



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



In the matter of:)	
)	
SSN:)	ISCR Case No. 09-07853
)	
Applicant for Security Clearance)	

Appearances

For Government: Ray T. Blank, Jr., Esq., Department Counsel
For Applicant: *Pro se*

July 29, 2010

Decision

LOUGHRAN, Edward W., Administrative Judge:

Applicant has not mitigated Financial Considerations security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On April 9, 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).

Applicant answered the SOR in writing on May 5, 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 June 1, 2010. 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 a copy of the FORM on June 7, 2010. He answered the FORM in an undated response. He did not object to the admission of the items attached to the FORM, and they are admitted. Department Counsel did not object to the documents in Applicant's response, and they are admitted. The case was assigned to me on July 16, 2010.

Findings of Fact

Applicant is a 28-year-old employee of a defense contractor. He is a high school graduate. He has never been married and has no children.¹

The SOR alleges 11 delinquent debts with balances totaling about \$6,249, and two unpaid judgments for \$7,905 and \$2,480. Applicant admitted owing the judgments and all the debts alleged in the SOR. With the exception of the \$170 debt to an insurance company alleged in SOR ¶ 1.m, all the debts and judgments are medical accounts.

Applicant was a passenger in a car that was involved in an accident in September 2006. He was injured and was unable to work for a year. Most of the debts in the SOR resulted from the accident. Applicant lived with his brother and supported himself through loans from his family. Applicant stated that his lawyer paid more than \$13,000 toward his medical bills and the car owner's insurance paid \$5,000, but Applicant was "stuck with around 18 thousand dollars."²

When he returned to work, Applicant decided to pay the personal loans before the medical debts. He stated that he paid the personal loans and started on the medical debts when he was laid off from his job in April 2010. He returned to work in June 2010. A credit report from March 25, 2010, shows four medical debts totaling \$1,033 that had been in collection, but were paid. On April 20, 2010, Applicant paid \$36 and \$48 medical debts that were not alleged in the SOR. He paid \$85 toward the \$170 insurance company debt alleged in SOR ¶ 1.m, and the debt appears to be settled.³

The medical debts alleged in SOR ¶¶ 1.f (\$2,057), 1.g (\$730), 1.k (\$212), and 1.l (\$267) are listed on Applicant's credit report as being incurred in 2003. Applicant stated that he moved in with his older brother in 2004. His brother was behind on his bills. Applicant stated he gave his brother extra money to help him out, and he placed his own debts "on the back burn[er] for awhile."⁴

¹ Item 4.

² Items 2, 5; Applicant's response to FORM.

³ Items 2, 5, 7; Applicant's response to FORM.

⁴ Items 5, 6; Applicant's response to FORM.

There is no evidence that Applicant received financial counseling. He stated that he contacted a debt settlement company while he was out of work, but they could not help him while he was unemployed. He stated that he would contact the company after he returned to work and reach an agreement with the company to get all his debts paid. He stated he plans to pay all his debts and be debt-free in two to three years.⁵

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 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 extrapolation of potential, rather than actual, risk of compromise of classified information.

⁵ Items 2, 5; Applicant's response to FORM.

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 as follows:

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.

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 has not resolved most of the debts alleged in the SOR. His financial issues are recent and ongoing. AG ¶ 20(a) is not applicable.

Applicant was in a car accident in September 2006, and was out of work for a year. Those conditions were outside his control. To be fully applicable, AG ¶ 20(b) also requires that the individual act responsibly under the circumstances. Applicant admitted he had debts from 2003 or 2004 that were unrelated to his car accident. He stated that he paid his personal loans accrued after the accident. The amount of the loans is unclear from the record. It is also unclear why his medical debts resulting from the car accident were not completely covered by insurance. Applicant paid six medical debts that were not alleged in the SOR. He paid \$85 toward the \$170 insurance company debt alleged in SOR ¶ 1.m, and that debt apparently is resolved. Despite those payments, I am unable to make a determination that Applicant acted responsibly under the circumstances. I have questions that are unanswered by the limited information available in the record. AG ¶ 20(b) is partially applicable.

There is no evidence that Applicant received financial counseling. There is insufficient evidence for a determination that Applicant made a good-faith effort to pay or resolve all his delinquent debts, or that his overall financial problems are being resolved or under control. AG ¶¶ 20(c) and 20(d) are not applicable.

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 Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(a) were

addressed under that guideline, but some warrant additional comment. In 2006, Applicant was a passenger in a car that was involved in an accident. He was injured, incurred medical expenses, and was out of work for about a year. He also has unpaid medical bills from 2003 to 2004, when he decided to help his brother rather than pay his own debts. The limited information in the record has not convinced me that Applicant's financial problems will be resolved within a reasonable period.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, 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.l:	Against Applicant
Subparagraph 1.m:	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.

Edward W. Loughran
Administrative Judge