



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



In the matter of:)
)
) ISCR Case No. 10-08192
)
Applicant for Security Clearance)

Appearances

For Government: Candace Le'i Garcia, Esq., Department Counsel
For Applicant: *Pro se*

07/26/2012

Decision

LOUGHRAN, Edward W., Administrative Judge:

Applicant has not mitigated financial considerations security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On April 18, 2012, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, financial considerations. The action was taken under Executive Order (EO) 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) implemented by the Department of Defense on September 1, 2006.

Applicant answered the SOR on May 14, 2012, and requested a hearing before an administrative judge. The case was assigned to me on June 22, 2012. DOHA issued a notice of hearing on June 29, 2011, scheduling the hearing for July 17, 2012. The hearing was convened as scheduled. Government Exhibits (GE) 1 through 5 were

admitted into evidence without objection. Applicant testified and submitted Applicant's Exhibits (AE) A through F, which were admitted without objection. DOHA received the hearing transcript (Tr.) on July 25, 2012.

Findings of Fact

Applicant is a 32-year-old employee of a defense contractor. He has worked for his current employer since April 2010. He served in the U.S. military from 1998 until he was honorably discharged in 2008. He held a security clearance in the military, but it lapsed when he was discharged. He attended college for a period but did not obtain a degree. He married in 2000 and divorced in 2006. He married his current wife in 2006. He has three children, ages 11, 5, and 4.¹

Applicant has had financial issues for a number of years. He and his first wife filed Chapter 7 bankruptcy in 2005, and their debts were discharged the same year. The bankruptcy petition listed \$24,686 in secured claims and \$23,445 in unsecured claims. He stated that his first wife mismanaged their finances while he was deployed. He and his first wife separated in 2004. The added costs of supporting two households also contributed to their financial problems.²

Applicant was unemployed for about a year after his discharge from the military. When he did find work, the jobs did not pay well. He was unable to pay all his bills, and three cars were repossessed.³

The SOR alleges Applicant's bankruptcy and 13 delinquent debts, with balances totaling about \$35,000. The debts range from \$74 to \$15,000. Applicant admitted owing all the debts.

Applicant received financial counseling as a requirement of his 2005 bankruptcy. He has not received additional financial counseling, but he reads financial advice on the Internet. He made some payments toward his delinquent debts, and he paid several debts that were not alleged in the SOR. He has not made any payments since February 2012, when he settled a debt that was not alleged in the SOR for \$100. He could not explain why he did not pay some of the smaller debts in the SOR. Applicant pays \$500 per month in child support, and his wife is a stay-at-home mother. He earns enough to pay his child support and his current obligations, but he is unable to pay anything towards his delinquent debts. He consulted an attorney about filing a Chapter 13 bankruptcy, but he cannot afford the attorney's fees. He is saving for the attorney's retainer and plans to file Chapter 13 bankruptcy when he has enough to pay the lawyer.⁴

¹ Tr. at 15, 19, 22-24; GE 1, AE D.

² Tr. at 15; Applicant's response to SOR; GE 2, 3.

³ Tr. at 15, 22, 25-26; Applicant's response to SOR; GE 2, 4-5.

⁴ Tr. at 15-26; Applicant's response to SOR; GE 2; AE A-C.

Applicant received numerous awards and accolades during his military career. He served at least one deployment to Iraq. He volunteers in his community. Letters on his behalf attest to his excellent job performance, dedication, responsibility, trustworthiness, and honesty.⁵

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are to be used 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, administrative judges apply 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."

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 the applicant or proven by Department Counsel." The applicant has the ultimate burden of persuasion to obtain 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 safeguard 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 EO 10865 provides that adverse decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the

⁵ Tr. at 23; AE A-F.

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 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 notes conditions that could raise security concerns under AG ¶ 19. Two are potentially applicable in this case:

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

Applicant accumulated a number of delinquent debts and was unable or unwilling to pay his financial obligations. The evidence is sufficient to raise the above disqualifying conditions.

Conditions that could mitigate financial considerations security concerns are provided under AG ¶ 20. The following are potentially applicable:

- (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; and
- (d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant's first wife mismanaged their finances while he was deployed. They separated in 2004. The added costs of supporting two households also contributed to their financial problems. After his 2008 discharge from the military, he had periods of unemployment and underemployment before he obtained his current job in April 2010. The above events qualify as conditions that were outside his control. To be fully applicable, AG ¶ 20(b) also requires that the individual act responsibly under the circumstances.

Applicant's debts were discharged in bankruptcy in 2005. His finances did not remain stable after the bankruptcy. He had three cars repossessed, and he could not explain why he did not pay some of the smaller debts in the SOR.

I am unable to find that Applicant acted completely responsibly under the circumstances or that he made a good-faith effort to pay his debts.⁶ His finances are not yet under control. His financial issues are recent and ongoing. I am unable to determine that they are unlikely to recur. They continue to cast doubt on his current reliability, trustworthiness, and good judgment. AG ¶¶ 20(a) and 20(d) are not applicable. AG ¶ 20(b) is partially applicable. The first section of AG ¶ 20(c) is applicable; the second section is not. I find that financial concerns remain despite the presence of some mitigation.

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

⁶ The Appeal Board has explained what constitutes a "good-faith" effort to repay overdue creditors or otherwise resolve debts:

In order to qualify for application of [the good-faith mitigating condition], an applicant must present evidence showing either a good-faith effort to repay overdue creditors or some other good-faith action aimed at resolving the applicant's debts. The Directive does not define the term 'good-faith.' However, the Board has indicated that the concept of good-faith 'requires a showing that a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation.' Accordingly, an applicant must do more than merely show that he or she relied on a legally available option (such as bankruptcy) in order to claim the benefit of [the good-faith mitigating condition].

(internal citation and footnote omitted) ISCR Case No. 02-30304 at 3 (App. Bd. Apr. 20, 2004) (quoting ISCR Case No. 99-9020 at 5-6 (App. Bd. Jun. 4, 2001)).

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 the facts and circumstances surrounding this case. I have incorporated my comments under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

I considered Applicant's honorable military service, particularly his service in a war zone, and his favorable character evidence. I believe Applicant is sincere in his desire to rectify his financial problems. However, 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." At this time, Applicant has not dispelled the doubts raised by his financial problems.

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. I conclude Applicant has not mitigated financial considerations security concerns.

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.n:	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.

Edward W. Loughran
Administrative Judge