts, other than a plan to discharge them through a Chapter 7 bankruptcy this spring. He provided no evidence concerning the quality of his recent job performance. 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

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the Adjudicative Guidelines. In addition to brief introductory explanations for each guideline, the Adjudicative Guidelines (AG) 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, 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.

Directive ¶ E3.1.14 requires the Government to 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 the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision." 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.”

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.

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 evidence established security concerns under two Guideline F disqualifying conditions. Specifically, AG ¶ 19(a), an “inability or unwillingness to satisfy debts;” and AG ¶ 19(c), “a history of not meeting financial obligations.” Based on five CBRs and his admissions, Applicant has been unable or unwilling to satisfy debts that began accruing in 2004. He demonstrated a six-year history of not meeting financial obligations. The evidence is sufficient to raise these two potentially disqualifying conditions.

After the Government raised potential disqualifications, the burden shifted to Applicant to rebut or prove mitigation of those security concerns. The guideline includes four conditions that could mitigate security concerns arising from financial difficulties in AG ¶ 20. 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 delinquencies arose in 2004 and remain unresolved to date. Because the ongoing problems are not isolated and there is no evidence to support a finding that the delinquent indebtedness is unlikely to recur, this condition does not apply.

AG ¶ 20(b) states that it may be mitigating 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.” Applicant attributed his financial problems to a garnishment order for child support for a child that was determined not to be his child, and periods of unemployment. Those may have been circumstances beyond his control; however, he did not offer any evidence that he attempted to act responsibly while the debts were accruing or after they accrued. This mitigating condition marginally applies.

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 that “the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.” Applicant established no mitigation under these two provisions. He submitted evidence that he received a session or two of credit counseling in February 2010, however, that is not sufficient to warrant the application of AG ¶ 20(c) as to credit counseling, and there is no additional evidence indicating that his financial delinquencies are under control, as required. He did not provide evidence that he paid, attempted to pay, or established a repayment plan for any debt, including small debts such as the \$46 debt alleged in SOR ¶ 1.p, the \$66 debt alleged in SOR ¶ 1. bb, or the \$91 debt alleged in SOR ¶ 1.cc. Nor is there evidence that he contacted any creditor over the past six years to resolve any of the 29 debts.

Applicant filed all outstanding state and federal tax returns in early 2009, warranting the application of AG ¶ 20(c), as to SOR ¶ 1.dd and SOR ¶ 1.ee, as those allegations are resolved.

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). They include the following:

- (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. Applicant is a mature individual, who honorably served this country. However, he is responsible for his voluntary choices and conduct that underlie the security concerns set out in the SOR. He established a consistent pattern of financial irresponsibility dating back to 2004, with no evidence of efforts to resolve his outstanding obligations, including small debts, despite learning of the Government's concerns in November 2008. At this time, he intends to discharge his delinquent debts through a Chapter 7 bankruptcy, claiming that he cannot afford to repay them.

Applicant failed to demonstrate financial rehabilitation so a recurrence of his financial problems is likely. The record contains insufficient other evidence about his character, trustworthiness, or responsibility to mitigate these concerns or make their continuation less likely.

Overall, the record evidence creates substantial doubt as to Applicant's present 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 ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a through 1.cc:	Against Applicant
Subparagraphs 1.dd and 1.ee:	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 grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

SHARI DAM
Administrative Judge