



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



In the matter of:)	
)	
-----)	ISCR Case No. 10-01125
)	
Applicant for Security Clearance)	

Appearances

For Government: Richard Stevens, Esq., Department Counsel
For Applicant: *Pro se*

April 6, 2011

Decision

MARSHALL, Jr., Arthur E., Administrative Judge:

On October 15, 2010, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) noting security concerns arising 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 (DOD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the DOD on September 1, 2006.

In a November 4, 2010, response, Applicant admitted four of the allegations without comment and requested a decision without hearing. On January 6, 2011, Department Counsel submitted a File of Relevant Material (FORM), which included nine attached items. Applicant did not submit a response within the time period of 30 days after his receipt of the FORM. The case was assigned to me on April 4, 2011. Based on a review of the case file, I find Applicant failed to meet his burden regarding the security concerns raised. Security clearance denied.

Findings of Fact

Applicant is a 33-year-old systems operator who has worked for the same defense contractor since about February 2009. He attended one year of college after he was discharged from the U. S. Army, in which he served from 1997 until 2004. He is married and has five children.

At issue in the SOR are seven delinquent debts attributed to Applicant: 1.a (\$3,038 - denied), 1.b (\$689 - admitted); 1.c (\$413 - admitted); 1.d (\$11,454 - admitted); 1.e (\$6,745 - admitted); 1.f (\$550 - denied); and 1.g (\$167 - denied).¹ In sum, he admitted four of the debts (about \$19,300). He provided no documentary evidence showing that the three denied accounts (approximately \$3,760) have been paid, addressed, resolved, or formally disputed. No documentary evidence was submitted supporting his claims that he has worked with some of his creditors by telephone.² He did, however, submit evidence that two delinquent accounts and a state tax liability not shown as being at issue in the SOR were previously satisfied.³

Applicant attributed his debts, in part, to an earlier separation and divorce that occurred in 2005 and four deployments over the past 10 years.⁴ He was also unemployed from September 2008 through November 2008 and in January 2009.⁵ No significant information was provided that linked these events to the debts at issue. He also failed to provide information about his current finances. There is no evidence that he has pursued financial counseling, or describing his overall financial situation.

Policies

When evaluating an applicant's suitability for a security clearance, an administrative judge must consider the AG. The AG lists potentially disqualifying conditions and mitigating conditions. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, they are applied in conjunction with the factors listed in the adjudicative process. An administrative judge's over-arching adjudicative goal is a fair, impartial, and commonsense decision. Under AG ¶ 2(c), this process is a conscientious scrutiny of a number of variables known as the "whole-person concept." An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

¹ With regard to debt 1.a, Applicant contends that this was a joint account with his ex-wife.

² See FORM, Item 6 (Interrogatories) at 2-4.

³ *Id.* at 8-11.

⁴ Applicant was deployed both as a member of the military and as a career civilian working for a defense contractor. See FORM at 4-5.

⁵ FORM, Item 5 (Security clearance application, dated Feb. 4, 2009) at 18-19.

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.

The United States Government (Government) must present evidence to establish controverted facts alleged in the SOR. It is an applicant’s responsibility to present “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . .”⁶ The burden of proof is something less than a preponderance of evidence. The ultimate burden of persuasion is on the applicant.⁷

A person seeking access to classified information enters into a fiduciary relationship with the Government based on 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 about 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.”⁸ “The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”⁹ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such information.¹⁰ A security clearance denial does not necessarily reflect badly on an applicant’s character. It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense established for issuing a clearance.

Analysis

Guideline F – Financial Considerations

In this case, Guideline F is the appropriate guideline for consideration. Under that guideline, “failure or an inability to live within one’s means, satisfy debts, and meet

⁶ See also ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

⁷ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

⁸ See also EO 12968, § 3.1(b) and EO 10865 § 7.

⁹ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

¹⁰ *Id.*

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."¹¹ It also states that "an individual who is financially overextended is at risk of having to engage in illegal acts to generate funds."¹² Here, Applicant admitted delinquent debts amounting to about \$19,300, and provided no documentary evidence showing that about \$3,760 in denied debts have been addressed, resolved, or formally disputed with one of the three major credit reporting bureaus. Therefore, Financial Considerations Disqualifying Conditions AG ¶ 19(a) (inability or unwillingness to satisfy debts) and AG ¶ 19(c) (a history of not meeting financial obligations) apply. With such conditions raised, it is left to Applicant to overcome the case against him and mitigate security concerns.

There are multiple debts at issue, amounting to \$23,000 in delinquent debt. As noted above, there is no tangible evidence that any of these debts have been addressed. Financial Considerations Mitigating Conditions 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) and FC MC AG ¶ 20(d), (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts) do not apply.

Applicant suggests that a separation and divorce in about 2005 and four deployments over the past decade contributed to his financial issues. He also experienced at least two brief periods of unemployment between 2008 and 2009. Although he failed to document a clear nexus between those events, such unanticipated situations often disrupt one's financial planning and joint accounts are often unresolved in a divorce. However, in the absence of any additional information about Applicant's finances or budget, there is no way to discern whether he acted responsibly during those periods, obviating application of AG ¶ 20(b) (the conditions that resulted in the behavior 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).

In failing to provide a clear picture of his finances, there is only scant evidence that Applicant has worked on addressing his debt or improving his finances. The evidence submitted addressed two apparently delinquent debts and a state tax liability that have been resolved, but none of those accounts were shown to be among the accounts at issue in the SOR. There is no evidence that Applicant has pursued financial counseling. There is no documentary evidence supporting his claims that he has worked with some or all of his creditors vis telephone. There is no evidence that he has developed and implemented a plan to resolve his delinquent debts. Therefore, neither AG ¶ 20(c) (the person has received or is receiving counseling for the problem and there are clear indications that the problem is being resolved or is under control) nor AG

¹¹ AG ¶ 18.

¹² *Id.*

¶ 20(d) (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts) applies.

With regard to the joint account which Applicant appears to imply may be the responsibility of Applicant's ex-wife, there is insufficient evidence to raise AG ¶ 20(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).¹³ None of the other financial considerations mitigating conditions apply.

The burden for mitigation in these proceedings is placed squarely on Applicant. Lacking evidence that he has made any progress on the debts noted in the SOR, financial considerations security concerns remain unmitigated.

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 an applicant's conduct and all the circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a). 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. As noted above, the ultimate burden of persuasion is on the applicant seeking a security clearance.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case, as well as the "whole-person" factors. In choosing a decision without hearing, there are scant facts of record. Applicant is a mature and experienced man who has devoted his adult life to the military and the defense industry. He has only been subject to minor periods of unemployment. He is married and, together with his current wife, has five children.

Applicant was separated from his first wife, then divorced in 2005. He was briefly unemployed twice between 2008 and 2009. There is insufficient evidence to evaluate his current financial situation. There is no evidence as to either his current budget, if any, or any plans he may have to address and satisfy the debts at issue. While he did submit some documentary evidence of satisfying a few debts not at issue in the SOR, they are impossible to assess as part of any overall personal finance strategy without more information and evidence.

Applicant admitted over \$19,000 in delinquent debt. He denied three of the debts at issue, amounting to about \$3,760. As previously noted, the burden of persuasion in these proceedings is placed on the Applicant. Here, Applicant failed to meet his burden. He offered scant documentary evidence to mitigate his admitted liability or to refute

¹³ Emphasis added.

those debts which he denies. The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials. Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such information. In light of the foregoing, security concerns remain unmitigated. Clearance is denied.

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-1.g:	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 access to classified information. Clearance denied.

ARTHUR E. MARSHALL, JR.
Administrative Judge