



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



In the matter of:)
)
) ISCR Case No. 10-09744
)
)
Applicant for Security Clearance)

Appearances

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

October 31, 2011

Decision

HOGAN, Erin C., Administrative Judge:

Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) on May 24, 2010. On March 2, 2011, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline F, Financial Considerations, and Guideline E, Personal Conduct, for Applicant. 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 for SORs issued after September 1, 2006.

On March 18, 2011, Applicant answered the SOR and requested his case be decided on the written record. Department Counsel prepared a File of Relevant Material (FORM) on August 1, 2011. The FORM was forwarded to Applicant and Applicant received the FORM on August 15, 2011. He had 30 days from receipt of the FORM to submit any additional material. He did not respond. The FORM was forwarded to the hearing office on October 6, 2011, and assigned to me on October 7, 2011. Based upon a review of the case file, pleadings, and exhibits, eligibility for access to classified information is denied.

Findings of Fact

In his Answer to the SOR, dated March 18, 2011, Applicant admitted to all of the SOR allegations. (Item 3)

Applicant is a 38-year-old employee of a defense contractor who seeks a security clearance. He has been employed with the defense contractor since December 2008. From 2001 to 2003, he served on active duty in the United States Army. He is married and has two children, ages 12 and 19. (Item 4)

Applicant's background investigation revealed several financial issues. He has nine delinquent accounts totaling approximately \$19,762. The debts included a \$153 medical account placed for collection (SOR ¶ 1.a: Item 5 at 2; Item 7 at 1; Item 8 at 1); a \$1,460 credit account that was placed for collection in May 2010 (SOR ¶ 1.b: Item 5 at 2; Item 6 at 15; Item 7 at 1; Item 8 at 2); a \$574 credit card account placed for collection in October 2009 (SOR ¶ 1.c: Item 5 at 2; Item 8 at 1) and a \$1,645 credit card account placed for collection in July 2010 (SOR ¶ 1.d: Item 5 at 2; Item 7 at 2; Item 8 at 1).

Additional delinquent accounts include: a \$10,000 account placed for collection in December 2010. (SOR ¶ 1.e: Item 5 at 2; Item 6 at 5; Item 7 at 1; Item 8 at 2); a \$1,062 account placed for collection in December 2009 (SOR ¶ 1.f: Item 5 at 2; Item 6 at 13; Item 7 at 2); a \$1,028 account placed for collection in December 2008. (SOR ¶ 1.g: Item 5 at 2; Item 7 at 2; Item 8 at 2); a \$2,724 credit card account placed for collection in May 2010 (SOR ¶ 1.h: Item 5 at 2; Item 6 at 5; Item 7 at 2; Item 8 at 2); and a \$1,147 account placed for collection in May 2010. (SOR ¶ 1.i: Item 5 at 2; Item 6 at 15)

Applicant's financial problems began when he got out of the military and was unemployed for approximately eight months in 2004. Once the accounts were placed for collection, he lost track of them. He claims that he has not incurred additional delinquent accounts in the last four to five years. He has not used a credit card since 2007 to 2008. He buys only what he can afford. His wife is a full-time student and will graduate in 2011. It has been difficult to pay the bills without her working. Applicant anticipated that their income would increase upon her graduation and they would be able to start paying their debts. He did not list the debts on his security clearance questionnaire due to oversight. He did not know all of his delinquent debts. He did not intend to mislead the government about his financial situation. This was his first time completing an e-QIP application. When he was interviewed during his background investigation on June 22, 2010, he fully cooperated with the investigator. (Item 3; Item 5 at 3, 6)

Applicant states that he was a well respected soldier for six years and a well respected employee. He is aware of the importance of holding a security clearance and security in general. He takes annual training on protecting classified and sensitive information. He takes everything he does seriously and believes his integrity to hold a security clearance should not be judged by his past-due debts. He needs the clearance

for his job and for his future. He states that he has every quality a clearance holder should have. (Item 3)

In response to interrogatories, dated January 21, 2001, Applicant included a personal financial statement. His net monthly income was \$4,496. His monthly expenses total \$4,115 which leaves him \$381 in discretionary income.

Applicant's supervisor wrote a letter on his behalf. He supervised Applicant on two contracts. Applicant's knowledge was recognized right away and he was promoted to inspector. He always supports his co-workers. Applicant is involved in his children's after school activities. He is well respected by his supervisors and fellow workers and maintains a professional attitude in everything he does. (Item 3 at 2)

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 must be considered 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.

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 applicant or proven by Department Counsel. . . ." The applicant 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.

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 notes several disqualifying conditions that could raise security concerns. The following Financial Considerations Disqualifying Conditions (FC DC) apply to Applicant’s case:

AG ¶19(a) (an inability or unwillingness to satisfy debts); and

AG ¶19(c) (a history of not meeting financial obligations).

Applicant incurred delinquent debts during a period of unemployment after he separated from the Army. At present, limited income prevents him from paying his delinquent debts.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. The mitigating conditions that potentially apply to Applicant’s case include:

AG ¶ 20(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);

AG ¶ 20(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;

AG ¶ 20(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

AG ¶ 20(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

AG ¶ 20(a) does not apply because none of Applicant's delinquent debts have been resolved. His financial problems continue. AG ¶ 20(b) partially applies in relation to Applicant's eight month period of unemployment when he separated from the military. However, he has worked full-time since 2004 and has not taken steps to resolve any of his delinquent accounts. I cannot conclude that he acted responsibly under the circumstances so AG ¶ 20(b) only partially applies.

AG ¶ 20(c) does not apply because there is no evidence in the record that Applicant received financial counseling. While his wife may find full-time employment within the near future, there are no clear indications that his delinquent debts are being resolved. AG ¶ 20(d) does not apply because he did not make a good-faith effort to resolve his debts. A promise to pay in the future does not mitigate the concerns raised by delinquent debts. The concern under financial considerations is not mitigated.

Guideline E, Personal Conduct

The security concern relating to the guideline for Personal Conduct is set out in AG ¶ 15:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

Personal conduct concerns are raised because Applicant did not list his financial problems in response to section 26 of the e-QIP application. This raises the following Personal Conduct Disqualifying Condition:

AG ¶ 16(a) (deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine

employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities)

For AG ¶16(a) to apply the omission must be intentional. I find Applicant's omissions were not intentional. He explained that he was not aware of all of his delinquent debts. When he was interviewed during his background investigation on June 22, 2010, he admitted to his delinquent debts and fully cooperated with the investigator. The Personal Conduct concern is found for Applicant.

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 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.

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's supervisor attests to his favorable work performance. Applicant indicates that after his wife receives her degree, she will get a full-time job and they will be able to resolve their delinquent accounts. However, all of the delinquent debts remain unresolved. Applicant's past history of financial irresponsibility raises questions about his judgment, trustworthiness, and reliability. At some time in the future Applicant may mitigate the concerns raised under financial considerations. It is premature to conclude the concerns are mitigated. Applicant failed to mitigate the security concerns arising under financial considerations.

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.i:	Against Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraph 2.a:	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.

ERIN C. HOGAN
Administrative Judge