



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



In the matter of:)
)
) ISCR Case No. 10-03430
)
)
Applicant for Security Clearance)

Appearances

For Government: Jeff Nagel, Esq., Department Counsel
For Applicant: Steven Marczeski, Esq.

July 1, 2011

Decision

GOLDSTEIN, Jennifer I., Administrative Judge:

Applicant is a 56-year-old employee of a defense contractor. He is alleged to be indebted to nine creditors in the approximate amount of \$81,858. Applicant failed to mitigate the Financial Considerations security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On December 14, 2010, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, Financial Considerations. 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) effective for cases after September 1, 2006.

Applicant answered the SOR on February 4, 2011, and requested a hearing before an administrative judge. The case was assigned to me on March 1, 2011. DOHA

issued a notice of hearing on March 15, 2011, scheduling the hearing for April 5, 2011. Applicant, through his counsel, requested a continuance. On March 16, 2011, the hearing was rescheduled for April 14, 2011, based upon good cause. The hearing was convened as scheduled. The Government offered Exhibits (GE) 1 through 7, which were admitted without objection. The Applicant offered Exhibits (AE) A through C, which were admitted without objection. Applicant testified on his own behalf. Applicant also requested that the hearing record be left open for the submission of additional documents. His request was granted and the record was left open until close of business May 16, 2011. On April 15, 2011, Applicant submitted four additional pages, marked AE D; and on May 16, 2011, Applicant submitted two additional pages, marked AE E. Department Counsel indicated he had no objections to AE D or AE E, and the exhibits were admitted into the record. DOHA received the transcript of the hearing (Tr.) on April 25, 2011.

Findings of Fact

Applicant admitted the SOR allegations 1.a, 1.d, 1.f, 1.g, 1.h, and 1.i. He denied allegations 1.b., 1.c., and 1.e. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is a 56-year-old employee of a defense contractor. He served in the Navy for 25 years and achieved the rank of master chief petty officer. He held a top secret clearance in the Navy. After retiring from the Navy in 2001, he went to work for a government contractor. He has been employed by several government contractors since that time and has held a clearance throughout his civilian career. He has never received a security violation or infraction. During his 25-year Navy career, he was never tried by court-martial or awarded nonjudicial punishment. (Tr. 26-28, 33-37; GE 1.)

As stated in the SOR, Applicant is alleged to be indebted to 9 creditors in the approximate amount of \$81,858. His debts were substantiated in the credit reports dated December 25, 2009; June 5, 2010; November 6, 2010; and April 13, 2011. He attributes his financial problems to a financial downturn in the economy that had a significant impact on his wife's childcare business. Applicant's wife contributed significantly to their income until three-to-four years ago. At that time, payments she relied on from the state for childcare for subsidized, low-income families ceased, and the number of her self-paying customers declined due to their own job losses. Applicant found that they were no longer able to meet their financial obligations. He relied on credit cards for a while, hoping that her business would improve. After he had reached the credit limit on his credit cards, he realized that he needed to find another way to manage his debt. He contacted a bankruptcy attorney. (Tr. 29-31, 39; GE 2; GE 3; GE6; GE 7; AE B.)

On February 14, 2011, Applicant filed Chapter 13 bankruptcy. The plan was accepted and Applicant agreed to pay \$1,863.18 per month for five years to the trustee. He has made two payments under this plan. He also had received financial counseling as part of the Chapter 13 process. He recently implemented the suggestions from this course and focused on ways he could cut his expenditures. He has stopped his monthly

subscriptions and reduced services like his phone service to the cheapest plan. The Chapter 13 bankruptcy filing also shows that Applicant had gambling losses of \$11,500 in 2010. (Tr. 48-49, 57-60; AE A; AE B; AE D.)

His debts are as follows:

Applicant is indebted to a collection agent for a utility bill in the amount of \$184, as alleged in 1.a. This debt is being paid through Applicant's Chapter 13 bankruptcy plan. (Tr. 51; GE 4; AE A.)

Applicant is indebted to a collection agent for an educational loan that he had co-signed with his son in the amount of \$1,036, as alleged in 1.b. He denied this debt in his Answer because he thought the debt belonged solely to his son. At hearing, he admitted his liability for this debt. It is being paid through Applicant's Chapter 13 bankruptcy plan. (Tr. 51; AE A.)

Applicant is indebted to a bank for a second student loan that he co-signed for his son in the amount of \$3,633, as alleged in 1.c. He denied this debt in his Answer because he thought the debt belonged solely to his son. At hearing, he admitted his liability for this debt. It is being paid through Applicant's Chapter 13 bankruptcy plan. (Tr. 51-52; AE A.)

Applicant is indebted on his mortgage for his primary residence in the amount of \$22,113, as alleged in 1.d. Applicant has reaffirmed his mortgage. The arrearage is part of his bankruptcy plan. He testified that he is now current on his monthly mortgage payments, due since the arrearage was incorporated into the bankruptcy plan. (Tr. 44, 52-53; AE A.)

Applicant is indebted to a collection agent for vehicle insurance in the amount of \$145, as alleged in 1.e. Applicant denied this debt in his Answer because he currently has an account with this insurance provider, but explained at hearing that the debt was incurred when a second account was opened up after his insurance had lapsed. He had an unpaid balance on the lapsed account that he was not aware of. This debt is being paid through Applicant's Chapter 13 bankruptcy plan. (Tr. 54; AE A.)

Applicant is indebted on a mortgage for unimproved property he purchased in the amount of \$14,000, as alleged in 1.f. Applicant received a trustee's sale notice; however, he also received a property tax bill. He is unsure of the status of this property. This debt is listed on Applicant's Chapter 13 bankruptcy plan. (Tr. 45-46, 54-55; AE A.)

Applicant is indebted in the amount of \$13,805, as alleged in 1.g and duplicated in 1.i, for a repossessed vehicle. He testified he leased the vehicle for approximately nine months, before his wife experienced the business downturn. When he found he could no longer afford the payments on the vehicle, he surrendered the vehicle to the dealership. This debt is being paid through Applicant's Chapter 13 bankruptcy plan. (Tr. 40-42, 46-47, 55-56; GE 5; AE A.)

Applicant is indebted to a collection agent for a credit card in the amount of \$14,632, as alleged in 1.h. Applicant used this credit card to pay other debts when he fell upon difficult financial times. He testified he reached the card's limit on expenditures in late 2010. This debt is being paid through Applicant's Chapter 13 bankruptcy plan. (Tr. 56-57; AE A.)

Applicant is well respected by his colleagues. Applicant presented three letters from a colleague that noted he is entirely trustworthy in his allegiance to the United States. During his 25 years of military service, Applicant was awarded numerous medals and awards, including two Navy and Marine Corps Commendation Medals; three Navy and Marine Corps Achievement Medals; and six Navy Good Conduct Medals. (Tr. 35-37; GE 5; AE C; AE E.)

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 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 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 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, as follows:

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. Compulsive gambling is a concern as it may lead to financial crimes including espionage. Affluence that cannot be explained by known sources of income is also a security concern. It may indicate proceeds from financially profitable criminal acts.

The guideline notes several conditions that could raise security concern 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 has nine delinquent accounts, which have been past due for a significant period of time. Applicant and his wife accumulated these delinquent accounts and have been unable to pay these obligations. His financial problems have been ongoing since 2008. The evidence is sufficient to raise the above disqualifying conditions.

Four Financial Considerations Mitigating Conditions under AG ¶ 20 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; and

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

Applicant's debt is being managed through his Chapter 13 bankruptcy plan. He filed bankruptcy only two months prior to the hearing, and two months after the SOR was issued, despite being aware of his financial problems since 2008. He has only made two payments under this plan. Therefore, his financial delinquencies are recent and he has yet to establish a good-faith effort to resolve these debts. Further, he blames his financial difficulties on the downturn of his wife's daycare business. However, he failed to show that he has acted responsibly under the circumstances. He has received some financial counseling, required during the filing of Chapter 13 bankruptcy, but he failed to establish that his financial problems are under control. Not enough time has passed since taking the financial course to predict that Applicant will act responsibly with respect to his finances in the future. His bankruptcy filing shows unexplained gambling losses of \$11,500 in the past year. While there was neither an allegation of compulsive or addictive gambling in the SOR, nor sufficient evidence in the record to establish potential disqualification under AG ¶ 19(g), Applicant's recent unexplained gambling losses indicate that, as late as 2010, he has not acted responsibly under the circumstances. AG ¶¶ 20(a), 20(b), 20(c), and 20(d) are not mitigating.

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 pertinent 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.

Applicant is well respected by his colleagues. He has served the U.S. honorably for over 25 years. Those who know him best report that he has sound judgment and high moral standards. His standards are reflected in the numerous awards he received during his military service. However, he has failed to act responsibly with respect to his finances. He only recently began to address his financial problems by filing bankruptcy proceedings that will resolve his debts five years from now if he follows plan requirements. Further, his unexplained large gambling losses in 2010, while substantial delinquent financial obligations were largely ignored, are of concern.

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated the Financial Considerations security concern.

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
Subparagraph 1.h:	Against Applicant
Subparagraph 1.i:	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.

Jennifer I. Goldstein
Administrative Judge