



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



In the matter of:)
)
) ISCR Case: 10-03549
)
)
Applicant for Security Clearance)

Appearances

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

April 21, 2011

Decision

DAM, Shari, Administrative Judge:

Based upon a review of the record evidence, eligibility for access to classified information is denied.

On January 18, 2010, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP). On November 23, 2010, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing 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 effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant filed an undated answer to the SOR and requested that the case be decided on the written record in lieu of a hearing. On January 25, 2011, Department Counsel prepared a File of Relevant Material (FORM) containing eight Items and mailed

Applicant a complete copy on January 26, 2011. Applicant received the FORM on February 2, 2011, and had 30 days from its receipt to file objections and submit additional information. He submitted a letter outside of the time limit to which the Department had no objection. I marked that as Applicant Exhibit (AE) A and admitted it into the record. On February 23, 2011, DOHA assigned the case to me.

Findings of Fact

In his answer to the SOR, Applicant admitted all allegations contained in ¶ 1. His admissions are incorporated into the following findings.

Applicant is a 41 years old. He is divorced and remarried since February 2010. He has two step-children. He has an associate degree in Art. In November 2007 he began a position as an aircraft mechanic with a defense contractor. Prior to obtaining this employment, he worked for private companies for at least ten years with a short period of unemployment in January 2007. (Item 5, 7.)

In February 2010 Applicant met with a government investigator to discuss his delinquent accounts. During that interview, he acknowledged the debts listed on a February 4, 2010 credit bureau report (CBR) and indicated that he intended to pay them, including a \$96 bill owed to an electric company. (Item 7.) In October 2010 he responded to Interrogatories and submitted a budget that listed his and his spouse's monthly net income as \$4,070 and expenses as \$4,052, leaving only \$18 remaining.¹ (Item 7.) He provided a statement that he contacted five creditors about delinquent debts. He cannot afford repayments at this time and deferred his student loan for another year. (*Id.*) The \$13,291 debt listed in ¶ 1.a is a personal loan he obtained to help his parents prevent a foreclosure. (*Id.*)

Based on the February 2010 CBR, the SOR alleged nine debts totaling \$58,695, including an \$18,000 student loan, which began accumulating in 2007 and continued accumulating into 2010. Applicant offered no evidence of any payment or payment plan to resolve these debts. He has not obtained credit counseling. He provided no evidence concerning the quality of his job performance. He submitted no character references or other evidence tending to establish good judgment, trustworthiness, or reliability.

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 (AG) list potentially disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant's eligibility for access to classified information.

¹ Applicant receives \$700 per month from two rental properties.

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.

Directive ¶ E3.1.14 requires the Government to present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an “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, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision.” 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.”

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.

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

overextended is at risk of having to engage in illegal acts to generate funds.

AG ¶ 19 notes two disqualifying conditions that could potentially raise security concerns in this case:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

Based on a CBR and his statements, Applicant has been unable to satisfy his delinquent debts that began accruing in 2007. The evidence is sufficient to raise these two potentially disqualifying conditions.

After the Government produced substantial evidence of those two disqualifications, the burden shifted to Applicant to produce evidence and prove a mitigating condition. AG ¶ 20 sets forth conditions that could mitigate financial security concerns:

- (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;
- (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; and
- (f) the affluence resulted from a legal source of income.

Because Applicant's delinquent debts are ongoing and not isolated, there is insufficient evidence to support a finding that the indebtedness is unlikely to recur or continue. Hence, AG ¶ 20(a) does not apply. Applicant stated that he was out of work a

short time in early 2007. While that situation may have had a negative effect on his finances in 2007, Applicant did not present sufficient evidence that the total accumulation of \$58,695 of debt can be attributed to conditions beyond his control or that he attempted to responsibly manage the debt once it accrued, as required under AG ¶ 20(b).

Applicant established no mitigation under AG ¶ 20(c) or AG ¶ 20(d). He did not submit evidence that he received credit counseling or that his financial situation is coming under control. He did not present sufficient evidence that he made a good-faith effort to pay or resolve his debts, including the small \$96 debt. He asserted that his student loan is deferred, but did not submit proof. There is no evidence to support the application of AG ¶ 20(e) or AG ¶ 20(f).

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). They include the following:

- (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 is a mature individual, who has worked for a defense contractor since November 2007. In February 2010 he learned of the Government's concerns relating to his financial delinquencies, and responsibly indicated his willingness to resolve the matters. In November 2010 DOHA filed a SOR, listing over \$58,000 of delinquent debts that consists of an \$18,000 student loan, about \$27,000 of credit card debt, and a \$13,000 personal loan for his parents. In January 2011 the Government filed the FORM. For almost a year, he has been on notice that his debt was creating security concerns and potentially affecting his employment. Despite that knowledge, he did not provide sufficient proof that he has taken steps to address the debts or even pay the smallest debt. While I recognize that Applicant has little money in his budget for debt reduction, he could have taken some steps to address the debts, such as obtaining credit counseling or financial assistance

through his company's Employee's Assistance Program, and consistently making small payments on the debts. The record contains insufficient other evidence about his character, trustworthiness, or responsibility to mitigate these concerns or make their continuation less likely.

Overall, the record evidence creates substantial doubt as to Applicant's present eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant did not mitigate the security concerns arising from his financial considerations.

Formal Findings

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

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a through 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.

SHARI DAM
Administrative Judge