



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



In the matter of:)
)
) ISCR Case: 10-09677
)
)
Applicant for Security Clearance)

Appearances

For Government: Alison O’Connell, Esquire, Department Counsel
For Applicant: *Pro se*

November 15, 2011

Decision

DAM, Shari, Administrative Judge:

Based upon a review of the record evidence, eligibility for access to classified information is denied.

On May 17, 2010, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP). On April 25, 2011, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing security concerns 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 Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive), and the adjudicative guidelines effective within the Department of Defense for SORs issued after September 1, 2006.

On May 16, 2011, Applicant filed an answer to the SOR and requested the case be decided on the written record in lieu of a hearing. On July 19, 2011, Department Counsel prepared a File of Relevant Material (FORM) containing nine Items. DOHA

mailed Applicant a complete copy of the FORM on August 1, 2011. Applicant received the FORM on August 22, 2011, and had 30 days from its receipt to file objections and submit additional information. He did not submit any additional information. On October 11, 2011, DOHA assigned the case to me.

Findings of Fact

In his answer, Applicant admitted all allegations contained in the SOR. His admissions are incorporated into the following findings.

Applicant is 49 years old and married to his fourth wife. He has three children. He received a Police Officer Certificate in 1982. In April 2010 he began working in a security guard supervisor position for a defense contractor. Prior to this position, he worked as a police officer and security director over the past 30 years. (Items 5, 7.)

Applicant began accumulating delinquent debts while married to his third wife, between 2004 and 2008. He acknowledged that they continued to overspend after she quit her job in 2006. (Item 4.) From March 2009 to April 2010 he was unemployed, which aggravated his financial situation. (Item 7 at 10.)

In July 2010 Applicant met with a government investigator to discuss his delinquent financial obligations. He acknowledged the debts and stated that he previously contacted all creditors, but found it difficult to negotiate a settlement with them. He intended to pay all creditors within the next six months to three years. He has not participated in credit counseling and did not intend to file bankruptcy. (Item 7 at 10.) According to evidence in the record, he resolved some debts that were not listed on the SOR, but were discussed during the interview. (Items 4, 7.)

Appellant submitted his February 2011 budget. He and his wife have a combined net income of approximately \$6,900. After paying expenses and making payments on his mortgage and other loans, he has approximately \$600 remaining at the end of the month. He noted, however, that in May 2011 his father moved in with him and he began paying \$240 per month for his father's medication. (Item 7 at 14.)

Based on July 2011 and May 2010 credit bureau reports (CBR), the SOR alleged 10 delinquent debts, totaling \$74,471, which accumulated between 2006 and 2011. (Items 8, 9.) The debts alleged in paragraphs 1.d (\$7,288) and 1.g (\$6,200) are duplicates, reducing the delinquent amount to about \$68,271. The largest SOR debt is listed in paragraph 1.c for \$44,822 and is owed to a credit card company. Applicant believes the original debt was around \$22,000. (Item 7 at 10.) To date, Applicant has not paid or resolved any of these nine debts.

Applicant has not obtained credit or financial counseling. He did not submit evidence concerning the quality of his job performance. He submitted no character references or other evidence tending to establish good judgment, trustworthiness, or reliability.

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 (AG) 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, these guidelines are applied 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.

Directive ¶ E3.1.14 requires the Government to 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."

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.

AG ¶ 19 notes two disqualifying conditions that could potentially raise security concerns in this case:

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

Based on two credit bureau reports and his admissions, Applicant has been unable to satisfy delinquent debts that began accruing in 2006. The evidence is sufficient to raise these potentially disqualifying conditions.

After the Government produced substantial evidence of those disqualifications, the burden shifted to Applicant to produce evidence and prove mitigation. AG ¶ 20 sets 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 delinquent debts are ongoing and 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. There is some evidence to warrant a limited application of AG ¶ 20(b) because some of the delinquent debt alleged in the SOR accumulated as a result of a long period of unemployment, which may have been the result of circumstances beyond his control. However, full application cannot be established because he did not provide evidence showing why he was unemployed, or that he attempted to responsibly address the debts while they were accruing. Applicant did not establish mitigation under AG ¶ 20(c) or AG ¶ 20(d). He has not participated in credit counseling or submitted evidence that his financial situation is under control. He failed to present evidence that he made a good-faith effort to pay or resolve any of the SOR-listed delinquent debts since their accrual. There is no evidence to support the application of AG ¶ 20(e) or 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). They include the following:

(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 relevant facts and circumstances surrounding this case. Applicant is a mature individual, who has worked for a defense contractor since April 2010. In July 2010 he learned of the Government's concerns relating to his financial delinquencies, and specifically the SOR-listed debts. He indicated that he would begin addressing them, and in fact did pay

or resolve a couple debts not included in the SOR. On April 25, 2011, DOHA issued an SOR listing \$74,471 of delinquent debts. On July 19, 2011, the Government filed the FORM, notifying him of the Government's request that he be denied a security clearance and that he had an additional 30 days to file a response. On August 22, 2011, he received said document and had another 30 days to submit additional information, which he did not do.

For over a year, Appellant had notice that his delinquent debts were creating security concerns and potentially affecting his employment. Despite that notice he did not begin resolving the nine SOR-listed debts. While he may have limited funds to pay all debts, he could have taken some steps to address the debts, such as promptly paying the smaller debts, obtaining credit counseling or financial assistance, and establishing a plan to manage his obligations. At this time he has not provided a track record of responsibly resolving his delinquent debts, or exhibiting good judgment in responding to the Government's concerns. The record contains insufficient evidence about his character, trustworthiness, and responsibility to mitigate these concerns, or make their continuation less likely. Overall, the record creates sufficient doubt as to Applicant's present eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant did not mitigate the security concerns arising from his financial considerations.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a through 1.f:	Against Applicant
Subparagraph 1.g:	For Applicant
Subparagraphs 1.h through 1.j:	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.

SHARI DAM
Administrative Judge