



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



In the matter of:)
)
) ISCR Case No. 10-00116
)
)
Applicant for Security Clearance)

Appearances

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

July 21, 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 April 6, 2010, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines 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 15, 2010, and requested a decision without a hearing before an administrative judge. Department Counsel exercised its right to request a hearing before an administrative judge on April 29, 2010, pursuant to paragraph E3.1.7 of the additional procedural guidance. The case was assigned to me

on May 5, 2010. DOHA issued a notice of hearing on May 17, 2010, and the hearing was convened as scheduled on June 3, 2010. The Government offered Exhibits (GE) 1 through 7, which were admitted without objection. Applicant testified on his own behalf. The record was held open for Applicant to submit additional information. On June 15, 2010, Applicant submitted a packet of three pages, which were marked AE A and admitted without objection. DOHA received the transcript of the hearing (Tr.) on June 18, 2010.

Findings of Fact

Applicant is a 33-year-old employee of a defense contractor. He is single and has no children. He possesses a bachelor's degree from an American university. (Tr. 21-22.)

The SOR alleges four delinquent debts as listed on credit reports obtained in 2009 and 2010. Applicant admits each debt in his answer to the SOR. Two of the debts were for a primary mortgage and a line of credit on his house, and two were for credit cards.

In approximately April 2001, Applicant purchased a home for approximately \$142,000. He put approximately 3% of the cost down, as a down payment, and financed the rest of the purchase. He had a thirty-year, fixed-interest rate of approximately 7.25% on his mortgage. However, he chose to refinance his home two or three times. He also took out a line of credit against the home. (Tr. 24-33, 49-54; GE 1; GE 2; GE 4; GE 5; GE 6; GE 7.)

In August of 2001 through October 2003, Applicant was laid off from his job. In 2003, he moved to for a new job and rented the house to tenants. The rent payments covered all but \$300 of the primary mortgage and line of credit. In 2009, he lost his tenant and could no longer afford to make the mortgage payments on his home. He halted his payments on both the primary mortgage and the line of credit at approximately the same time, and tried to sell the home by advertising it himself for two months. His attempts to sell the home failed and the home was foreclosed upon. After foreclosure, the bank sold the property. After the sale, Applicant was still indebted at least \$32,050 on the first mortgage (as alleged in 1.a.) and owed \$31,950 on the home equity line of credit (as alleged in 1.d.). Although these creditors have been in contact with him to collect these debts, Applicant has not made any payment arrangements with them. (Tr. 24-33, 49-54.)

Applicant also is indebted on two credit card accounts in the approximate amounts of \$11,115 (as alleged in 1.b.) and \$12,029 (as alleged in 1.c.). Applicant was current on both credit cards until mid-2009, when he defaulted on both accounts. He was using the cards to live on, pay travel expenses, and pay his bills. Applicant indicated he has contacted both creditors about repayment, but was unable to reach agreement with either creditor. (Tr. 33-37; GE 4; GE 5; GE 6; GE 7.)

Applicant has not received financial counseling. He has contemplated filing for bankruptcy and met with a bankruptcy attorney once, approximately a year prior to the hearing, but has not yet filed a bankruptcy petition. Applicant claims he currently lives within his means and makes an annual income of approximately \$49,000. Applicant has approximately \$21,000 saved in a 401K account. (Tr. 37-40, 45-46.)

Applicant presented two letters of recommendation from co-workers. Both letters attest that Applicant is “trustworthy” and “honest.” (AE A.)

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. One is potentially applicable in this case:

(a) inability or unwillingness to satisfy debts.

Applicant accumulated delinquent debts and is unable or unwilling to pay his obligations. 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 more than \$87,144 on his four debts. 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 his period of unemployment and subsequent loss of a renter. These qualify as conditions that were outside his control. 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 debts, despite his significant annual income and his 401K savings. Further, he did not submit sufficient information for a finding that he acted responsibly under the circumstances with respect to his house. He only listed it for sale for two months prior to relinquishing the property to the mortgage holder. AG ¶ 20(b) is not applicable.

Applicant has not sought financial counseling. While he may have spoken to a bankruptcy attorney once, over a year ago, he did not follow through and file for bankruptcy. He failed to provide proof that AG ¶ 20(c) applies.

Applicant has not made payment arrangements with any of his creditors. There is no showing he has initiated a good-faith effort to repay his overdue creditors or otherwise resolve debts. AG ¶ 20(d) does not apply.

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 makes at least \$49,000 annually. He has no dependants. Yet, 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 need 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.:	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.

Jennifer I. Goldstein
Administrative Judge