



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



In the matter of:)	
)	
SSN:)	ISCR Case No. 10-00065
)	
Applicant for Security Clearance)	

Appearances

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

August 3, 2010

Decision

GOLDSTEIN, Jennifer I., Administrative Judge:

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

Statement of the Case

On March 19, 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) effective for cases after September 1, 2006.

Applicant answered the SOR on April 13, 2010, and requested a hearing before an administrative judge. The case was assigned to me on May 7, 2010. DOHA issued a notice of hearing on May 14, 2010, and the hearing was convened as scheduled on June 8, 2010. The Government offered Exhibits (GE) 1 through 6, which were admitted

without objection. The Applicant offered Exhibits (AE) A through D and testified on his own behalf. The record was held open for Applicant to submit additional information. On June 14, 2010, Applicant submitted a packet of 21 pages, marked AE E; on June 16, Applicant submitted 7 pages marked AE F; and on June 23, 2010, Applicant submitted 3 additional pages marked AE G; all of which were admitted without objection. DOHA received the transcript of the hearing (Tr.) on June 25, 2010.

Findings of Fact

Applicant is a 49-year-old employee of a defense contractor. He is divorced and has one child, age 22. He served in the U.S. Navy from 1982 to 1989, achieving the rank of Second Class Petty Officer (E-5). While in the Navy, he was the recipient of a Good Conduct Medal. After separating from the Navy, he went on to work as a defense contractor until 1996. He held a security clearance from approximately 1982 through 1996. (Tr. 22-23, 27-28, 34-35, 39, 40-42; AE F.)

Subsequently, Applicant left the defense industry and started his own construction business. Applicant presented the Articles of Incorporation, dated February 11, 2002, as evidence that he had incorporated his business. The company did well for the first couple of years, but started having financial problems as a result of forest fires and a downturn in the economy. In 2008, Applicant felt he could no longer support himself through his construction business, so he found a truck driving job. However, the economy impacted the trucking industry too, and Applicant soon found himself out of work. (Tr. 22-24, 43-45; AE B.)

Applicant's Personal Financial Statement indicates he has approximately \$82 left over after he satisfies his bills each month. (GE 2.) The SOR alleges six delinquent debts as listed on credit reports obtained in 2009 and 2010. (GE 3; GE 4; GE 5; GE 6.) They are as follows:

Allegation 1.a. alleges that Applicant is indebted on a state tax lien for the approximate amount of \$5,143. Applicant incurred this debt when he failed to file his state corporate taxes in 2007.¹ He further testified that he failed to file his corporate tax returns for tax years 2007, 2008, and 2009. He is currently indebted to the state for approximately \$9,000. He intends to negotiate a payment arrangement with the state, but failed to present any documentation of reaching an agreement or show payments made on his state tax debt. (Tr. 32, 49-52; GE 2.)

Allegation 1.b. alleges that Applicant is indebted on a credit card placed with a collection agent in the approximate amount of \$6,440. This was a corporate card, which Applicant failed to repay. He intends to satisfy this debt once he has the funds available. He last contacted this creditor two years ago. (Tr. 32, 53; GE 2.)

¹ He filed his 2007 Federal Income Tax return for his corporation on October 23, 2009. His 2008 Federal Income Tax return for his corporation was filed on December 12, 2009. His 2009 Federal Income Tax return for his corporation was filed on June 9, 2010. (AE E.)

Allegation 1.c. alleges that Applicant is indebted on a credit card placed with a collection agent in the approximate amount of \$13,012. This was a corporate card, which Applicant failed to repay. He intends to satisfy this debt once he has the funds available. He last contacted this creditor two years ago. (Tr. 32, 53-54.)

Allegation 1.d. alleges that Applicant is indebted to his former wife in the approximate amount of \$6,000 for child support. This account was settled in 2005, and Applicant presented documentation from his attorney as proof of payment. (Tr. 28; AE A; GE 2.)

Allegation 1.e. alleges that Applicant is indebted on a credit card placed with a collection agent in the approximate amount of \$8,694. This was a personal credit card, which Applicant used for both personal and corporate purchases. He intends to satisfy this debt once he has the funds available. (Tr. 32, 54-55.)

Allegation 1.f. alleges that Applicant is indebted to a phone company in the approximate amount of \$263. Applicant presented a canceled check, dated November 20, 2002, as proof that this debt had been satisfied. (Tr. 32; AE D; GE 2.)

In 2007, Applicant sought the assistance of a debt management company to help him resolve his financial delinquencies. He contracted with a company to help him repay his debts; but after paying the firm \$1,400, he found that he could no longer afford the payments and he defaulted on the agreement. (Tr. 66-67; AE E.)

Applicant presented three letters of character reference from colleagues at his current employer. Each letter indicates Applicant has a professional demeanor and indicates they find Applicant to be trustworthy. (AE G.)

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 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 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 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 concern 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 delinquent debts and is unable or unwilling to pay his obligations. His delinquencies have been on-going for several years, without resolution. 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.

Applicant still owes at least \$33,289 on four of the six debts listed on the SOR. His debt is current and on-going. He gave little indication that he is working to improve his financial situation. His unwillingness to address these debts casts doubt on his current reliability, trustworthiness, and good judgment. AG ¶ 20(a) is not applicable.

Applicant's financial difficulties were partly caused by the downturn in his construction business. This qualifies as a condition that was outside his control. However, to be fully applicable, AG ¶ 20(b) also requires that the individual act responsibly under the circumstances. Applicant has not made any attempt to responsibly address his remaining debts. He has not had contact with several of his creditors in over two years. He has not made payment arrangements on any of his consumer debt. AG ¶ 20(b) is not applicable.

Applicant has not sought financial counseling. While he may have contracted a debt management company, he did not abide by his agreement with that company. He failed to provide proof that AG ¶ 20(c) applies.

Applicant has satisfied two of his debts. He no longer is obligated on his child support obligation and he has satisfied the phone company debt. However, he has not made payment arrangements with any of his other creditors. There is no showing he has initiated a good-faith effort to repay his overdue creditors or otherwise resolve debts with respect to allegations 1.a., 1.b., 1.c., or 1.e. AG ¶ 20(d) is only partially mitigating.

Finally, Applicant has not contested any of his four outstanding debts. AG ¶ 20(e) is not mitigating.

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.

Applicant is well respected by his colleagues. He is gainfully employed and has successfully held a security clearance in the past. He honorably served in the Navy for six years. Despite his accomplishments, he has failed to demonstrate good judgment when it comes to satisfying his financial delinquencies. He has been unable to make ends meet and satisfy his past due accounts. His choices, with respect to his debts, do not demonstrate the judgment, reliability, or trustworthiness needed to hold a security clearance. There are significant unresolved concerns about Applicant's finances and judgment.

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 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
Subparagraph 1.a.:	Against Applicant
Subparagraph 1.b.:	Against Applicant
Subparagraph 1.c.:	Against Applicant
Subparagraph 1.d.:	For Applicant
Subparagraph 1.e.:	Against Applicant
Subparagraph 1.f.:	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.

Jennifer I. Goldstein
Administrative Judge