



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



In the matter of:)	
)	
)	ISCR Case No. 10-01086
)	
Applicant for Security Clearance)	

Appearances

For Government: Alison O’Connell, Esq., Department Counsel
For Applicant: *Pro se*

May 12, 2011

Decision

LOUGHRAN, Edward W., Administrative Judge:

Applicant has not mitigated financial considerations security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On August 2, 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) implemented by the Department of Defense on September 1, 2006.

Applicant answered the SOR on August 28, 2010, and again on September 25, 2010, and requested a hearing before an administrative judge. The case was assigned to another administrative judge on February 1, 2011. DOHA issued a notice of hearing on February 23, 2011, and the hearing was convened as scheduled on March 8, 2011.

Applicant did not appear for the hearing, and the case was continued. The case was reassigned to me on March 18, 2011. DOHA issued a second notice of hearing on March 28, 2011. On April 6, 2011, Applicant requested to change his request from a hearing to a decision on the written record in lieu of a hearing. Department Counsel's request to proceed with a hearing was approved. The hearing was convened as scheduled on April 20, 2011. The Government offered exhibits (GE) 1 through 7, which were admitted without objection. Applicant testified but did not submit any documentary evidence. The record was held open until May 6, 2011, for Applicant to submit additional information. Applicant did not submit any documentary evidence before the record closed. DOHA received the hearing transcript (Tr.) on April 28, 2011.

Findings of Fact

Applicant is a 42-year-old employee of a defense contractor. He has worked for his current employer since March 2009. He is applying for a security clearance for the first time. He is a high school graduate. He is married with two children, ages 14 and 12.¹

The SOR alleges three delinquent debts with balances totaling about \$34,416, and that Applicant filed Chapter 7 bankruptcy and his debts were discharged in 2001. Applicant admitted all the allegations.

Applicant attributed his financial problems leading to his bankruptcy to not earning enough money. He had a family with two young children and could not pay all his debts. He worked for a company from 1996 to 2007, and his finances stabilized after the bankruptcy. Applicant was laid off in October 2007, when his job was outsourced. He had the option to remain with a new employer, but at a greatly reduced salary, or he could accept a severance package of one week's pay for every year he was with the company. He chose the severance package. Applicant was unemployed until he was hired by his current employer in March 2009. He received unemployment compensation, and he cashed in his 401(k) retirement account, but he was unable to pay all his bills, and a number of debts became delinquent.²

Applicant received a loan modification on his primary mortgage and is not behind on those payments. He has not made any payments on the three debts alleged in the SOR, including \$19,802 owed on a charged-off home equity loan. He stated he is paying his current debts, but admitted that he had not made the monthly payments on a credit union line of credit since about August 2010. A January 2011 credit report listed the account as \$510 past due, with a balance of \$4,295. He stopped paying the debt while he and his wife were separated. They have since reconciled. He has received some financial counseling. Applicant is unable to address his delinquent debts at this

¹ Tr. at 24-25; GE 1.

² Tr. at 17-23, 28-31; GE 1-3.

time. He stated that he plans to pay them, but he is uncertain when he will be able to do so.³

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 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.

³ Tr. at 22-24, 31-41; GE 2, 3. Any debt that was not specifically alleged in the SOR will not be used for disqualification purposes. It will be used in assessing Applicant's overall financial situation, in the application of mitigating conditions, and in analyzing the "whole person."

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 accumulated a number of delinquent debts and was unable or unwilling to pay his obligations for a period of time. The evidence is sufficient to raise 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 attributed his financial problems leading to his bankruptcy to not earning enough money. His finances recovered after the bankruptcy until he lost his job in October 2007. He was unemployed until he was hired by his current employer in March 2009. He was separated from his wife for a period, which also exacerbated his financial problems. His unemployment and marital separation qualify as conditions that were outside his control. AG ¶ 20(b) also requires that the individual act responsibly under the circumstances. Applicant has been employed for more than two years, but he has done nothing of significance to address his delinquent debts. In fact, his credit union line of credit became delinquent after he returned to work. There is insufficient evidence for a determination that Applicant acted responsibly and made a good-faith effort to repay or otherwise resolve his delinquent debts. He received some financial counseling, but his finances are not under control. His financial issues are recent and ongoing. I am unable to determine that they are unlikely to recur. They continue to cast doubt on Applicant's current reliability, trustworthiness, and good judgment. AG ¶¶ 20(a) and 20(d) are not applicable. AG ¶¶ 20(b) and 20(c) are partially applicable. In sum, I find that financial concerns remain despite the presence of some mitigation.

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's finances suffered when he was unemployed for an extended period. He returned to work more than two years ago, but his finances are still in disarray, without any resolution in the foreseeable future.

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. 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
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Subparagraphs 1.a-1.d:	Against Applicant
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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.

Edward W. Loughran
Administrative Judge