



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



In the matter of:)
)
) ISCR Case No. 10-00816
)
)
Applicant for Security Clearance)

Appearances

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

January 6, 2012

Decision

HOGAN, Erin C., Administrative Judge:

On April 7, 2011, 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 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 after September 1, 2006.

On May 25, 2011, Applicant answered the SOR and did not request a hearing. He later changed his mind and requested a hearing before an administrative judge. Department Counsel was ready to proceed on August 16, 2011. The case was assigned to another administrative judge on August 26, 2011, and transferred to me on October 25, 2011. That same date, a Notice of Hearing was issued, scheduling the hearing for November 15, 2011. The hearing was held as scheduled. During the hearing, the Government offered six exhibits which were admitted as Government Exhibits (Gov) 1 – 6. Applicant testified and offered four exhibits which were admitted as Applicant Exhibits (AE) A - D. The transcript (Tr.) was received on November 27, 2011. Based upon a

review of the pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

Findings of Fact

In his response to the SOR, Applicant denies the allegation in SOR ¶ 1.d and admits all the remaining SOR allegations.

Applicant is a 47-year-old air conditioning mechanic employed by a Department of Defense contractor, who seeks a security clearance. He has worked for his current employer since April 2009. He is single and has three children, ages 23, 21, and 16. (Tr. 23-26, 42; Gov 1)

Applicant's background investigation revealed that he has 18 delinquent accounts, an approximate total of \$42,357. Of that amount, \$9,992 was for tax liens and \$9,173 related to an automobile repossession. He owed a tax lien in the amount of \$7,041 for tax years 1995, 1996, and 1997. He owed another tax lien in the amount of \$2,951 owed for tax years 2006, 2008, 2009, and 2010. (Gov 2; Gov 3; Gov 5; Gov 6; Response to SOR, dated May 26, 2011).

In response to the SOR, Applicant provided a letter indicating that he retained a law firm to help him negotiate resolutions for his debts in October 2010. Applicant offered the same letter during the hearing. It was admitted as AE A. Initially, Applicant was able to afford his monthly payments to the law firm. He eventually was unable to make the payments when his child support payments increased. After he left the agreement with the law firm, he researched filing for bankruptcy, but decided it was too expensive. (Tr. 34 – 36; AE A)

Applicant owes a significant amount of child support arrearages for his three children. While not alleged in the SOR, his child support obligation is one of the reasons why he is unable to pay his bills. On January 1, 2009, Applicant's total child support arrearages was \$79,801. On February 1, 2010, the total arrearages was \$85,143. The arrearages increased because of interest. Applicant testified that his financial problems began in 1988 because he could not afford his child support payments and pay his other debts. (Tr. 27, 46; AE C)

The two tax liens resulted because Applicant was unable to pay his taxes. Applicant provided proof that the \$7,041 tax debt alleged in SOR ¶ 1.d was resolved. (Tr. 29-30; Response to SOR, AE B) Applicant entered into a payment agreement with the Internal Revenue Service (IRS) for the remaining tax debt. He agreed to pay the IRS \$50 a month. (Tr. 31-32, 43; AE B)

During the hearing, Applicant admitted he never contacted any of the other creditors alleged in the SOR. He has not attended financial counseling courses. He has not had an active credit card account since 1998. He does not have additional debts that were not alleged in the SOR. (Tr. 36, 38, 41)

Applicant's net monthly pay is \$2,000. He rents a room from a co-worker for \$550 a month. He does not own a car. He pays \$100 monthly towards gas, electricity, and cable. He estimates that he has \$250 left over each month after expenses. (Tr. 38 – 40)

Applicant's site manager wrote a letter on his behalf. She indicates Applicant is a trustworthy employee who occasionally is the acting section lead. He is responsible and dependable. Applicant also provided numerous awards, certificates of achievement, and training certificates that he earned during his career. (AE D)

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 must be considered when determining 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.

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 applicant or proven by Department Counsel. . . ." The applicant has the ultimate burden of persuasion as to obtaining 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 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 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.

The guideline notes several disqualifying conditions that could raise security concerns. I find AG ¶19(a) (an inability or unwillingness to satisfy debts); and AG ¶19(c) (a history of not meeting financial obligations) apply to Applicant’s case. Applicant has a history of financial problems. He admits to having financial problems since 1988, the year his oldest child was born. The SOR alleged 18 delinquent accounts, an approximate total of \$42,357.

An individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in their obligations to protect classified information. Behaving irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life. A person’s relationship with his creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to pay debts under agreed terms. Absent evidence of strong extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a situation of risk inconsistent with the holding of a security clearance. An applicant is not required to be debt free, but is required to manage his finances in such a way as to meet his financial obligations.

The Government’s substantial evidence and Applicant’s own admissions raise security concerns under Guideline F. The burden shifted to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the security concerns. (Directive ¶E3.1.15) An applicant has the burden of proving a mitigating condition, and the burden

of disproving it never shifts to the Government. (See ISCR Case No. 02-31154 at 5 (App. Bd. September 22, 2005))

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. The following mitigating conditions potentially apply:

AG ¶ 20(a) (the behavior happened so long ago, was 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) does not apply. Applicant's financial problems are ongoing. While he resolved one of his federal tax liens, he has a considerable amount of unresolved debt.

AG ¶ 20(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) does not apply. While Applicant has a large child support arrearage, which he claims prevents him from paying his bills, paying support is something that was within his control. Considering the amount of the arrearages, Applicant did not pay child support for a number of years. Although he is now paying child support, he neglected his duties to pay child support in the past, which was not responsible behavior.

AG ¶ 20(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) does not apply. Applicant has not received financial counseling. He has no plan in place to resolve his delinquent debts.

AG ¶ 20(d) (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts) applies with respect to the \$7,041 federal tax lien alleged in SOR ¶ 1.d. He agreed to pay the IRS \$50 a month towards the \$2,952 tax lien alleged in SOR ¶ 1.c. However, he did not provide proof that he was consistently making payments towards this lien. Applicant retained a law firm to assist him with resolving the accounts but was unable to make the payments so the agreement was discontinued. He researched filing for bankruptcy, but determined it was too expensive. While Applicant has a large monthly child support payment, he has made little effort to resolve his remaining delinquent accounts.

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 the favorable recommendation of his site manager and the awards and decorations that he has received. Applicant has a long history of financial problems. While he now has a well-paying job, his child support payments have increased with his income. Applicant accumulated significant child support arrearages. If he had paid his child support dutifully, he would not be in the position that he is in at the present. Most of Applicant's delinquent accounts are unresolved. Security concerns are not mitigated.

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 – c:	Against Applicant
Subparagraph 1d:	For Applicant
Subparagraph 1.e – r:	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.

ERIN C. HOGAN
Administrative Judge