



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



In the matter of:)	
)	
)	ISCR Case No. 10-01272
SSN:)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Candace Le'i Garcia, Esquire, Department Counsel
For Applicant: *Pro se*

November 30, 2010

Decision

HENRY, Mary E., Administrative Judge:

Based upon a review of the case file, pleadings, exhibits, and testimony, I deny Applicant's eligibility for access to classified information.

Applicant signed an Electronic Questionnaire for Investigations Processing (e-QIP) version of a security clearance application (SF-86) on September 12, 2009. The Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) (Item 1) on July 21, 2010, detailing security concerns under Guideline F, Financial Considerations, that provided the basis for its preliminary decision to deny him a security clearance. 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) implemented on September 1, 2006.

Applicant acknowledged receipt of the SOR on July 27, 2010. (Item 2) He submitted a notarized, written response to the SOR allegations dated July 28, 2010, and requested a decision on the written record in lieu of a hearing. (Item 3)

Department Counsel prepared a File of Relevant Material (FORM) and mailed Applicant a complete copy on September 20, 2010. Applicant received the FORM on September 24, 2010. He had 30 days from receipt of the FORM to file objections and submit material in refutation, extenuation, or mitigation. He did not submit a response or additional documentation. DOHA assigned this case to me on November 19, 2010. The Government submitted eight exhibits, which have been marked as Items 1-8 and admitted into the record.

Findings of Fact

In his Answer to the SOR, Applicant admitted the factual allegations in the SOR. His admissions are incorporated as findings of fact. He also provided additional information to support his request for eligibility for a security clearance. After a complete and thorough review of the evidence of record, I make the following additional findings of fact.

Applicant, who is 51 years old, works as a security officer for a Department of Defense contractor. He began this employment in July 2009.¹

Applicant served in the U.S. Army reserve for six years and received an honorable discharge. He and his wife married in November 1978. They have two daughters, ages 31 and 24, and a son, aged 29. One daughter and two grandchildren recently moved into his house, after his daughter lost her job.²

Applicant worked as a corrections officer for 22 years, retiring in 2001. From 2001 until 2009, he operated a home improvement contracting business. At the inception of his business, he purchased tools and equipment. His business required him to pay certain ongoing expenses, such as workers' compensation insurance, liability insurance, and licensing costs, even if he did not have work. His business contracts fluctuated, causing problems with a steady income. He incurred debts, some unexpected, for his business, even when he did not have work. He used his credit cards to pay these expenses. His financial problems started in 2005, as he did not have sufficient income from his business to meet his business expenses and pay his credit cards.³

¹Item 4.

²*Id.*; Item 6.

³Item 6.

Applicant receives \$2,000 a month net income from his pension and \$800 a month in net income from his job. His wife receives \$2,000 a month in net income. His total household net income is \$4,800. He listed total monthly expenses at \$2,900 at his meeting with the security clearance investigator. He submitted additional information about his expenses with his responses to interrogatories. He identified \$1,060 in expenses incurred by his wife, which were not previously listed. These expenses increased his monthly expenses to \$3,960. Based on these numbers, he has approximately \$840 a month to pay his debts.⁴

Applicant hired a debt consolidation company to help resolve his debt problems. He made two payments to the company, which then went out of business. The company did not pay any of his debts. He also contacted his creditors, who requested that he pay his back payments on his accounts before the companies would discuss a payment plan with him. He could not meet these demands. He has not made any further contacts with his creditors. He has not filed for bankruptcy.⁵

The SOR lists seven debts, five of which are under \$775. His largest debt is for more than \$29,000, and the one remaining debt is for approximately \$1,500. Applicant has not provided proof of payment on any of these debts. The credit reports of record reflect that he paid two other collection debts, which are not shown on the SOR.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 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

⁴Item 5; Item 6.

⁵Item 6.

⁶Item 1, Item 7; Item 8.

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, an applicant is responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . .” An applicant has the ultimate burden of persuasion for 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 an 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.

AG ¶ 19 describes the disqualifying conditions that could raise security concerns. I have considered all the conditions, and especially the following:

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

Applicant incurred significant debt when he operated his home improvement contracting business. He has been unable to resolve all the debts resulting from this business. These debts remain unpaid. These two disqualifying conditions apply.

The Financial Considerations guideline also includes examples of conditions that can mitigate security concerns. I have considered mitigating factors AG ¶ 20(a) through 20(f), and especially the following:

- (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.

Applicant's financial problems began when he started his home improvement business. His business did not progress as he had anticipated, causing his income to fluctuate and making payment of his debts difficult. He provided no evidence which indicates that he attempted to reduce his business expenses when his business income declined. Rather, he used his credit cards to pay his business expenses. When his debts became unmanageable, he contacted a debt consolidation company for assistance. This company went out of business after taking two checks from him and without paying any of his debts. He did not contact another company for assistance. The lack of business income and the dissolution of the debt consolidation company are events that were out of his control. However, he has not provided information which showed he acted reasonably under the circumstances. He did not exercise good judgment in the management of his business expenses. He is entitled to partial credit under AG ¶ 20(b) because of the events out of his control.

Applicant has not received credit counseling and has not provided proof of a good faith effort to resolve his debts. He has not disputed the debts listed in the SOR.

His debts are not resolved or under control. AG ¶¶ 20(c), 20(d), and 20(e) are not applicable.

Likewise, AG ¶ 20(a) is not applicable. Applicant purchased materials and supplies for his business even when he did not have work or income. These poor financial decisions negatively impacted him, resulting in unpaid debts. He has not resolved any of the debts listed in the SOR, even the smaller debts. He has not demonstrated due diligence in dealing with his debts.

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 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. The decision to grant or deny a security clearance requires a careful weighing of all relevant factors, both favorable and unfavorable. In so doing, an administrative judge must review all the evidence of record, not a single item in isolation, to determine if a security concern is established and then whether it is mitigated. A determination of an applicant's eligibility for a security clearance should not be made as punishment for specific past conduct, but on a reasonable and careful evaluation of all the evidence of record to decide if a nexus exists between established facts and a legitimate security concern.

In reaching a conclusion, I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant served honorably in the military and worked as a corrections officer for 22 years before retiring. He has been married for many years and has three grown children. He provided housing for his daughter and two grandchildren after she lost her job. His financial problems began shortly after he decided to operate a small business. His business income fluctuated, even in good economic times. When he did not have business income, he did not control his expenses, creating significant business debt, which is not resolved. He has not made an effort to resolve even the smaller debts in the SOR. While immediate resolution of his largest debt is not possible, he had sufficient funds to

resolve the remaining debts in the SOR quickly, but chose not to do so. His unpaid debts remain a security concern.

Overall, the record evidence leaves me with questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated the security concerns arising from his finances under Guideline F.

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
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	Against Applicant
Subparagraph 1.f:	Against Applicant
Subparagraph 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 eligibility for a security clearance. Eligibility for access to classified information is denied.

MARY E. HENRY
Administrative Judge