



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



In the matter of:)
)
) ISCR Case No. 10-00089
)
Applicant for Security Clearance)

Appearances

For Government: Paul M. DeLaney, Esq., Department Counsel
For Applicant: *Pro se*

April 27, 2011

Decision

COACHER, Robert E., Administrative Judge:

Applicant failed to mitigate the security concerns under Guideline F, Financial Considerations. Applicant's eligibility for a security clearance is denied.

Statement of the Case

On November 11, 2010, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, Financial Considerations. DOHA acted 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 answered the SOR on December 13, 2010, and elected to have his case decided on the written record. Department Counsel submitted the Government's

File of Relevant Material (FORM) on January 28, 2011. The FORM was mailed to Applicant and he received it on February 14, 2011. Applicant was given an opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant submitted his response to the FORM on March 9, 2011. The case was assigned to me on April 4, 2011.

Findings of Fact

In Applicant's answer to the SOR, he admitted SOR ¶¶ 1.a, 1.b, 1.g, and 1.h and denied 1.c -1.f. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 50 years old. He is married and has two adult children. He has worked for his current employer, a defense contractor, since May 2004. He is a senior engineer. He served on active duty as an enlisted member of the Navy from about June 1978 to April 2004, retiring in the pay grade of E-8. He has previously held a security clearance.¹

The debts listed in the SOR are supported by credit reports dated November 2, 2010, and September 26, 2009. The debts alleged in SOR ¶¶ 1.b - 1.e, and 1.g are various consumer debts totaling \$89,555. The debt alleged in SOR ¶ 1.f is a second real estate mortgage in the amount of \$29,665. Applicant also filed for Chapter 13 bankruptcy relief in September 2008, but subsequently had the case dismissed in April 2009 (SOR¶ 1.a). The last allegation in the SOR concerns Applicant's 2004 special court-martial conviction for committing larceny while still in the Navy (SOR ¶ 1.h).²

In January 2007, Applicant transferred with his job from one state to another. In September 2006, he purchased a condominium (condo) that he had to sell because of his relocation. His company paid his interest payment for six months on the condo while it was offered for sale. The property was listed at the price Applicant owed on it. Applicant received one offer to buy the property in six months. The offer was about \$10,000 below the list price. He did not accept this offer; rather he looked to rent the property. He was thwarted in his rent attempt by the rules of the homeowners association which prohibited renting the property. Consequently Applicant was paying all the living expenses at his new location as well as the expenses related to his condo. Additionally, he was paying on numerous credit card bills, auto loans, signature loans, and two recreational vehicle (RV) loans.³

Applicant could no longer afford to make the condo payments. He sought debt relief through a debt consolidation company. He claims to have paid the company

¹ GT Items 4, 6

² GT Item 1.

³ GT Item 4.

several thousand dollars only to discover that his creditors would not work with them. He next sought advice about bankruptcy from a law firm. He was advised to file for Chapter 13 bankruptcy relief. He filed bankruptcy under Chapter 13 in September 2008. In April 2009, he requested and received a voluntary dismissal of the bankruptcy petition. He pursued the dismissal because he and his wife did not want to burden the court with their debt problems. He now believes it was a mistake to have the bankruptcy petition dismissed. He then began to set up payment arrangements with his creditors. One creditor brought a wage garnishment action against him that resulted in a 25% reduction in his monthly pay.⁴

The consumer debt listed at SOR ¶1.b in the amount of \$27,008 is still owed. Applicant made \$250 per month payments on the debt in January and February 2011.⁵

The consumer debt listed at SOR ¶1.c in the amount of \$5,257 has been resolved. A judgment for this debt was satisfied in November 2010.⁶

The consumer debt listed at SOR ¶1.d in the amount of \$14,168 has been resolved. A settlement was reached and Applicant paid the amount in December 2010.⁷

The consumer debt listed at SOR ¶1.e in the amount of \$1,712 has been resolved. A settlement was reached and Applicant paid the amount in December 2010.⁸

This second mortgage on the condo listed at SOR ¶1.f in the amount of \$29,665 is unresolved. Applicant has no payment plan for this debt. He is waiting to receive a demand letter from the current creditor. The last action reported on this account was in October 2009.⁹

The consumer debt listed at SOR ¶1.g in the amount of \$25,913 has been resolved. A credit report dated February 21, 2011, reflects a zero balance and a closed status.¹⁰

⁴ *Id.*

⁵ Applicant's Reply to Form (AR) Item 8 (In Applicant's reply he provided supporting information which he labeled as "Items". To distinguish Applicant's items from the Government items, any Applicant item reference will be preceded by the letters: AR and the Government items will be preceded by the letters GT.

⁶ AR Item 4, 5.

⁷ AR Item 4, 5.

⁸ AR Item 4, 5.

⁹ AR; GT Item 8.

¹⁰ AR Item 7.

In April 2003, a Navy criminal investigation was initiated concerning Applicant because he was suspected of filing false Navy travel vouchers and forging documents to support those vouchers. When he was first interviewed about the allegations, he voluntarily wrote a statement denying any wrongdoing. He attested, *inter alia*, he was “better off financially than I have ever been”, and that he “did not need to commit fraud to get money.” He further stated, “I could not do that to my family, my CO or the people who worked for me.” Applicant was a master chief petty officer, paygrade E-9, at the time of the investigation. A few weeks after his original statement for the investigation, Applicant gave a subsequent statement where he admitted to creating false receipts and submitting false travel claims. He explained he was going through a stressful time and he could use the extra money to pay for family needs. He was later convicted of larceny at a special court-martial in January 2004 and sentenced to confinement for 33 days, fined \$6,000 and reduced to the paygrade of E-8.¹¹

Applicant presented letters from four coworkers who attested to his good character for trustworthiness, loyalty, and dedication to project success. They all recommend him for a security clearance. He also presented his employer performance evaluations where he was consistently given an overall rating of “exceeds requirements.”¹²

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 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.

¹¹ GT Item 10.

¹² AR Items 12, 13.

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 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 that an applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about 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

AG ¶ 18 expresses the security concern for financial considerations:

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. I have considered all of them under AG ¶ 19 and especially considered the following:

- (a) inability or unwillingness to satisfy debts;
- (c) a history of not meeting financial obligations; and
- (d) deceptive or illegal financial practices such as embezzlement, employee theft, check fraud, income tax evasion, expense account fraud, filing deceptive loan statements, and other intentional financial breaches of trust.

Applicant has delinquent debts that remain unpaid or unresolved. He was convicted of larceny for filing false travel vouchers while in the Navy. I find all three disqualifying conditions are raised.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. I have considered all of the mitigating conditions under AG ¶ 20 and especially considered the following:

- (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 paid or resolved the debts listed at SOR ¶¶ 1.c, 1.d, 1.e., and 1.g. I find mitigating condition AG ¶ 20(d) applies to these debts. He also has made two recent payments toward the debt listed at SOR ¶ 1.b which also amounts to a good-faith effort to pay that debt. AG ¶ 20(d) applies to this debt.

Applicant's decision to file for Chapter 13 bankruptcy relief and then seek a voluntary dismissal of the same does not cast doubt on his current reliability, trustworthiness, or good judgment. AG ¶ 20(a) applies to this situation.

Applicant has not resolved his past-due second mortgage listed at SOR ¶ 1.f. Applicant's difficulty in selling his home may be a condition beyond his control, however, his lack of action in attempting to resolve the debt for two years does not show responsible action. I find AG ¶ 20(b) does not apply. Additionally, the debt is recent and unresolved. AG ¶¶ 20(a), 20(c), and 20(d) also do not apply.

Although Applicant's larceny conviction was in 2004, the severe breach of trust he committed by stealing government funds and the cover-up lies he told to conceal his action, call into question his reliability, trustworthiness, and good judgment. None of the mitigating conditions listed above apply to SOR ¶ 1.h.

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 considered Applicant's years of service in the Navy as well as his recent job performance evaluations. I also considered the character statements supporting him. Although he has made good progress toward resolving his financial problems, a large debt of over \$29,000 remains unpaid. Additionally, his crime of larceny while a master chief petty officer in the Navy and the resulting lies he told investigators call into question his integrity, trustworthiness, and good judgment. Therefore, although he has mitigated several of the debts, he failed to provide sufficient evidence to mitigate the security concerns.

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 failed to mitigate the security concerns arising under Guideline F, 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 – 1.e:	For Applicant
Subparagraph 1.f:	Against Applicant
Subparagraph 1.g:	For Applicant
Subparagraph 1.h:	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.

Robert E. Coacher
Administrative Judge