



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



In the matter of:)
)
) ISCR Case No. 10-00658
)
)
Applicant for Security Clearance)

Appearances

For Government: Paul M. Delaney, Esquire, Department Counsel
For Applicant: *Pro se*

December 6, 2010

Decision

DAM, Shari, Administrative Judge:

Based upon a review of the record evidence, eligibility for access to classified information is denied.

On July 22, 2009, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP). On May 17, 2010, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F (Financial Considerations). 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 effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant answered the SOR on June 3, 2010 and DOHA received it on June 8, 2010. On June 30, 2010, he filed a request that the case be decided on the written record in lieu of a hearing. DOHA received said request on July 6, 2010. On August 2,

2010, Department Counsel prepared a File of Relevant Material (FORM) containing 11 items and mailed Applicant a complete copy on August 3, 2010. Applicant received the FORM on August 10, 2010, and had 30 days from its receipt to file objections and submit additional information. He did not submit any additional documentation. On October 26, 2010, DOHA assigned the case to me.

Findings of Fact

In his response to the SOR, Applicant admitted the allegations contained in ¶ 1.a and denied those in ¶ 1.b and ¶ 1.c. His admissions are incorporated into the following findings.

Applicant is a 60-year-old employee of a defense contractor. He is twice-divorced and has two adult children. Since May 2008, he has worked as a watchman/security guard for his current employer. Prior to this employment, he was a self-employed painter for many years. (Item 5.)

On November 25, 2009, Applicant met with a government investigator to discuss past due financial accounts. During that interview, he indicated that he would contact his former cable company about an outstanding \$229 bill. He denied owing money to either the state or federal government for unpaid taxes. He explained that as part of his second divorce settlement, he received \$72,000 from his former wife's retirement fund, of which he used \$20,000 to purchase a home and the remainder he transferred into another retirement fund. He stated that his sister offered to help him resolve and pay the taxes, and that he would contact the taxing bodies. (Item 6.) In response to interrogatories sent to him in March 2010, he reiterated that he disputed the tax liens. Along with that response, he submitted a budget, which listed his monthly net income as \$3,972 and expenses as \$2,500, leaving approximately \$1,400 remaining. (Item 7.)

Based on credit bureau reports (CBR) dated August 2009, February 2010, and April 2010, the SOR alleged a state tax lien for \$6,289, a federal tax lien for \$21,242, and a \$229 collection account for cable company, totaling \$27,760. The state tax lien was filed in 2003 and the federal tax lien was filed in 2004. The collection account became delinquent in June 2008. (Items 8, 9, 10.) In his answer, he admitted owing the cable bill, but denied owing the taxes assessed against him. (Item 4.)

Applicant offered no corroborating evidence of any voluntary payment toward or attempt to resolve these debts. He submitted a statement and document from the state indicating that \$1,232 was seized by the federal government in October 2009 and asserting that it was applied to the outstanding federal tax lien. (Item 7.) He provided no evidence concerning the quality of his job performance. He submitted no character references or other evidence tending to establish good judgment, trustworthiness, or reliability. I was unable to evaluate his credibility, demeanor, or character in person since he elected to have his case decided without a hearing.

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 (AG) 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, 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.

Directive ¶ E3.1.14 requires the Government to 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 the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision." 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."

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.

Analysis

Guideline F, Financial Considerations

The security concern relating to the guideline 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.

AG ¶ 19 notes two disqualifying conditions that could potentially raise security concerns in this case:

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

Based on three CBRs and his statements, Applicant has been unwilling to satisfy three delinquent debts that began accruing in 2003. The evidence is sufficient to raise these two potentially disqualifying conditions.

After the Government produced substantial evidence of those two disqualifications, the burden shifted to Applicant to produce evidence and prove a mitigating condition. AG ¶ 20 set forth conditions that could mitigate financial security concerns:

- (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;

(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; and

(f) the affluence resulted from a legal source of income.

Applicant's tax delinquencies arose in 2003 and 2004 when two tax liens were filed. Those and a delinquent debt from 2008 remain unresolved. Because the problems are ongoing and not isolated, there is insufficient evidence to support a finding that the indebtedness is unlikely to recur or continue. Hence, AG ¶ 20(a) does not apply. He did not present credible evidence that the accumulation of \$27,760 of debt was due to conditions beyond his control or that he attempted to responsibly manage those debts once it accrued, as required under AG ¶ 20(b).

Applicant established no mitigation under AG ¶ 20(c) or AG ¶ 20(d). He did not submit evidence that he received credit counseling or that he paid or resolved the tax liens and one small delinquent debt, which would indicate that the situation is coming under control. Nor, did he present evidence that he made a good-faith effort to pay any of the three debts. Despite his statements throughout the record that he disputed the debts, Applicant did not provide documentation verifying that he formally disputed the tax liens or cable bill, which is necessary to trigger the application of AG ¶ 20(d). There is no evidence to support the application of AG ¶ 20(f).

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). They include the following:

(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. Applicant is a mature individual, who has worked for a defense contractor since May 2008. In November 2009, he learned of the Government's concerns relating to two tax liens and one collection account, and indicated his willingness to resolve the matters. The tax problems have been outstanding since 2004. In March 2010, the Government again notified him of its concerns. In May 2010, DOHA filed a SOR. In August 2010, the Government filed the FORM. For almost nine months, he has been on notice that the tax liens and \$229 debt were creating security concerns and potentially affecting his employment. Despite that knowledge, he did not provide proof that he has taken steps to address the liens or pay the small \$229 cable company bill. Applicant failed to demonstrate financial rehabilitation, which would tend to indicate that the recurrence or continuance of these unaddressed obligations is unlikely. The record contains insufficient other evidence about his character, trustworthiness, or responsibility to mitigate these concerns or make their continuation less likely.

Overall, the record evidence creates substantial doubt as to Applicant's present eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant did not mitigate the security concerns arising from his financial considerations.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a through 1.c:	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.

SHARI DAM
Administrative Judge