



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



In the matter of:)
)
) ISCR Case No. 10-01574
)
Applicant for Security Clearance)

Appearances

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

May 19, 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 September 1, 2010, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines F (financial considerations) and E (personal conduct). 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 October 18, 2010, and elected to have the case decided on the written record in lieu of a hearing. On February 15, 2011, he changed his request to a hearing before an administrative judge. The case was assigned to me on March 15, 2011. DOHA issued a notice of hearing on March 30, 2011, and the

hearing was convened as scheduled on April 21, 2011. DOHA received the hearing transcript (Tr.) on May 4, 2011.

Procedural and Evidentiary Rulings

Notice

Applicant affirmatively waived his right under ¶ E3.1.8 of the Directive to 15 days notice before the hearing.

Motion to Amend SOR

Department Counsel moved to amend the SOR by withdrawing the allegation under Guideline E. Applicant did not object to the amendment, and it was granted.

Evidence

The Government offered exhibits (GE) 1 through 11, which were admitted without objection. Applicant testified and submitted exhibits (AE) A through E, which were admitted without objection. 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.

Findings of Fact

Applicant is a 52-year-old employee of a defense contractor. He seeks to retain a security clearance he has held since 2004. He worked for another defense contractor from 1973 to 2003. He has worked for his current employer since 2003. He has a bachelor's degree and a master's degree. He is married with two adult children and an adult stepchild.¹

Despite steady employment and earning a good salary, Applicant has had financial problems for many years. He filed Chapter 13 bankruptcy in 1992. His debts included unpaid state and federal taxes. He completed his plan and his dischargeable debts were discharged in about 1995.²

Applicant continued to have financial problems after his bankruptcy. He did not have sufficient money withheld from his paycheck for state and federal taxes, and he did not pay the amount owed when they were due. The SOR alleges Applicant owes the Internal Revenue Service (IRS) \$51,132. Applicant admitted that his actual debt to the IRS is more than that, because he owes about \$14,000 for his 2010 federal taxes.³

¹ Tr. at 32-33, 36-38; GE 1; AE A.

² Tr. at 40-42; Applicant's response to SOR; GE 2, 11.

³ Tr. at 26-32, 41-42; Applicant's response to SOR.

In 2005, Applicant's state filed a tax lien of about \$25,859 against him. His wages have been garnished every month since then to pay his state taxes. Applicant has continued to accrue unpaid state taxes since 2005. He owes for every year from 2005 to 2009. He paid his 2010 state taxes. He estimates that he still owes the state about \$25,000.⁴

In addition to his bankruptcy and unpaid state and federal taxes, the SOR alleges seven delinquent debts with balances totaling about \$16,000, that Applicant was at least 120 days past due on a \$28,609 student loan account, and that his wages were involuntarily garnished about \$4,000 to pay a judgment on a car loan. The status of individual debts is discussed below.

Applicant stated that he paid the \$258 medical debt alleged in SOR ¶ 1.b. He did not submit any documentary evidence proving the payment. He stated that the \$258 medical debt to the same collection company, as alleged in SOR ¶ 1.i, represented a duplicate account. The 2009 credit report lists two accounts. The two most recent credit reports in evidence only list one account. There is insufficient evidence for a determination that the second \$258 debt represents a separate account.⁵

Applicant denied owing the \$128 medical debt alleged in SOR ¶ 1.j. He stated that he did not recognize the collection company handling the debt. The debt is listed on the 2009 credit report, but not the two most recent credit reports. I find that debt to be successfully disputed.⁶

Applicant owes about \$51,000 in student loans that became delinquent at various points between about 2000 and 2007. His wages were garnished in 2009 for his student loans. He consolidated his various loans in 2010, and he has consistently made the monthly payments under that plan.⁷

Applicant submitted documentary evidence that he paid the delinquent debt alleged in SOR ¶ 1.h, with a \$975 payment in May 2010.⁸

Applicant stated that the garnishment for his car loan has been satisfied. He admitted owing the other debts alleged in the SOR. The amount of the debts are \$1,803 (SOR ¶ 1.c), \$6,497 (SOR ¶ 1.d – for LASIK eye surgery and dental work), and \$5,624 (SOR ¶ 1.g – credit card). He did not submit proof of any payments toward those debts.⁹

⁴ Tr. at 26-28, 52-54; Applicant's response to SOR; GE 2, 4.

⁵ Tr. at 48; GE 8-10.

⁶ Tr. at 48-49; GE 8-10.

⁷ Tr. at 21-25, 46-48; Applicant's response to SOR; GE 2, 7; AE B-D.

⁸ Tr. at 24, 52; AE E.

⁹ Tr. at 49-55; Applicant's response to SOR; GE 2, 4-6, 8-10.

Applicant admitted that he overextended himself, he made “bad choices,” and he was “irresponsible” about his finances. When he received his security clearance in 2004, he signed a letter acknowledging that he had financial issues in the past, and any future financial problems could adversely impact his security clearance. His annual salary is about \$122,000. His wife earns about \$56,000 a year. He pays his adult children’s rent and some of their car expenses. He stated that he has discretionary income at the end of the month, but he does not know where it goes. He received financial counseling about ten years ago. He stated that he is attempting to pay his debts, by paying the smallest accounts first.¹⁰

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

¹⁰ Tr. at 34-39, 44-45, 55-57; GE 2, 3; AE A.

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 accumulated a number of delinquent debts and was unable or unwilling to pay his financial obligations. The evidence is sufficient to raise the above disqualifying conditions.

AG ¶ 20 provides conditions that could mitigate security concerns. The following 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;

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

(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 issues go back at least two decades. He admitted that he overextended himself, he made "bad choices," and he was "irresponsible" about his finances. He owes more than \$50,000 to the IRS and about \$25,000 to his state for unpaid taxes. He now has a payment plan for his student loans, and he paid the debts alleged in SOR ¶¶ 1.h and 1.k. AG ¶ 20(d) is applicable to those debts only. He received financial counseling about ten years ago, 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(b) are not applicable. AG ¶ 20(c) is partially applicable. AG ¶ 20(e) is applicable to the debts alleged in SOR ¶¶ 1.i and 1.j. 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.

I considered Applicant's long employment in the defense industry. Despite steady employment and a good salary, Applicant has had financial issues for more than two decades, with no reasonable chance of 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
Subparagraphs 1.a-1.d:	Against Applicant
Subparagraph 1.e:	For Applicant
Subparagraphs 1.f-1.g:	Against Applicant
Subparagraphs 1.h-1.k:	For Applicant
Subparagraph 1.l:	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 continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Edward W. Loughran
Administrative Judge