



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



In the matter of:)	
)	
)	ISCR Case No. 10-00472
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Julie R. Mendez, Esq., Department Counsel
For Applicant: *Pro se*

February 8, 2011

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant mitigated the Government's security concerns under Guideline F, Financial Considerations. Applicant's eligibility for a security clearance is granted.

Statement of the Case

On September 16, 2010, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F. The action was taken 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 October 25, 2010, and requested a hearing before an administrative judge. The case was assigned to me on December 7, 2010. DOHA issued a Notice of Hearing on December 9, 2010. I convened the hearing as

scheduled on January 19, 2011. The Government offered Exhibits (GE) 1 through 5 into evidence. Applicant did not object and they were admitted. Applicant and one witness testified on his behalf. He offered Exhibit (AE) A, which was admitted without objections. The record was held open until January 21, 2011, to allow Applicant to submit additional documents. Applicant submitted an additional document with multiple pages which was marked as AE B, and admitted without objection, and the record closed. DOHA received the hearing transcript (Tr.) on January 26, 2011.

Procedural Issue

Department Counsel moved to withdraw SOR ¶¶ 1.n and 1.o. The request was granted.

Findings of Fact

Applicant admitted all of the SOR allegations. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is 32 years old. He married in 1999. He has three children, ages 11, 10 and 5. He is a high school graduate and is presently attending college online to obtain his bachelor's degree. He needs 25 more credits to complete it. Applicant's wife has a medical problem. For a period of time she was a homemaker because the cost of daycare was greater than her earnings. She resumed working in May 2009, and was laid off in June 2010. She received approximately \$140 a week from unemployment insurance, but that has expired. She is actively pursuing any type of employment.¹

In 2002, Applicant was a car salesman. He worked solely on commission. He estimated he was earning about \$100,000 annually. He was able to pay his mortgage and other monthly expenses. In 2004, the car business began to decline and it continued to decline significantly through 2008. Applicant's income was reduced to about \$36,000 in 2008. He looked for other employment opportunities in the area, but did not find any. He could no longer afford his house payments. His father advised him to move to the state where he was residing because the job market was better. In December 2008, Applicant moved his family across the country and lived with his parents until April 2010, when they moved to a rental unit. Applicant believed he would be able to find a job quickly when he moved to the new state. That was not the case. He was unemployed for six months. He worked at a car dealership for a period of time and his monthly earnings were about \$2,100.²

In September 2009, Applicant began work with a county sheriff's department as a deputy sheriff. He made the sheriff's department aware of his financial problems and advised them he had delinquent debts. He passed their background investigation. Since then he has completed several law enforcement schools that will allow him to work in

¹ Tr. 25, 27-30, 37, 54-56.

² Tr. 18-22, 30.

different areas. He received his law enforcement certification, which gives him arrest authority and authorizes him to work for any law enforcement agency in the state. His salary is \$33,000. His youngest child's preschool costs are paid under a state grant program. He has applied for food stamps, but was denied because his income level is just over the threshold requirement.³

Applicant has applied for another job so he can subsidize his current income. The new job will require a security clearance. He decided that the only way to resolve his delinquent debts is to file bankruptcy. He met with an attorney, who provided a letter verifying that he will file Chapter 7 bankruptcy. Applicant has delayed filing because he must save enough money to pay the attorney before he proceeds. He stated the reason he decided to file for bankruptcy was because he wanted to show he was taking affirmative steps to resolve his delinquent debts.⁴

Four of Applicant's debts are for medical services that were not covered by insurance. SOR ¶¶ 1.j and 1.l are likely duplicates. All of the others, except SOR ¶ 1.m are credit card debts that were used for living expenses. SOR ¶ 1.m is a foreclosure on the house Applicant owned. It was purchased by the bank. He has not been contacted about whether there is a deficiency. He last made a payment in October 2008. The creditor has Applicant's new address. There was no second mortgage on the house.⁵

In 2009, Applicant earned \$21,000. He was unemployed for six months of the year. He has no other delinquent debts except those that are listed on the SOR. The approximate amount of delinquent debts Applicant owes is \$13,000.⁶

Applicant's father testified on his behalf. He verified he advised Applicant to move because the job prospects were better. He raised his son to be honest and have integrity. He believes his son has maintained that standard.⁷

Applicant provided character letters. He is described as fair, thoughtful, and intelligent. He thinks first and acts second. He holds himself to a very high set of morals and standards. He is reliable and has integrity. He is considered a great father, husband, and citizen. He displays a selfless attitude toward his family and country. A former employer and supervisor described him as extremely responsible with excellent work habits and an asset to the company.⁸

³ Tr. 22-26, 31, 45-53.

⁴ Tr. 33-34- 38, 55; AE A.

⁵ Tr. 38-45.

⁶ Tr. 45-51.

⁷ Tr. 57-63.

⁸ AE B.

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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

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 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 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

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. I have considered all of the disqualifying conditions under AG ¶ 19, and the following are potentially applicable:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant has numerous delinquent debts that are unpaid and unresolved. He began accumulating the debt in 2007 and 2008. I find there is sufficient evidence to raise these disqualifying conditions.

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

- (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 has numerous delinquent debts that are unpaid and unresolved. He was earning a substantial income, when the industry he worked in experienced an economic downturn. He took action to increase his job opportunities by moving to a state where the job prospects were better. Unfortunately, it took him six months to get a job, and the salary was meager for a family of four to live on. His wife had medical issues, but she eventually found work. She was laid off and is now looking for a new job. He used credit cards to provide for his family while unemployed. Applicant attended school to make him more marketable. He earned his law enforcement certificate. He is attempting to subsidize his meager deputy sheriff's salary, so he can better support his family. He was declined food stamps, but received a state grant for his child's preschool. Applicant decided to file Chapter 7 bankruptcy to show that he is not ignoring his debts. I find the conditions that resulted in Applicant's financial problems are unlikely to recur and do not cast doubt on his reliability, trustworthiness or good judgment. Therefore, AG ¶ 20(a) applies.

The conditions that caused Applicant's financial problems were beyond his control. He worked in an industry that is steered by consumer spending. He saw his salary take a plunge, so he took action to find a way to support his family. He moved to a new state, lived with his parents, went to school, and after being unemployed for six months, finally obtained a job. His wife worked, but was laid off and is looking for a new job. He is attempting to work a second job. I find that Applicant acted responsibly when he encountered financial problems and conclude AG ¶ 20(b) applies.

Applicant is working with an attorney to file Chapter 7 bankruptcy, which will resolve his debts. He is realistic about his ability to repay his delinquent debts, especially based on his current salary. He determined that, under the circumstances, the best way to resolve them is with a fresh start through bankruptcy. I find there are clear indications the problem is being resolved through Chapter 7 bankruptcy. Therefore, AG ¶ 20(c) applies. Applicant has not paid his delinquent debts, but he is resolving them through bankruptcy, so AG ¶ 20(d) also applies. Applicant does not dispute the debts, so AG ¶ 20(e) is 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. Applicant was earning a substantial salary when he was confronted with an economic downturn. He took his father's advice and moved to a state where the job prospects appeared better. He was unemployed for six months, he and his family lived with his parents, and he attended school so he could change careers. He is now in law enforcement, but he could not recover from the economic devastation. He has approximately \$13,000 in delinquent debts. He made a realistic decision that the only way to resolve his delinquent debts was through a Chapter 7 bankruptcy. He has begun that process. Applicant is trying to get another job so he can increase his income and support his family. His wife worked until she was laid off and is now searching for a job. Applicant's character references describe him as a well respected man of integrity. I find that the financial considerations that were raised are not a security concern. Overall, the record evidence leaves me with no questions or doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising under the guideline for 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:	FOR APPLICANT
Subparagraphs 1.a-1.m:	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 a security clearance. Eligibility for access to classified information is granted.

Carol G. Ricciardello
Administrative Judge