



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 10-04071

Appearances

For Government: Gregg A. Cervi, Esq., Department Counsel

For Applicant: *Pro se*

December 6, 2011

Decision

MARSHALL, Jr., Arthur E., Administrative Judge:

Statement of the Case

On April 15, 2011, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) noting 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).

In an April 27, 2011, response, Applicant admitted all allegations and requested a hearing before a DOHA administrative judge. He subsequently withdrew his request for a hearing and requested an administrative determination. On September 16, 2011, Department Counsel submitted a File of Relevant Material (FORM), which included nine attached items. Applicant did not submit a response within the time period of 30 days after his receipt of the FORM. The case was assigned to me on September 29, 2011.

Based on a review of the case file, I find Applicant failed to meet his burden regarding the security concerns raised under Guideline F. Security clearance is denied.

Findings of Fact

Applicant is a 35-year-old aircraft mechanic who has worked for the same defense contractor since about June 2009. He has earned a high school diploma and completed technical training in his field. Applicant is single and has one minor child.

From December 2007 through August 2008, Applicant was unemployed. During that period, he received unemployment compensation from February 2008 through August 2008. Otherwise, Applicant has been continuously employed for the past decade. Over those years, he has worked as a custodian, order-filler, warehouse stocker, clerk, temporary service employee, and sales consultant. Applicant attributes his on-going financial distress to his failure to earn sufficient income to cover his expenses. He hoped to start saving sufficient money to start paying off some of his delinquent debts in October 2010 by working overtime, but there is no evidence that he was able to do so. His most recent personal financial statement shows that he has a monthly net remainder of about \$35 after paying for his current living expenses. There is no evidence that he has received financial counseling.

In withdrawing his request for a hearing before a DOHA administrative judge, Applicant noted that he wanted additional time to work on his finances. It is his intention to reapply for a security clearance when his finances improve.¹ At issue in the SOR are 23 delinquent debts, set forth in allegations ¶¶ 1.a-1.w. Applicant admits that all of those debts remain unpaid due to his current lack of sufficient income. The delinquent debts at issue represent approximately \$26,250 in debt. Little more is known about the debts or Applicant's personal situation.

Policies

When evaluating an applicant's suitability for a security clearance, an administrative judge must consider the AG. The AG lists 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 over-arching 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

¹ FORM, Item 6 (Government's Discovery Letter, dated Jul. 28, 2011, and Applicant's e-mail requests for a decision without a hearing, dated Aug. 4, 2011).

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.

The United States Government (Government) must present evidence to establish controverted facts alleged in the SOR. It is an applicant’s responsibility to present “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . .”² The burden of proof is something less than a preponderance of evidence. 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 safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about 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 A security clearance denial 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.

Analysis

Guideline F – Financial Considerations

In this case, Guideline F is the appropriate guideline for consideration. Under that guideline, “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

² See also ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

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

⁴ See also EO 12968, § 3.1(b) and EO 10865 § 7.

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

⁶ *Id.*

reliability, trustworthiness and ability to protect classified information.”⁷ The burden in these proceedings is placed squarely on an applicant. Here, Applicant admitted responsibility for all the delinquent debts alleged. The dates of last activity on the delinquent accounts at issue generally range from 2006 to 2009, when the credit report providing the basis for the SOR was generated.⁸ Applicant does not presently have sufficient income to address the debts. In light of these facts, Financial Considerations Disqualifying Conditions AG ¶ 19(a) (inability or unwillingness to satisfy debts) and AG ¶ 19(c) (a history of not meeting financial obligations) apply. With such conditions raised, it is left to Applicant to mitigate security concerns.

The multiple debts at issue generally became delinquent in the past five years. All those debts remain unaddressed and unpaid. Applicant has served in the same position since June 2009, and there is no evidence he has received a raise or has increased his income through significant overtime. He concedes that he does not currently have sufficient income to address his delinquent debts. There is no evidence that he has received financial counseling. Under these facts, neither Financial Considerations Mitigating Conditions 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*), 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*), nor AG ¶ 20(d) (*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*) applies.

Applicant was unemployed from December 2007 through August 2008, during which time he only received unemployment compensation for about seven months. His reason for leaving his job in December 2007 is unclear. Regardless, Applicant provided no documentary evidence demonstrating any reasonable efforts to lessen his financial distress at that time, or to otherwise act responsibly with regard to his finances. Therefore, 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.

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). 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

⁷ AG ¶ 18.

⁸ FORM, Item 9 (Credit Report, dated Dec. 3, 2009).

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 provided scant facts of record. It is noted that he is a mature man with a high school education and some post-secondary technical training. He is a single father. Applicant's written statements are brief, but highly forthright. He is fully aware of his financial situation. He has a net monthly remainder of under \$50.

As Applicant concedes, he currently has insufficient income to address any of the 23 debts at issue. There is no evidence that he has received much needed financial counseling, contemplated filing for bankruptcy, entered into a debt consolidation program, or devised a reasonable strategy for addressing his debts. He seems to appreciate that his present financial situation is not compatible with the standards expected of one seeking a security clearance. Given the scant facts of record, I conclude that Applicant failed to meet his burden and that financial considerations security concerns remain unmitigated. Clearance is denied.

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.w:	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 access to classified information. Clearance denied.

ARTHUR E. MARSHALL, JR.
Administrative Judge