



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



In the matter of:)	
)	
)	ISCR Case No. 10-07517
)	
)	
Applicant for Security Clearance)	

Appearances

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

06/25/2012

Decision

HOWE, Philip S., Administrative Judge:

On April 23, 2010, Applicant submitted his electronic Security Clearance Application (e-QIP) (SF 86). On September 29, 2011, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guidelines F (Financial Considerations) and J (Criminal Conduct). 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 acknowledged receipt of the SOR on October 11, 2011. He answered the SOR in writing on October 24, 2011, and requested a hearing before an administrative judge. DOHA received the request on October 28, 2011. Department Counsel was prepared to proceed on January 3, 2012, and I received the case assignment on January 10, 2012. DOHA issued a Notice of Hearing on April 3, 2012, and I convened the hearing as scheduled on April 24, 2012. The Government offered

Exhibits 1 through 6, which were received without objection. Applicant testified and submitted Exhibits A through D, without objection. DOHA received the transcript of the hearing (Tr.) on May 2, 2012. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

Findings of Fact

In his Answer to the SOR Applicant admitted the factual allegations in ¶¶ 1.a through 1.s of the SOR, with explanations, except he denied the factual allegations in ¶ 1.e of the SOR. Applicant admitted the allegations in Subparagraphs 2.a through 2.c. He also provided additional information to support his request for eligibility for a security clearance.

Applicant is 31 years old, unmarried, and has two minor children. He is engaged to be married in 2013. Applicant has a general education diploma (GED) and a bit of college study. Applicant works for a defense contractor in the information technology business and has done so for the past two years. His income is currently \$31,000 annually. Applicant's monthly net income is \$1,669 and his expenses are \$1,582. (Tr. 20-23, 68; Exhibits 1, C)

Applicant has two vehicles on which he makes payments. He has a motorcycle he purchased in March 2011 to reduce his transportation costs. The purchase price was \$7,000. His monthly payments are \$177. Applicant lists \$183 for this account on his monthly expense statement. Applicant bought a used pickup truck a few months before the hearing and paid \$4,000 in cash for it. Applicant does not pay rent for his accommodations at his fiancée's parents' house, where he has lived for the past three years. (Tr. 42-44; Exhibit C)

Applicant's SOR lists 19 delinquent debts totaling \$13,492. These debts include medical accounts, utility bills, and an unpaid lease obligation. The debts were incurred three or more years ago, with the earliest debt date of 2005. Applicant told the government investigator in June 2010 that he would pay his debts during the following couple of years. Applicant did not do anything to resolve his delinquent debts until he found a debt consolidation agency on the internet about two weeks before the hearing and signed an agreement on April 23, 2012. The agreement with this agency required a payment of \$150 automatically each month until the 11 debts listed in the plan were paid. The agency would receive 30% of any settlement amount as the fee. Applicant did not list eight debts on the SOR in his plan, but stated he would do so after the hearing. As of the date of the hearing Applicant had not made a payment of \$150. The agreement is supposed to be completed in April 2017. Applicant did not do anything about his delinquent debts before April 2012 because he was taking care of his monthly financial obligations and his two children. None of the SOR-listed debts are resolved. (Tr. 25-38, 62-68; Exhibits 2-5, A-D)

Applicant was charged with theft of property over \$50 in March 2003 when he took a Windows 2000 package from a returned item bin in the store at which he worked.

Applicant stated his supervisor approved of him taking the software package, but the store manager disagreed. Applicant returned the software and pled guilty in court on the charge. He received six months of probation and fined \$200. (Tr. 58, 59; Exhibit 6)

Applicant was charged in March 2007 with domestic abuse or assault when he removed his then girlfriend, who is the mother of his two children, from their apartment. He objected to her unfaithfulness. That person called the police and alleged Applicant used physical force against her. Applicant denies that allegation. He spent the night in jail, and the next day in court, the charges were dismissed because his former girlfriend did not appear in court. (Tr. 54-57; Exhibit 6)

Applicant was arrested for driving while under the influence (DUI) in December 2009 and was subject to two charges involving alcohol. One charge was dismissed and he pled guilty to the second charge of DUI Alcohol. Applicant admits he drank 12 beers in four hours and was arrested within five minutes of getting in his car. He ran a red light and made an improper lane change. He failed the field sobriety test. Applicant claims it was the first time he was arrested for DUI. Judgment was deferred and he was placed on probation for one year, which he successfully completed. He paid fines and fees of \$1,800, and his driving privileges were suspended for six months. Applicant has not been arrested for any crime since December 2009. (Tr. 48-53; Exhibit 6)

Applicant testified frankly and credibly about his past financial and criminal problems. He is an articulate person who presented his case in a logical manner.

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 in conjunction with the factors listed in the adjudicative process (AG ¶ 2(a)). 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under 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 clearance 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.

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

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. 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 accumulated \$13,492 in delinquent debt from 2005 to the present time that remains unpaid. Applicant has 19 delinquent debts listed in the SOR.

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

(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.

Applicant's financial problems are recent and his failure to resolve them in a timely manner casts doubt on his current reliability, trustworthiness, and good judgment. AG ¶ 20 (a) does not apply.

Applicant did not act responsibly under the circumstances and the financial problem was not beyond his control. He has been employed for the past two years. AG ¶ 20 (b) does not apply.

Applicant has not received any financial counseling. The problem is not resolved and is not under control. His delinquent debts remain unpaid after Applicant received notice of the government's security concern in June 2010 when he was interviewed by the government investigator. AG ¶ 20 (c) does not apply.

Applicant is not paying his debts in an installment payment plan. He tried to establish a plan by finding an agency to manage his account by researching the internet. He has not paid any money to the agency he found. Yet he paid \$4,000 in cash

for a used pickup truck while continuing to ignore his delinquent debts. AG ¶ 20(d) does not apply because Applicant has not made a good-faith effort to repay his delinquent debts.

Applicant has not articulated a reasonable basis for disputing the legitimacy of the delinquent debts. AG ¶ 20 (e) does not apply.

There is no evidence of any legal source of any affluence. AG ¶ 20 (f) does not apply.

Guideline J, Criminal Conduct

AG ¶ 30 expresses the security concern pertaining to criminal conduct:

Criminal activity creates doubt about a person's judgment, reliability, and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules and regulations.

AG ¶ 31 describes five conditions that could raise a security concern and may be disqualifying. Two conditions are applicable:

(a) a single serious crime or multiple lesser offenses; and

(c) allegation or admission of criminal conduct, regardless of whether the person was formally charged, formally prosecuted or convicted.

Applicant has three arrests between 2003 and 2009, each for a different type of criminal offense. He pled guilty to two charges, in 2003 and 2009. The 2007 domestic abuse charge was dismissed. Therefore, Applicant has multiple lesser offenses on his record regardless of whether he was convicted or prosecuted. AG ¶ 31(a) and (c) apply.

AG ¶ 32 provides four conditions that could mitigate security concerns. Two conditions apply:

(a) so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment; and

(d) there is evidence of successful rehabilitation; including but not limited to the passage of time without recurrence of criminal activity, remorse or restitution, job training or higher education, good employment record, or constructive community involvement.

Applicant has not had any criminal violations since December 2009, nearly three years ago. The other offenses are five years and nine years ago. The passage of time since these incidents is sufficient to apply AG ¶ 32(a).

Applicant has rehabilitated himself by being gainfully employed for the past two years, obtaining his high school equivalency degree (GED) and taking some college courses, becoming engaged, and taking care of his two children. There has not been any additional criminal activity perpetrated by Applicant. AG ¶ 32(d) applies.

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.

AG ¶ 2(c) requires each case must be judged on its own merits. 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 was an adult when all of the debts were incurred and the criminal acts performed. His actions were all voluntary.

In the past three years Applicant demonstrated he changed his behavior and has not committed any more crimes. He has a good-paying job and has performed it for the past two years. His current job performance and current lawful behavior shows there is no potential for pressure, coercion, exploitation, or duress regarding his criminal history. However, he procrastinated resolving his delinquent debts. Applicant only recently initiated a repayment plan which is designed to repay his debts. His financial delinquencies continue to be a security concern.

Based on Applicant’s current employment and family efforts there is no likelihood of recurrence of his past criminal conduct. Applicant’s testimony at the hearing on this issue was credible and persuasive. He was articulate and forthright in explaining his past criminal actions.

Overall, the record evidence leaves me with questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising from his criminal conduct. Applicant did not mitigate the financial considerations security concern. I conclude the "whole-person" concept against Applicant because of his lack of action on resolving his delinquent debts during the past two years.

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 to 1.s:	Against Applicant
Paragraph 2, Guideline J:	FOR APPLICANT
Subparagraph 2.a to 2.c:	For 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