



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



In the matter of:)	
)	
-----)	ISCR Case No. 10-02883
SSN: -----)	
)	
Applicant for Security Clearance)	

Appearances

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

January 12, 2011

Decision

LYNCH, Noreen A., Administrative Judge:

On September 10, 2010, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing the basis for its preliminary decision to deny his security clearance application, citing security concerns under Guideline F (Financial Considerations). DOHA acted 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 by the DoD in September 2006.

Applicant timely requested a hearing before an administrative judge. DOHA assigned the case to me on October 22, 2010. DOHA issued a notice of hearing on November 8, 2010. I convened the hearing as scheduled on December 7, 2010. Government Exhibits (GE) 1 through 9, and Applicant Exhibit (AE) (A) were stipulated into evidence. Applicant testified on his own behalf. DOHA received the transcript (Tr.) on December 15, 2010. At Applicant's request, I kept the record open for additional documents until January 4, 2010. Applicant submitted three packets for the record, which

were marked as AE B-D and admitted into the record without objection. Eligibility for access to classified information is denied.

Findings of Fact

In his answer to the SOR, Applicant denied the factual allegations in ¶ 1.a through 1.ff. At the hearing, Applicant acknowledged all the debts alleged in the SOR. I make the following findings.

Applicant is a 57-year-old operations specialist. He graduated from high school in 1972. (GE 1) He served on active duty in the military from 1972 until 1980. (Tr. 9) He was in the Army National Guard from 1981 until 1999. Applicant held a security clearance while in the military. (Tr. 21) He receives a 60% disability benefit, and is eligible for a military pension at age 60. (Tr. 22)

Applicant is currently using a VA benefit to attend classes on a “work-study” program, and his former contract employer is sponsoring him for a security clearance. His last contract with the employer ended in September 2010. (Tr. 19) He received unemployment benefits until their recent termination.

Applicant’s twenty year marriage ended in divorce in 1993. Applicant was emotionally devastated by the divorce. The divorce proceedings lasted several years. (Tr. 38) However, he acknowledged that he was negligent with his finances after the divorce. He has two grown children from his first marriage.

Applicant remarried in 2001 but his wife divorced him in 2004 based on his unresolved delinquent debts and tax issues (Tr. 38). He has an eight-year-old son from his second marriage. He pays child support in the amount of \$300 a month. (AE A)

Financial

In 1990, Applicant filed for Chapter 7 bankruptcy. (GE 4) The majority of the debt was incurred when Applicant’s first wife handled the financial affairs. Applicant admitted that they overextended themselves and did not manage money properly. (Tr. 27) Applicant does not recall the amount of debt that was discharged.

Applicant did not file state or federal tax returns from 1993 to 1999. He owes approximately \$30,000. (GE 5) He recently filed his tax returns but still has not made any payments on the taxes due. He contacted the IRS. After Applicant hired a company to help him resolve the issue, he learned that nothing had been accomplished. (Tr. 29)

Applicant was unemployed for varying periods of time from 2000 until 2007 due to contracts that were not renewed. His most recent unemployment was from May 2008 until June 2009. Before his unemployment, he earned about \$15,000 a year in income. (Tr. 33) He was unemployed after September 30, 2010. (Tr. 42) His monthly disability benefit is \$1,112. (Tr. 33) He currently receives \$500 a month from the VA work-study

program. (Tr. 41). He fell behind in his child support payments as a result of the recent unemployment.

The SOR alleges 32 delinquent debts, including child support arrearage, tax liens, and collection accounts. The total amount of indebtedness is approximately \$42,000. The SOR also notes that Applicant filed for Chapter 7 bankruptcy in 1990. Applicant's credit reports confirm his debts. (GE 6-9)

Applicant contacted an attorney to resolve his delinquent debts and his tax issues after a security clearance investigation in 2009. However, he has not found a law firm that will help him resolve the tax issues and the delinquent accounts. He is contacting another firm. (Tr. 53) He hopes to file for Chapter 13 bankruptcy.

Applicant paid his child support arrearage. (AE A) The current amount (\$300) is automatically deducted from his account. He is current on his \$400 a month car payment. He claimed that he paid one or two small debts, but he did not submit documentation to support his claim. He also acknowledged that his finances are stretched.

Applicant disclosed his bankruptcy on his security clearance application when he was in the military. He held a clearance during his military career with no security-related incidents. (Tr. 60)

Applicant is recognized for his outstanding service in the Army National Guard since 1987. He is described as a motivated team player who has gained the respect of his peers, instructors, and others. (AE B) Applicant completed the Chaplain Assistant Course in 1987. (AE C) He submitted various certificates of training completed throughout his career.

Policies

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has "the authority to . . . control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to occupy a position . . . that will give that person access to such information." *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.

Eligibility for a security clearance is predicated upon an applicant meeting the criteria contained in the adjudicative guidelines (AG). These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with an evaluation of the whole person. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. An

administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk an applicant may deliberately or inadvertently fail to protect classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Clearance decisions must be “in terms of the national interest and shall in no sense be a determination as to the loyalty of an applicant concerned.” See Exec. Or. 10865 § 7. Thus, a decision to deny a security clearance is not necessarily a determination of the loyalty of an applicant. It is merely an indication an applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance

Initially, the government must establish, by substantial evidence, conditions in the personal or professional history of an applicant that may disqualify an applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability. See ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

Analysis

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 filed for Chapter 7 bankruptcy in 1990. He has delinquent debts in the amount of \$42,836, including tax liens for federal and state taxes. 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 had a fresh start in 1990 when his debts were discharged under Chapter 7 of the Bankruptcy Code. However, his separation and divorce from his first and second wife, breaks in employment from 2000 until 2007, and unemployment in 2009 caused further financial problems. He incurred more delinquent debts which are still unresolved. He was under a defense contract until September 30, 2010. His employer expects to hire him when another contract is available. However, due to the uncertainty of employment, he is likely to continue experiencing financial problems. 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 above, Applicant experienced separation, divorce on two occasions, unemployment and underemployment. However, even though they were out of his control and adversely impacted his finances, he has not acted responsibly under the circumstances. He only recently filed his tax returns. He has not paid any of his back taxes. He plans to file for bankruptcy, but he has not started the process.

FC MC AG ¶ 20(d), (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts) applies to the child support arrearage he paid, but not the other debts. Applicant receives some credit under that mitigating condition. 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) does not apply. Applicant owes approximately \$42,000 in delinquent debts. His income is already stretched with his child support payments.

Whole-Person Concept

Under the whole-person concept, an 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. An 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. Some of the factors in AG ¶ 2(a) were addressed above, but some warrant additional comment.

Applicant is a veteran who has held a security clearance without any security violations. He served eight years on active duty in the military, and 18 years in the Army National Guard. He was honorably discharged and earned awards. He is a respected team player in the National Guard. His first marriage ended in a difficult divorce. However, Applicant admitted that they overspent. Applicant's second wife divorced him due to his financial problems. Applicant acknowledged that these events were emotionally difficult for him, but he acted negligently in not filing taxes or paying on the other accounts for a long time.

Applicant enjoys working and hopes to continue with a defense contractor. His plan is to find an attorney to aid him in resolving his tax issues and his delinquent debts. He is considering filing Chapter 13 bankruptcy. However, despite his good intentions, I have doubts about Applicant's judgment and reliability with respect to his delinquent debts based on his past behavior.

Accordingly, I conclude he has not carried his burden of showing that it is clearly consistent with the national interest to grant his eligibility for access to classified information under the financial considerations guideline.

Formal Findings

I make the following formal findings for or against Applicant on the allegations set forth in the SOR, as required by Directive ¶ E3.1.25 of Enclosure 3:

Paragraph 1, Financial:	AGAINST APPLICANT
Subparagraphs 1.a-t:	Against Applicant
Subparagraph 1.u:	For Applicant
Subparagraphs 1.v-ff:	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

Noreen A. Lynch
Administrative Judge