



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ISCR Case No. 09-07450
)
Applicant for Security Clearance)

Appearances

For Government: Nichole L. Noel, Esq., Department Counsel
For Applicant: *Pro se*

April 5, 2011

Decision

LOUGHRAN, Edward W., Administrative Judge:

Applicant has not mitigated financial considerations security concerns. Eligibility for access to classified information is denied.

On April 8, 2010, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, financial considerations. 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) implemented by the Department of Defense on September 1, 2006.

Applicant answered the SOR in writing on April 27, 2010, and elected to have the case decided on the written record in lieu of a hearing. Department Counsel submitted the Government's written case on January 15, 2011. A complete copy of the file of relevant material (FORM) was provided to Applicant, who was afforded an opportunity to file objections and submit material to refute, extenuate, or mitigate the security concerns. Applicant received the FORM on January 31, 2011. As of March 10, 2011, he

had not responded. The Government exhibits included in the FORM are admitted. The documents attached to Applicant's response to the SOR are also admitted. The case was assigned to me on March 21, 2011.

Findings of Fact

Applicant is a 29-year-old employee of a defense contractor. He has worked for his current employer since February 2008. He is applying for a security clearance for the first time. He has a bachelor's degree. He is married. His Questionnaire for National Security Positions (SF 86), submitted in July 2009, does not list any children.¹

Applicant was employed by a company from August 2005 to August 2007. His annual salary was \$60,000, but he was also able to work substantial overtime. His tax records show that Applicant and his wife had taxable income of \$90,819 in 2006. The economy affected his company. It stopped his overtime hours, and his pay significantly decreased. Applicant believed he would be laid off, and he accepted a job at a lower salary in another state. He later learned that he would have been laid off had he remained with the company. His annual salary at the second job was \$52,000, and there was no overtime. His 2007 tax records show taxable income of \$70,087 for Applicant and his wife. In February 2008, he moved to a third state to work for his current employer at a slightly higher annual salary, \$57,200. Tax records show taxable income for Applicant and his wife at \$62,796 for 2008 and \$73,032 for 2009. The cost of living at his current location is higher than in the two states where he previously lived. Applicant was unable to pay all his bills, and a number of debts became delinquent.²

The SOR alleges three delinquent debts with balances totaling about \$22,103. Applicant admitted that he owed the three delinquent debts. Applicant's wife also had delinquent debts that were in her name.³

Applicant retained an attorney in April 2009 to assist him in addressing his and his wife's delinquent debts. The attorney negotiates with the creditors to settle the debts. Applicant deposits money into an account. When there is enough in the account, the attorney uses the funds to settle a debt. A \$6,649 debt in Applicant's wife's name was settled for \$2,000 in October 2009.⁴

Applicant responded to the SOR in April 2010. He stated that since the settlement of his wife's debt, he has made additional payments of \$5,432 to his

¹ Item 4.

² Items 2, 4, 5.

³ Items 2, 6. Any debts that were solely in Applicant's wife's name, or were not specifically alleged in the SOR, will not be used for disqualification purposes. They will be used in assessing Applicant's overall financial situation. His wife's resolution of one debt will be considered in the application of mitigating conditions.

⁴ Items 2, 5.

attorney. He provided evidence of additional payments to the attorney of \$400 on April 12, 2010, and \$4,000 on April 17, 2010. He included a budget that showed a surplus each month that could be used to pay his debts. Except for his wife's debt that was settled in October 2009, no other debts had been paid or settled as of April 2010. Applicant received the FORM on January 31, 2011. He never responded to the FORM, so I have no evidence as to whether any additional debts have been paid or settled, or if Applicant maintained his contract with the attorney.⁵

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 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 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 safeguard classified information. Such decisions entail a certain degree of legally permissible

⁵ Item 2.

extrapolation of 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 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 of time. The evidence is sufficient to raise the above disqualifying conditions.

Four 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; and

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

Applicant had a job where he earned a good salary and was able to work overtime hours. The faltering economy affected the company, and his overtime hours were cut. He accurately believed that he would be laid off if he remained with the company. He accepted a job in another state with a lower salary and no overtime. He then accepted his current job in a third state, where the pay is better than his second job, but not as high as the first job. The cost of living where he currently works is higher than in the first two states.

Applicant's employment issues qualify as conditions that were outside his control. AG ¶ 20(b) also requires that the individual act responsibly under the circumstances. Applicant started to act responsibly by retaining an attorney to assist him in resolving his and his wife's debts. A \$6,649 debt in his wife's name was settled for \$2,000 in October 2009. Applicant continued to pay his attorney money to be held in trust to settle his debts. He paid between \$4,400 and \$5,432 to the trust fund by April 2010. Unfortunately, Applicant did not respond to the FORM. I do not know if those funds were used to settle additional debts, if Applicant continued to pay into the fund, or if he has maintained the contract with the attorney. Applicant could have continued to pay into the fund and settled several debts, or he could have cancelled the contract with the attorney in May 2010 and withdrew the money from the fund. The bottom line is that Applicant has left me guessing as to what has occurred since April 2010. There is insufficient evidence for a determination that Applicant continued to act responsibly and made a good-faith effort to repay or otherwise resolve his delinquent debts. His financial issues are recent and ongoing. I am unable to determine that they are unlikely to recur. They continue to cast doubt on Applicant's current reliability, trustworthiness, and good judgment. AG ¶¶ 20(a) and 20(d) are not applicable. AG ¶¶ 20(b) and 20(c) are partially applicable. In sum, I find that financial concerns remain despite the presence of some mitigation.

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.

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 Guideline F in my whole-person analysis. The limited information in the record has not convinced me that Applicant's finances are sufficiently in order to warrant a security clearance.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. I conclude Applicant 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.c:	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.

Edward W. Loughran
Administrative Judge