



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 10-07165

Appearances

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

October 26, 2011

Decision

HOWE, Philip S., Administrative Judge:

On October 7, 2010, Applicant submitted his electronic version of the Security Clearance Application (SF 86) (e-QIP). On May 25, 2011, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F. 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 on September 1, 2006.

Applicant answered the SOR in writing on June 14, 2011. Applicant requested his case be decided on the written record in lieu of a hearing.

On June 27, 2011, Department Counsel submitted the Department's written case. A complete copy of the file of relevant material (FORM) was provided to the

Applicant on August 16, 2011. He was given the opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant received the file on August 18, 2011. Applicant filed a Response to the FORM on August 30, 2011, within the 30 day time allowed that expired on September 17, 2011. The Department Counsel had no objection to the admission of the Response into the record. I received the case assignment on October 12, 2011. Based upon a review of the pleadings and exhibits, eligibility for access to classified information is denied.

Findings of Fact

Applicant admitted the allegation in the SOR. (Items 1, 4)

Applicant is 61 years old and married to his fourth wife. He divorced his first three wives. He had three sons with his first wife. His sons are 41, 39, and 36 years old. Applicant fathered a daughter with his third wife. The daughter is 22 years old. He has no relationship with these children. (Items 4, 5, 9-11, Response)

Applicant did not pay child support to his first wife after their divorce in 1976, except for three years in the 1970s and two years in the 1980s. He paid after 1986 following his arrest for non-payment of child support. He resumed payments in December 2009, he claims, after he sought renewal of his security clearance. Applicant's Answer states he can only afford to pay \$50 per week on the arrearages. Applicant submitted evidence of nine payments totaling \$450 since December 2009, from November 2010 to February 2011.

The SOR alleges the amount owed for child support is \$40,382.44. The current amount owed is \$37,424.32 as of July 2011. Applicant's reason for not paying his child support was that his first wife moved and took his sons without giving him an address so he could exercise his visitation rights. Applicant claims he hired an attorney in 2010 to contest the child support arrearages, but did not submit any documents showing the identity of the attorney or the current status of Applicant's actions against the collection of this child support debt. Applicant did not hire an attorney to amend the divorce decree when his former wife moved and took the children with her, frustrating his visitation rights. (Items 1, 4, 5, 9-11, Response)

Applicant works for a defense contractor. His personal financial statement as of March 2011 shows his gross monthly income is \$5,236. His net remaining monthly income is \$2,061 after expenses, including the \$200 monthly he pays on the child support. Applicant owes approximately \$42,000 on the 2008 and 2010 pickup trucks he owns. He owes about \$14,000 in credit card debt listed on his personal financial statement. (Items 9-11)

Applicant disclosed his child support debt on his April 2008 security clearance application. He also admitted his failure to pay child support in a January 1998 statement in an earlier clearance application. (Items 6 and 9)

Applicant's payments of \$2,400 annually as presently planned by him will repay the \$37,424.32 in child support arrearages in 16 years. Applicant's payments might end when he is 77 years old. His net remainder income on his personal financial statement shows he can afford to pay \$800 to \$1000 monthly on his child support debt, making the debt payable in four years. He did not submit any evidence of credit counseling or financial management courses (Items 4, 11)

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, the administrative judge applies 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.

According to Directive ¶ E3.1.14, the Government must 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 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. 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 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.

The guideline at AG ¶ 19 contains nine disqualifying conditions that could raise security concerns. From these nine conditions, two conditions are applicable to the facts found in this case:

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

Applicant willfully failed to pay his child support obligations from 1976 to the present, except for three years in the 1970s and two years in the 1980s. He paid after 1986, following his arrest for non-payment of child support. Subsequently he stopped paying again. He did not seek a modification of his financial obligations when he claimed his former wife moved and denied him child visitation rights. Rather, he simply ceased paying child support. Now he owes \$37,424.32. His last payment was \$50 in February 2011.

The guideline in AG ¶ 20 contains six conditions that could mitigate security concerns arising from financial difficulties. No mitigating condition applies.

Applicant's behavior is current, ongoing, and extending over the past three decades. His conduct casts doubt on his current reliability, trustworthiness, and good judgment. AG ¶ 20 (a) does not apply.

Applicant's financial conditions were not beyond his control. He deliberately decided not to pay his child support for his three children to punish his former wife for taking his children where he did not think he could reasonably exercise his visitation

privileges. He did not seek a court modification of the divorce decree. Therefore, he did not act responsibly under the circumstances. AG ¶ 20 (b) does not apply.

Applicant did not present any proof of counseling, legal or otherwise, for his problem, nor are there any indications the child support debt problem is under control or being resolved. AG ¶ 20 (c) does not apply.

Applicant has not started or made regular payments in a good-faith effort to resolve the child support debt. His \$200 monthly payment plan stopped in February 2011 based on the evidence he submitted. His personal financial statement shows he could afford \$800 to \$1000 monthly and repay this debt in less than the 16 years he plans per his current payment plan. AG ¶ 20 (d) does not apply.

Applicant has not shown any reasonable basis to dispute the debt. He took no action years ago to modify the child support obligation when he claimed his former wife interfered with his child visitation privileges. There is no affluence resulting from a legal source of income that is at issue here. Applicant failed to meet his burden of proof on these issues. AG ¶¶ 20 (e) and (f) do 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 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 facts and circumstances surrounding this case. Applicant was an adult when he incurred the child support obligations. He has not taken any action to resolve his large delinquent child support debt. This inaction leaves him vulnerable to pressure, coercion, exploitation, or duress based on the magnitude of his financial obligation. His lack of action continues to this day, and is obviously voluntary. His inaction will continue based

on his past performance. Applicant displayed a lack of good judgment incurring the debts. Next, he exhibited a continued lack of appropriate judgment by failing to make payments on his child support debt despite being arrested for unpaid child support in 1986, making only small payments late in 2010 and two months in 2011. Applicant is not paying a reasonable amount monthly to resolve the debt in five years or less, based on his financial condition as he described it in his March 2011 personal financial statement.

Overall, the record evidence leaves me with substantial questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant did not mitigate the security concerns arising under the guideline for Financial Considerations. I conclude the "whole-person" concept against Applicant.

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

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.

PHILIP S. HOWE
Administrative Judge