



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



In the matter of:)	
)	
)	ISCR Case No. 10-06262
)	
Applicant for Security Clearance)	

Appearances

For Government: Caroline H. Jeffreys, Esquire
For Applicant: *Pro se*

July 26, 2011

Decision

CURRY, Marc E., Administrative Judge:

Although Applicant’s troubled finances stemmed from a business downturn and he has filed for Chapter 13 bankruptcy protection, there is insufficient evidence in the record to conclude he has mitigated the security concern. Clearance is denied.

Statement of the Case

On November 24, 2010, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the basis for its denial of Applicant’s security clearance. Specifically, it alleged facts which raise 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 (AG) effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant answered the SOR on December 8, 2010, and requested a decision on the record instead of a hearing. On January 6, 2011, the Government prepared a File of Relevant Materials (FORM). Applicant received the FORM on February 4, 2011, and was instructed he had 30 days to submit a response. Applicant did not submit a response, and the case was assigned to me on April 1, 2011.

Findings of Fact

Applicant is a 41-year-old man who has been married for nine years. A previous marriage ended in divorce. Applicant has no children.

Applicant served in the U.S. Navy from 1988 to 1994. He was honorably discharged. Shortly after leaving the Navy, Applicant enrolled in college, earning a bachelor's degree in 1999. (Item 5 at 17) He is a systems engineer who has been working for the same employer, a defense contractor, since 2006. He has held a security clearance for ten years. (Item 6 at 7)

For most of the last decade, Applicant's wife operated a mortgage financing business. (Items 5 at 54; 7 at 4) The business was initially prosperous, then the real estate market crashed. (*Id.*) Applicant's wife's salary was based solely on commissions, therefore, she supported herself between real estate deals with credit lines. After the market collapse, home sales decreased drastically, limiting her commissions. At or about this time, her creditors began restricting their access to credit lines, and raising the interest rates on their outstanding balances. (Item 5 at 60)

Applicant and his wife had financed their home with a variable rate, interest-only loan. Shortly after the real estate market collapsed, the interest rate on their home mortgage accelerated. (Item 5 at 60) Consequently, Applicant and his wife could not make ends meet, and began falling behind on their finances. By 2010, they had accrued approximately \$144,000 in delinquent debt. (Item 4)

Applicant and his wife attempted to negotiate interest rate reductions and/or lump-sum balance payments. These efforts were unsuccessful, and their credit rating continued "to plummet." (Item 5 at 60)

In October 13, 2010, Applicant and his wife filed for Chapter 13 bankruptcy protection. (*Id.*) The status of the bankruptcy is unknown from the record.

Applicant's wife no longer operates her business. Currently, she works at a bank.

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 useful 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, these guidelines are applied together with the factors listed in the adjudicative process. According to AG ¶ 2(c), the entire process is a 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 applicant or proven by Department Counsel. . . ." The applicant has the ultimate burden of persuasion as to obtaining 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. 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 an 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 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." See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline F, Financial Considerations

Under this guideline, "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" (AG ¶ 18). Moreover, "an individual who is financially overextended is at risk of having to

engage in illegal acts to generate funds” (*Id.*). Applicant’s history of financial delinquencies triggers the application of AG ¶¶ 19(a), “an inability or unwillingness to satisfy debts,” and 19(c), “a history of not meeting financial obligations.”

Applicant’s financial difficulties were not caused by extravagant or irresponsible spending. Rather they occurred after his wife’s business failed and the interest rates increased on his outstanding loans. After Applicant’s attempt at negotiating lower interest rates and/or lump-sum payments with his creditors failed, he filed for Chapter 13 bankruptcy protection. AG ¶ 20(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,” applies.

Although Applicant has acted prudently in response to his financial misfortune, and has filed for Chapter 13 bankruptcy protection, he provided no record evidence of its current status. Consequently, AG ¶ 20(d), “the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts,” applies, but not AG ¶ 20(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.”

Whole-Person Concept

Under the whole-person concept, 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.

Applicant’s financial situation is not unusual. Given the situation he faced after his wife’s business failed, he did not have many viable options other than to seek bankruptcy protection. Although his wife now has a job, and the bankruptcy pleading has been filed, it is too soon to conclude that their financial situation is under control. Under these circumstances, I conclude Applicant has not mitigated the 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

Subparagraphs 1.a - 1.h: Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

MARC E. CURRY
Administrative Judge