



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



In the matter of:)	
)	
)	ISCR Case No. 10-01736
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Gregg A. Cervi, Esquire, Department Counsel
For Applicant: *Pro se*

February 9, 2012

Decision

HOGAN, Erin C., Administrative Judge:

On August 23, 2011, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns 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 Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) which were effective within the Department of Defense for SORs issued after September 1, 2006.

On September 9, 2011, Applicant answered the SOR and requested that his case be decided on the written record. Department Counsel prepared a File of Relevant Material (FORM) on October 31, 2011. The FORM was forwarded to Applicant on November 1, 2011. Applicant received the FORM on November 8, 2011. He had 30 days to submit a response to the FORM. He did not submit additional matters in response to the FORM. On January 13, 2012, the FORM was forwarded to the hearing office. The FORM was assigned to me on January 18, 2012.

Based upon a review of the pleadings, and exhibits, eligibility for access to classified information is denied.

Findings of Fact

In his answer to the SOR, Applicant admits all of the SOR allegations. (Item 4)

Applicant is a 29-year-old employee of a Department of Defense contractor seeking a security clearance. He has been employed with the company since July 2004. He has two years of college credit. He is married and has a three-year-old child. (Item 5)

Applicant's security clearance background investigation revealed 14 delinquent accounts, a total approximate balance of \$28,071. (Items 6, 7, 8 and 9)

On January 11, 2010, Applicant was interviewed as part of his background investigation. He admitted the delinquent accounts which were listed in his credit report. Three student loan collection accounts that were listed in the credit report were not alleged in the SOR. Applicant stated that his financial problems began after he was hired by his current employer in July 2004. He incurred too much credit for what he could afford to pay. When he married in 2006, he forgot to put his wife on his medical insurance. His wife had to go to the emergency room three times during the first six months of their marriage. She also made several visits to medical doctors. Applicant added his wife's name to his medical insurance in early 2007. He estimates that he incurred \$5,000 in medical bills as a result of not adding his wife to his medical insurance. (Item 6)

Applicant relied on overtime to help pay his bills. In July 2007, Applicant's company reduced overtime, which caused Applicant to get further behind in his bills. Applicant missed three weeks of work in March 2008 after injuring his wrist. When Applicant's daughter was born in 2008, he had to stay home from work for five weeks to assist his wife because it was a complicated birth. His financial situation was further complicated when he was injured and placed on restrictive service and long-term disability between October 2008 to May 2009. During this time, he received only 65% of his income. When he returned to work in May 2009, he injured himself again and was placed on short-term disability from May 2009 to August 2009. He received 75% of his income. (Item 6)

In May 2009, 15% of his pay was garnished by his student loan servicer. In November 2009, the garnishment was reduced to 5%. Before the SOR was issued, Applicant's student loans were resolved. (Item 7; Item 8 at 2-3)

As of January 11, 2010, Applicant's net monthly income was \$2,084. His wife does not work. His monthly expenses include: rent \$550, food \$700, electricity/water/garbage/cable \$200, cell phone \$190, medical bills \$75, car insurance \$73, gas \$150-\$200, internet \$50, fast food \$80, medical copayments \$100, and

medications \$150. His total monthly expenses were \$2,368, leaving a negative monthly balance of \$288. Applicant's assets include a \$25,000 401K account and \$11,000 in company stock. (Item 6)

In response to interrogatories, dated July 6, 2011, Applicant indicated that while he resolved his student loans, he took no action to resolve the remaining delinquent accounts. He provided an updated personal financial statement. His net monthly income was \$2,461.84. His total monthly expenses were \$2,515.13, leaving a negative monthly balance of \$53.29. (Item 7)

In his response to the SOR, on September 9, 2011, Applicant did not provide additional information explaining the status of his delinquent accounts. His delinquent debts remain unresolved. (Item 4)

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which must be considered when 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 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 applicant or proven by Department Counsel. . . ." The 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 the applicant may deliberately or inadvertently fail to 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 over-extended is at risk of having to engage in illegal acts to generate funds.

The guideline notes several disqualifying conditions that could raise security concerns. I find AG ¶ 19(a) (an inability or unwillingness to satisfy debts) and AG ¶ 19(c), (a history of not meeting financial obligations) apply to Applicant's case. Applicant incurred numerous delinquent debts. The SOR alleged 14 delinquent accounts, an approximate total of \$28,071.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. 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) does not apply. Applicant's finances became more complicated when he took out too much credit after accepting his full-time job with his current employer. Aside from his student loans, he has not resolved any of his debts. His financial problems continue.

AG ¶ 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) applies, in part. Applicant's income was

reduced during the periods that he was on disability. His wife's medical issues were a factor beyond his control. However, he should have been more proactive in enrolling her on his insurance plan. Applicant's financial problems started when he accepted his full-time job. He overextended himself by purchasing items that he could not afford. While there were some factors that were beyond his control, he made poor financial decisions even before he encountered these circumstances. I cannot conclude Applicant acted responsibly under the circumstances.

AG ¶ 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) does not apply. Applicant has not attended financial counseling. It would be helpful for him to do so in order to learn how to create a budget and manage his finances more effectively. While he paid his student loan accounts, all of the debts alleged in the SOR are unresolved. Considering his monthly expenses exceed his monthly income, Applicant's financial situation is unlikely to be resolved in the near future.

AG ¶ 20(d) (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts) does not apply. None of the debts alleged in the SOR are resolved.

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 the 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. Applicant has not resolved any of the delinquent accounts alleged in the SOR, which creates doubts about his judgment, reliability, and ability to protect classified information. Mindful of my duty to resolve cases where there is doubt in favor of national security, I find Applicant failed to mitigate the concerns raised under financial considerations.

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.n:	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

ERIN C. HOGAN
Administrative Judge