



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



In the matter of:)	
)	
)	ISCR Case No. 10-06959
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Paul DeLaney, Esq., Department Counsel
For Applicant: *Pro se*

April 29, 2011

Decision

LYNCH, Noreen A., Administrative Judge:

On January 31, 2011, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) listing 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), implemented in September 2006.

Applicant timely answered the SOR and requested an administrative determination. Department Counsel submitted a File of Relevant Material (FORM), dated March 7, 2011.¹ Applicant received the FORM on March 14, 2011, but did not submit any response. On April 26, 2011, the Director, DOHA, forwarded the case for assignment to an administrative judge. I received the case assignment on April 27, 2011. Based on a review of the case file, submissions, and exhibits, I find Applicant

¹The Government submitted eight items in support of its case.

failed to meet his burden regarding the security concerns raised. Security clearance is denied.

Findings of Fact

In his answer to the SOR, Applicant admitted four factual allegations (SOR ¶¶ 1.a, b, bb, and ff). under Guideline F (Financial Considerations). He denied the other allegations in his answer.

Applicant is a 26-year-old employee of a defense contractor seeking to obtain a security clearance. He graduated from high school and attended several college courses. Applicant's first marriage ended in July 2009. He has three children from his marriage. Applicant remarried in August 2009 and has three step-children from this marriage. He has worked for his current employer since June 2010. (Item 5)

The SOR lists 32 delinquent accounts totaling \$54,000. The delinquencies include a 2007 and a 2008 judgment, medical accounts, vehicle repossession, and collection accounts. Applicant admitted four delinquent accounts totaling \$18,700 and the credit reports confirm them. (Items 7 and 8) He also acknowledged on his security clearance application that he defaulted on a mortgage loan of \$65,000 that is past-due in an amount of \$21,384.(SOR ¶1.y). However, he denied this allegation in his answer to the SOR. He provided no documentary evidence showing that he has paid any accounts.

Applicant simply denied the majority of the accounts alleged in the SOR. However, during his June 2010 investigation interview, he reported to the investigator that he was aware of the judgments and a vehicle repossession. He attributed his debts to his separation and divorce. (Item 6) Applicant also acknowledged several collection accounts and personal loans. Applicant provided no significant information that linked his divorce in 2009 to his inability to pay the debts at issue. He provided no information about his current finances. There is no evidence that he has pursued financial counseling, or described his overall financial situation.

Policies

When evaluating an applicant's suitability for a security clearance, an 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. 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 overarching 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 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

The United States Government must present evidence to establish controverted facts alleged in the SOR. An applicant is responsible for presenting “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.³ The ultimate burden of persuasion is on the applicant.⁴

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 protect classified information. Such decisions entail a certain degree of legally permissible extrapolation of 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.”⁵ “The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”⁶ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such information.⁷ The decision to deny an individual a security clearance 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.

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

³ *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

⁴ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

⁵ See also EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information), and EO 10865 § 7.

⁶ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

⁷ *Id.*

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 admitted delinquent debts amounting to \$18,000. Although he denied the majority of the debts in his answer to the SOR, he acknowledged others in his interview and his security clearance application. 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.

There are multiple debts at issue, amounting to \$54,000. As noted above, there is no tangible evidence that any of these debts have been resolved. Applicant's debts are recent and ongoing. 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, Applicant states that his financial problems arose from his 2009 divorce. He failed to document a clear nexus between the event and his delinquent debts. The judgments predate the actual divorce. There is no way to discern he acted responsibly during those periods. There is little evidence that he acted reasonably under the circumstances. He allowed the delinquent debts to remain unpaid. He did not report any unemployment. This mitigating condition does not apply.

FC MC AG ¶ 20(d), (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts) does not apply. Applicant has not provided evidence of any payments or a plan for repayment of the debts. He did not present evidence that he received financial counseling which obviates the applicability of 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).

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):

(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. 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 is 26 years old. He has worked for his current employer since June 2010. He was divorced in 2009. He has delinquent debts that he has not paid. He presented no evidence in mitigation.

In the absence of documentary evidence submitted in response to this FORM showing that Applicant started to resolve his financial difficulties through payment, or has obtained counseling with clear indication that the debts are being resolved or are under control, these concerns must be decided against him in evaluating his suitability to have access to classified information. The clearly-consistent standard indicates that security clearance determinations should err, if they must, on the side of denials. Applicant failed to submit sufficient information or evidence to mitigate the security concerns raised in his case. 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.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 a security clearance. Clearance is denied.

NOREEN A. LYNCH.
Administrative Judge