



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 10-09158

Appearances

For Government: Gina L. Marine, Esquire, Department Counsel
For Applicant: *Pro se*

June 30, 2011

Decision

HOWE, Philip S., Administrative Judge:

On April 23, 2010, Applicant submitted his electronic version of the Security Clearance Application (SF 86) (e-QIP). On February 11, 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 March 2, 2011. Applicant requested his case be decided on the written record in lieu of a hearing.

On March 11, 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 March 18, 2011. He was given the opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant received the file on March 23, 2011. Applicant did not file a Response to the FORM within the 30 day time allowed that would have expired on April 22, 2011. I received the case assignment on May 12, 2011. Based upon a review of the pleadings, and exhibits, eligibility for access to classified information is denied

Findings of Fact

Applicant denied all the allegations in Paragraph 1 listing 14 delinquent debts, except Subparagraph 1.m pertaining to a \$198 insurance debt. His 13 admissions are accepted as factual findings and incorporated herein as such. These debts total \$51,284. Eight debts are under \$500 each. The earliest delinquency of any debt is April 2005. Several debts were reported delinquent in April 2010 on the May 2010 credit report. (Items 1, 3, 6)

Applicant is 57 years old and works for a defense contractor. He was unemployed for three months in 2008, and again from July 2009 to April 2010. Applicant's e-QIP indicates that he has been employed by the defense contractor since April 2010. Applicant did not provide proof that he has resolved any of the debts or entered into debt repayment plans for them. Applicant has been divorced twice and his e-QIP does not list any children. (Item 4)

Applicant's answers to the DOHA interrogatory in January 2011 show he has not paid any of the listed debts, which are the same debts as those listed in the SOR. His credit score on the January 2011 credit report in the file is 512 as of January 2009. Applicant's May 2010 credit report is in the file and lists the same delinquent debts, including the state and federal tax liens. The state tax lien dates from 1994 and the federal tax lien from 1992. Applicant's two credit reports contain the same delinquent debts as alleged in the SOR. His written statement in Item 5 and his personal financial statement assert he was on unemployment compensation at the time he completed these documents. Applicant's statement asserts he has his disabled son living with him at the present time. However, his e-QIP did not list any children. (Items 5 and 6)

Applicant's statement with his Response to the SOR acknowledges his responsibility for his debts. However, he blames his former girlfriend for not using the money he earned while working overseas for a defense contractor from 2004 to 2009 to repay his debts. Applicant claims he never saw the bank account while he worked overseas. Applicant does not explain where the money went that he earned while working overseas. He declares his former girlfriend took all his money, emptied the bank accounts, and did not pay his debts. Applicant did not submit any documentary evidence to support his position. His statement again refers to his disabled son with whom he lives, but Applicant did not provide any information about the son's age, with whom he lived previously, or Applicant's current expenses. Applicant asks for an "interim clearance to go back to work for (his defense contractor) for a limited time."

(Item 3) He asserted that “all of the small past due debts will be paid off and steps will be taken on the large ones to get my credit back under control.” (*Id.*) Applicant states he wants to pay off his debts. (Item 3)

Applicant did not submit any documentation that he has participated in credit counseling or budget education. He provided no evidence concerning the quality of his job performance. He submitted no character references or other evidence tending to establish good judgment, trustworthiness, or reliability. I was unable to evaluate his credibility, demeanor, or character in person since he elected to have his case decided without a hearing.

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the revised 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.

From 1992 to the present, Applicant accumulated 14 delinquent debts totaling \$51,284 that remains unpaid or unresolved.

After the Government produced substantial evidence of those two disqualifications, the burden shifted to Applicant to produce evidence and prove a mitigating condition. AG ¶ 20 set forth conditions that could mitigate financial security concerns:

- (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.

Because Applicant's financial delinquencies have been ongoing since 2005, and the tax liens since 1992 remain unresolved and are not isolated, there is insufficient evidence to support a finding that the indebtedness is unlikely to recur or continue. Hence, AG ¶ 20(a) does not apply.

AG ¶ 20 (b) would apply if the loss of employment were demonstrated by Applicant to have a substantial effect on his ability to repay his debts. In the past 12 years, Applicant has been unemployed 12 months in two different periods. He claims he has been employed since April 2010, but did not provide proof that he paid any debts. More importantly, Applicant did not show he acted responsibly under the totality of the circumstances. He admits he failed to check his bank account while working abroad for several years. Applicant allowed his girlfriend to spend his money in an unfettered manner. He does not list any controls he imposed on her or his bank accounts to prevent the unauthorized expenditure of his money. Applicant also failed to submit proof of his income for the past six years, particularly when he worked overseas. Therefore, no determination can be made on the adequacy of that income to resolve his delinquent debts or the magnitude of Applicant's financial loss from his former girlfriend's actions. Nor does he describe any actions he took to recover the money she took without authority. Applicant failed to meet his burden of proof. He did not present credible evidence to corroborate his assertions that the accumulation of the debt was due to conditions beyond his control or that he attempted to responsibly manage that debt once as it accrued, as required under AG ¶ 20(b).

Applicant established no mitigation under AG ¶ 20(c) or AG ¶ 20(d). He did not submit evidence that he received credit counseling or that he paid or resolved any debt, which would indicate that the situation is coming under control. Nor, did he present evidence that he made a good-faith effort to pay or resolve any of the 14 debts. Applicant did not provide documentation verifying that he formally disputed or

investigated any debt, including those that he denied, which evidence is necessary to trigger the application of AG ¶ 20(d). There is no evidence to support the application of AG ¶ 20(f).

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 debts. He has not taken any action to resolve his delinquent debts. 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 any of his delinquent debts during the past seven years.

Overall, the record evidence leaves me with questions and substantial 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.

