



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



In the matter of:)	
)	
)	ISCR Case No. 10-00460
SSN:)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Caroline H. Jeffreys, Esq., Department Counsel
For Applicant: *Pro se*

September 8, 2010

Decision

LOUGHRAN, Edward W., Administrative Judge:

Applicant has mitigated Financial Considerations security concerns. Eligibility for access to classified information is granted.

Statement of the Case

On April 26, 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 on May 7, 2010, and requested a hearing before an administrative judge. The case was assigned to me on July 12, 2010. DOHA issued a notice of hearing on July 28, 2010, and the hearing was convened as scheduled on August 19, 2010. The Government offered Exhibits (GE) 1 through 5, which were

received without objection. Applicant testified and submitted Exhibits (AE) A through C, which were admitted without objection. DOHA received the transcript of the hearing (Tr.) on August 30, 2010.

Findings of Fact

Applicant is 28 years old. He served in the United States military from 2000 until he was honorably discharged in 2003. He is applying for a security clearance. He has an associate's degree. He married his first wife in 2001, and they divorced in 2005. He married his current wife in 2005. He has a four-year-old child.¹

The SOR alleges that Applicant has a delinquent debt of \$15,904 owed to a credit union for the deficiency balance on a car loan after the vehicle was repossessed. Applicant admitted the allegation. He also provided information in support of his request for a security clearance.

Applicant and his first wife owned two vehicles. She took one of the vehicles when they separated and was supposed to make the loan payments or refinance it. She did neither, and the car was repossessed. There was a deficiency balance on the loan of about \$8,000. Applicant settled the debt with the creditor for \$4,000 in October 2009. The second vehicle was in his first wife's name, but Applicant cosigned the loan. When they separated, his first wife called the credit union and had them pick the vehicle up for a voluntary repossession. The credit union listed the deficiency balance as \$15,904.²

Applicant did not hear from the credit union about the loan after the vehicle was returned. He contacted the credit union in July 2010. He agreed to settle the debt and entered into a stipulated judgment with the attorney for the credit union. The stipulated judgment calls for Applicant to pay \$8,000 for the debt. He is to pay \$150 per month for six months starting in August 2010. He made the first payment. After six months, Applicant and the attorney will reassess the monthly payments.³

Applicant's other debts are current. He had a few other delinquent debts for relatively small amounts. All of those debts were paid or settled by February 2010. Applicant has not received financial counseling. He and his wife are living within their means and not accruing new delinquent debts.⁴

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief

¹ Tr. at 18, 21-22; GE 1, 2.

² Tr. at 17-20; Applicant's response to SOR; GE 3.

³ Tr. at 20-21, 27; Applicant's response to SOR; AE A-C.

⁴ Tr. at 22-28; GE 3-5.

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.

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 owed the deficiency balance on a loan he cosigned after the vehicle was voluntarily repossessed. The evidence raises 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 just started making the payments on the stipulated judgment. AG ¶ 20(a) is not yet applicable.

Applicant cosigned a car loan for his first wife. She voluntarily returned the vehicle without any input from Applicant. Her actions were outside his control. To be fully applicable, AG ¶ 20(b) also requires that the individual act responsibly under the circumstances. When he cosigned the loan, Applicant agreed to be personally liable if she did not pay. He settled the deficiency owed on another car loan in 2009. He settled or paid several other delinquent debts. He entered into a stipulated judgment to settle

the deficiency owed on the second car loan. Those are all responsible actions. He does not rate full mitigation under AG ¶ 20(b) because it took several years before he took action on this debt.

Applicant has not received financial counseling. However, he has resolved other delinquent debts. His actions convince me that he will continue with the payments under the stipulated judgment. I find there are clear indications that his financial problems are being resolved and are under control. AG ¶ 20(c) is applicable. Applicant does not receive full mitigation under AG ¶ 20(d) because he only recently started the payments on the stipulated judgment.

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.

I considered Applicant's honorable service in the United States military. His ex-wife caused two cars to be repossessed. Applicant settled the deficiency balance on one car loan, and he entered into a stipulated judgment to settle the second loan. His finances are currently in order and do not generate a security concern.

Overall, the record evidence leaves me without questions or doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has 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: FOR APPLICANT

 Subparagraph 1.a: For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

Edward W. Loughran
Administrative Judge