



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



In the matter of: ----- SSN: ----- Applicant for Security Clearance)))))))	ISCR Case No. 10-02364
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Appearances

For Government: Gregg A. Cervi, Esq., Department Counsel
For Applicant: *pro se*.

January 21, 2011

Decision

LYNCH, Noreen A, Administrative Judge:

On August 25, 2010, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing 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), implemented in September 2006.

Applicant timely answered the SOR and requested a hearing. DOHA assigned the case to me on October 22, 2010. A Notice of Hearing was issued on November 8, 2010, and the case was heard on December 7, 2010. Department Counsel offered four exhibits, which were admitted without objection as Government Exhibits (GE) 1-4. Applicant testified, but he did not submit any documents. Based on a review of the pleadings, submissions, testimony, and exhibits, I find Applicant failed to meet his burden regarding the security concerns raised. Security clearance is denied.

Findings of Fact

Applicant is a 50-year-old employee of a defense contractor. He obtained his undergraduate degree in June 1986. He enlisted in the U.S. Army in 1978 and served until November 1983. (GE 1) Applicant is married and has four children. Applicant has held a security clearance since 1986. He has worked for his current employer since October 2008. (Tr. 9)

Financial

Applicant was unemployed on various occasions. After leaving the military, he attended college and obtained his degree in engineering. He worked as an engineer until 2002. He was unemployed from October 2002 until April 2004. (GE 1) Applicant obtained employment in April 2004 until May 2005. However, the company downsized and he was unemployed again in May 2005 for four months. Applicant was employed from 2005 until 2007. In 2007, he again faced unemployment until August 2007. He worked in temporary positions, such as a substitute teacher, from August 2007 until October 2008. In October 2008, he began employment with his current employer.

The SOR lists two delinquent accounts totaling \$51,000. The credit report confirms them. (GE 4) He disclosed his delinquent debts on his security clearance application. Applicant admits that these credit card debts were incurred before 2002. The debts are the result of consolidation loans for credit card debts and a car loan incurred before his layoff in 2002 (Tr. 14) Applicant had credit card insurance which made the minimum payments for two years. He did not renew any payments after the two years because he wanted to pay his current bills and keep his house. The interest rate increased to 29%. He considered this exorbitant and wanted to pay on the principal without any interest.

The debt alleged in SOR 1a (\$21,037) was charged off in August 2005. He contacted the company. However, he refused the settlement offer of \$600 a month. (Tr. 13) He could not afford the monthly amount. Applicant is considering a settlement but it has to be what he considers a reasonable payment. He states they have not attempted any collection in the past four-and-a-half years. (Tr. 14)

The debt alleged in SOR 1b (\$30,000) was charged-off in May 2005. Applicant believed the original amount was \$27,000. Applicant contacted them recently. The account was sold to a collection agency. He claims that someone misplaced paper work and that the "debt is in limbo." (Tr. 13) There is no pressure to collect. He has had no pressure and until "they find the debt" they cannot collect. (Tr. 13) Applicant does not want to make minimal payments that would only go to the interest and fees and not the principal.

Applicant paid his home mortgage with the help of his Dad. He explained that his priority was paying and keeping his home. He took any job that he could even if it was underemployment. His current job does not require an engineering degree but he wants to make money to support his family. He obtained a computer certification to improve

his employment opportunities. Applicant has paid his car loans. He acknowledged that he now uses credit cards that give cash back. He does not want to pay interest on anything. He is concerned that his credit score improve. He believes if he does “nothing” about paying on these two collection accounts, they will fall off the record. (Tr. 18) After that he would be able to report that he has no debts. Applicant also elaborated that he still has not decided on a course of action. He admits that he incurred the debt and is not leaning toward filing bankruptcy. (Tr. 18)

In 2010, Applicant acknowledged his debts to the investigator from OPM. He stated that he is now capable of meeting his financial obligations. He does not intend to incur debts he cannot meet. He is adamant that he is not a threat to national security because of these two charged-off credit cards. He is not under any “pressure” to pay them and he has not received any recent notices from the collection companies. He states that he would not “sell secrets” to pay off these debts. (Tr. 10)

Applicant does not want to pay the interest and fees that have accrued on these two credit accounts. He is contemplating a settlement with the one account, but has not initiated formal steps. He also thought about bankruptcy. Applicant considered waiting until the two accounts disappear from his credit report and then applying for a clearance. He explained that his financial habits have changed drastically and his indebtedness has gone away. (Tr. 10) He does not understand why others can obtain a security clearance when he perceives that they have greater risks than just past financial debts. (Tr. 20)

Applicant’s 2009 monthly net income was \$3530. Applicant’s wife works in the home and cares for their children. It appears that there is a net remainder of \$365 in disposable income. He has not received any credit counseling but he is considering it. (Tr. 36). He has one current credit card balance of approximately \$4,400. He pays \$380 a month but is contemplating getting a loan transfer to pay it off so that no interest accrues. (Tr. 44) He has a small amount of stocks and bonds.

Applicant was adamant at the hearing that he is not a security risk. He believes that his past military and work experience show that he is not going to do anything illegal. He claims his history shows that he has personal credibility. He states that he is suffering from what happened to this country in September 2001. He got stuck in a financial situation that hurt his career in engineering. (Tr. 40)

Policies

When evaluating an applicant’s suitability for a security clearance, an 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. 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 overarching 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.

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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

The Government must present evidence to establish controverted facts alleged in the SOR. 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. . . .”¹ The burden of proof is something less than a preponderance of evidence.² The ultimate burden of persuasion is on the applicant.³

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 protect 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 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.”⁴ “The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”⁵ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such information.⁶ The decision to deny an individual a security clearance 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.

¹ See also ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

² *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

³ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

⁴ See also EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information), and EO 10865 § 7.

⁵ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

⁶ *Id.*

Guideline F, Financial Considerations

The security concern for Financial Considerations is set out in AG ¶ 18:

Failure or an 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." It also states that "an individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

Applicant currently has delinquent debts in the amount of \$51,000. Consequently, Financial Considerations Disqualifying Condition (FC DC) AG ¶ 19(a) (inability or unwillingness to satisfy debts), and FC DC 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.

Applicant was unemployed on several occasions after 2002 and again in 2005. He worked from 2005 until 2007 and experienced more unemployment. After that he was steadily employed. This may have exacerbated Applicant's ability to meet his obligations, but he did not address the delinquent debts when he learned about them in 2005. He had credit card insurance to make minimum payments for two years. However, since the insurance stopped paying on the collection accounts, he made no attempt to make even a small payment. When the interest rate rose and more fees were applied, Applicant made a decision that he would not pay on the accounts. Recently, he contacted one company to settle the debt but he could not pay the amount. He is still undecided on a course of action. He has acknowledged that he could just wait until the debts disappear from the credit report. He has not made any good faith effort to otherwise meet his obligations during that period. He has not provided documentation to show he has made any formal settlement agreement on his delinquent accounts. He believes these debts should not make him a security risk. Consequently, Financial Considerations Mitigating Condition (FCMC) 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.

Financial Considerations Mitigating Condition (FC MC) 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) does not apply. As noted, Applicant had periods of unemployment and underemployment. He noted that his initial financial problems stem from the economic downturn in 2002, when he first lost his employment. These events, no doubt, impacted his finances. However, there is no evidence that he acted responsibly under the

circumstances. He allowed the delinquent debts to remain unpaid. There is no record of any attempts to resolve his debt until after he received the SOR.

FC MC AG ¶ 20(d), (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts) does not apply. Applicant has not provided evidence of any consistent payment plans. He asserts that he is still undecided on a course of action. However, at this time a concrete plan is still in the future. His failure to obtain any financial counseling obviates the applicability of FC MC 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).

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):

- (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. 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. Applicant is 50 years old. He served in the Army. Applicant is an educated and mature individual who has supported his family. While it is true that he suffered unemployment as an engineer in 2002, and has not been able to find another comparable position, his belief that he should not be considered a security risk due to old debt is not consistent with standards for a security clearance. He has unresolved financial difficulties, despite his current financial stability. Part of his financial difficulties stem from a time when he admittedly was unemployed, but he has not acted reasonably under the circumstances. Applicant claimed that he had no choice but to save his house and pay current bills, but I have doubts about his judgment. He has not met his burden in this case.

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 and 1.b:	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. Clearance denied.

NOREEN A. LYNCH.
Administrative Judge