



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



In the matter of:)
)
) ISCR Case No. 10-01219
)
Applicant for Security Clearance)

Appearances

For Government: Eric Borgstrom, Esq., Department Counsel
For Applicant: *Pro se*

August 29, 2011

Decision

NOEL, Nichole L., Administrative Judge:

Applicant contests the Defense Department’s intent to revoke his eligibility for a security clearance to work in the defense industry. The evidence shows that between fall 2006 and fall 2010, Applicant accumulated \$52,000 in delinquent debt. He filed for Chapter 7 bankruptcy protection in July 2011. Although bankruptcy is a legitimate method of resolving delinquent debt, Applicant has not demonstrated a record of financial reform and rehabilitation. Accordingly, clearance is denied.

Statement of the Case

Acting under the relevant Executive Order (EO) and DoD Directive,¹ on January 28, 2011, the Defense Office of Hearings and Appeals (the Agency) issued a Statement

¹ This case is adjudicated under Executive Order 10865, *Safeguarding Classified Information within Industry*, signed by President Eisenhower on February 20, 1960, as amended, as well as DoD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program*, dated January 2, 1992, as amended (Directive). In addition, the *Adjudicative Guidelines for Determining Eligibility for Access to*

of Reasons (SOR) explaining that it was not clearly consistent with the national interest to continue Applicant's access to classified information. The SOR detailed the factual basis for the action under the security guideline known as Guideline F (Financial Considerations).

Applicant answered the SOR and requested a hearing. The case was assigned to another administrative judge in April 2011. The case was assigned to me on June 3, 2011. The hearing proceeded as scheduled on July 12, 2011. Department Counsel offered Government's Exhibits (GE) 1 through 6, which were admitted without objection. Applicant's Exhibits (AE) A through I were also admitted without objection. I received the transcript (Tr.) on July 21, 2011.

Findings of Fact

Applicant is a 50-year-old employee of a government contractor. He has worked for the same company for 30 years and has held a security clearance for the majority of that time. His most recent periodic reinvestigation revealed, and he admits as alleged in the SOR, that he is indebted to ten creditors for approximately \$52,000 in delinquent debt.²

Applicant has never married and has no children. In late 2006, he became friendly with a single mother who lived on his street. When they met, the woman had three children between the ages of 6 and 12. Soon, Applicant became emotionally attached to them. Because he believed he was in a romantic relationship with the woman, he began to provide financial support to the woman and her children. Initially, he gave the woman some money to help her pay her bills. Initially, he was able to do so without any detriment to his personal finances because he earned overtime pay on a regular basis.³

In 2008, the woman had a fourth child, Applicant was not the father. Still, he continued to financially support the woman and her four children. By 2009, he was giving her in excess of \$3,000 each month. He paid her rent; he bought clothes and electronics for the children, which the family often sold for cash. He paid \$2,000 to bail the woman out of jail and allowed her and the children to live in his home while she served a sentence on home confinement. To provide this level of support, not only did Applicant give the woman his entire paycheck, he also took cash advances on his credit card. As his financial support for the woman and her family increased, his income steadily decreased due to lack of overtime. By 2009, Applicant's income decreased so

Classified Information (AG), effective within the Defense Department on September 1, 2006, apply to this case. The AG were published in the Federal Register and codified in 32 C.F.R. § 154, Appendix H (2006). The AG replace the guidelines contained in Enclosure 2 to the Directive.

² Tr. 16-17; Security Clearance Application, dated September 21, 2009.

³ Tr. 16, 20-21, 24-26.

drastically that he began having difficulty paying his bills and his mortgage became delinquent.⁴

In October 2010, Applicant was paying the rent for the apartment the woman lived in with the children. Through neighborhood gossip, he learned that another man was living in the apartment. After he confirmed this to be true, Applicant stopped providing financial support to the woman. However, by that time his finances were in disarray. Applicant refocused his attention on resolving his delinquent debt.⁵

He rehabilitated his mortgage loan through a loan modification program. Unable to negotiate settlement agreements with his creditors, Applicant decided to file for bankruptcy protection. Although he initially planned to file under Chapter 13, his lawyer advised him that Chapter 7 would be the better option. He filed his bankruptcy petition on July 11, 2011, the day before the hearing. All of the debts alleged in the SOR are included in the bankruptcy petition, which is now pending with the bankruptcy court.⁶

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,

⁴ Tr. 21, 27-29, 31-34.

⁵ Tr. 20, 29-30.

⁶ AE C – G; Tr. 34-37.

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.

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’s financial problems became acute in 2009 as he continued provide financial support for the family of his love interest despite his steady decrease in income. As a result, he began to accumulate debt that he could not repay. These facts support the application of the disqualifying conditions cited above.

The woman took advantage of Applicant’s kindness. However, he willfully ignored the red flags that were raised repeatedly during their four-year interaction and continued to provide financial support for the woman and her four children. The financial

problems he now faces are the consequences of that decision. Therefore, none of the mitigating conditions potentially available under AG ¶ 20⁷ apply to this case.

Because Applicant's financial problems are recent and did not occur under unusual circumstances, AG ¶ 20(a) does not apply. Although Applicant could not control the decrease in overtime hours available at his company, he did have control over how he spent his decreasing income. He chose to provide financial support to his love interest and her four children, to his detriment. Accordingly, AG ¶ 20(b) does not apply. Applicant did not provide any evidence that he has reformed his financial habits. Although he has received financial counseling, he only did so as a prerequisite for filing his bankruptcy petition. Consequently, AG ¶ 20(c) is not applicable. He has filed for Chapter 7 bankruptcy protection to resolve his delinquent debt. While bankruptcy is a legitimate method of resolving delinquent debt, an applicant must do more than merely show that he or she relied on a legally available option (such as bankruptcy) in order to claim the benefit of AG ¶ 20(d).⁸

To conclude, the evidence as a whole justifies current doubts about Applicant's judgment, reliability, and trustworthiness. Following *Egan*⁹ and the clearly-consistent standard, I resolve these doubts in favor of protecting national security. In reaching this conclusion, I gave due consideration to the whole-person concept. Nevertheless, Applicant did not meet his ultimate burden of persuasion to obtain a favorable clearance decision. This case is decided against Applicant.

⁷ 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;

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;

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;

20(d) The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts;

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; and

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

⁸ ISCR Case No. 02-30304 at 3 (App. Bd. Apr. 20, 2004) (citations omitted).

⁹ *Navy v. Egan*, 484 U.S. 518 (1988).

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.m: 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 a security clearance. Eligibility for access to classified information is denied.

Nichole L. Noel
Administrative Judge