



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



In the matter of:)
)
) ISCR Case No. 11-00026
)
Applicant for Security Clearance)

Appearances

For Government: Eric Borgstrom, Esq., Department Counsel
For Applicant: *Pro se*

August 29, 2011

Decision

Noel, Nichole L., Administrative Judge:

Applicant contests the Defense Department’s intent to deny or revoke his eligibility for a security clearance to work in the defense industry. The evidence shows he has a history of financial problems that remain unresolved. His two convictions for money-related crimes indicate a pattern of questionable judgment. Applicant did not present sufficient evidence to rebut, explain, extenuate, or mitigate the financial and personal conduct security concerns. Accordingly, as explained below, this case is decided against Applicant.

Statement of the Case

Acting under the relevant Executive Order and DoD Directive,¹ on April 1, 2011, the Defense Office of Hearings and Appeals (the Agency) issued a Statement of

¹ This case is adjudicated under Executive Order 10865, *Safeguarding Classified Information within Industry*, signed by President Eisenhower on February 20, 1960, as amended, as well as DoD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program*, dated January 2, 1992, as amended (Directive). In addition, the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* (AG), effective within the Defense Department on September 1, 2006, apply to this

Reasons (SOR) explaining that it was not clearly consistent with the national interest to grant Applicant access to classified information. The SOR detailed the factual bases for the action under Guideline F (Financial Considerations) and Guideline E (Personal Conduct).

Applicant answered the SOR and requested a hearing. The case was assigned to me on June 3, 2011. The hearing proceeded, as scheduled, on July 12, 2011. Department Counsel offered Government's Exhibits (GE) 1 through 5, which were admitted without objection. Applicant's Exhibits (AE) A and B were also admitted without objection. I identified as Hearing Exhibit (HE) 1, a debt matrix prepared by Department Counsel. The transcript (Tr.) was received July 21, 2011.

At the end of the hearing, I held the record open until August 12, 2011, to allow Applicant to submit additional documentation. He submitted two documents, which I have admitted as AE C and D, without objection from Department Counsel.

Findings of Fact

Applicant is 25 years old. He is engaged and has one child with his fiancée. He did not finish high school and is currently studying for his GED. He attended vocational school to become a welder. Although he did not complete the program, he has been working as a welder for the past five years. He applied for a security clearance when he began working for a government contractor in August 2010.²

Applicant left home at 16 years old. For the next five years, Applicant found temporary housing with his or his fiancée's relatives. He began accumulating delinquent debt at 18 years old, when he obtained his first credit card (1.b.) and cell phone (1.f.). In 2007, Applicant and his fiancée decided to live together. Although Applicant's living situation stabilized, his finances continued to be precarious. Since then, he has continued to accumulate delinquent debt. Applicant's most recent financial problems result from five months of unemployment in 2003 (1.a.), his being consistently underemployed (1.d. – 1.e.), and his decisions not to pay disputed accounts (1.c. and 1.g.).³

The SOR alleges and Applicant admits that he is indebted to seven creditors for \$16,700. The Sprint PCS debts alleged in 1.d. and 1.e. are duplicates. Debt Recovery solutions is currently collecting the debt on behalf of Sprint. The former collection agency, NCO, confirmed that the company is no longer collecting the account and the account is closed. To date, Applicant has paid \$25 each on the Stevens Business Services account (1.c.) and Debt Recovery Solutions account (1.e.). In addition to the SOR debts, Applicant disclosed at hearing that he is also indebted to the Internal

case. The AG were published in the Federal Register and codified in 32 C.F.R. § 154, Appendix H (2006). The AG replace the guidelines contained in Enclosure 2 to the Directive.

² Tr. 15-16; Security Clearance Application, dated August 10, 2010.

³ Tr. 16-18; 54-55.

Revenue Service for \$900 as a result of an overpayment of his 2010 tax refund. When he completed his 2010 tax return, Applicant thought his refund was too high based on his previous returns. He decided not to question the refund amount and spent it. He has not made any arrangements to repay the debt.⁴

Applicant attended debt management counseling in the spring of 2011. Because he has no disposable income, the credit counselor could not set up any payment plans on his behalf. He and his fiancée live paycheck to paycheck, barely earning enough money to cover their expenses. After paying all of their monthly expenses each month, the couple has a negative net remainder. When they are unable to make ends meet, the couple often relies on credit cards or personal loans from his fiancée's family members. In addition to the delinquent debt alleged in the SOR, Applicant is currently repaying a personal loan to his future father-in-law, who took out a debt consolidation loan on behalf of Applicant and his fiancée, and medical expenses from the birth of his daughter, which were not covered by his fiancée's health insurance. Applicant plans to repay all of his debt by taking a loan from his 401(k) account when he becomes eligible.⁵

In addition to the Guideline F considerations, the SOR also alleges that in 2005, Applicant pleaded guilty to improper use of a credit card over \$250 and threatening to commit a crime. Applicant's future brother-in-law, with whom Applicant was living at the time, allowed Applicant to use his credit card for necessities, as needed. Applicant used the credit card to purchase almost \$1,500 in adult movies and toys. After learning of Applicant's purchases, the two men had an altercation. Applicant's brother-in-law kicked Applicant out of his home and called the police. As a result of his guilty plea, he was sentenced to one year of probation and ordered to pay restitution. Since this incident, Applicant and his future brother-in-law have made amends. In 2011, Applicant's future brother-in-law loaned Applicant money to purchase a car. Applicant repaid the loan with the proceeds of his 2010 tax return.⁶

In May 2009, Applicant pleaded *nolo contendere* to a charge of false report of crime. In an effort to raise much-needed money to pay bills, Applicant took the money he and his fiancée kept in their home safe, about \$300, to purchase lottery tickets. His fiancée intended to use the money to pay upcoming bills. When his fiancée discovered the money was missing, she called the police, thinking it had been stolen. When questioned by the police about the money, Applicant did not immediately admit that he had taken it. When he finally admitted to taking the money, he was charged with Obstructing an Officer in Execution of Duty. He served six months probation.⁷

⁴ Tr. 50-52; AE C – D.

⁵ Tr. 39-41, 50, 57, 60.

⁶ Tr. 20, 43-47, 59; GE 3.

⁷ Tr. 21, 48-49; GE 3.

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. 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 the applicant or proven by Department Counsel." The applicant has the ultimate burden of persuasion to obtain a favorable security decision.

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

- (a) inability or unwillingness to satisfy debts;
- (c) a history of not meeting financial obligations; and
- (d) deceptive or illegal financial practices such as embezzlement, employee theft, check fraud, income tax evasion, expense account fraud, filling

deceptive loan statements, and other intentional financial breaches of trust.

Applicant's financial problems have persisted since he turned 18, over seven years ago. Since then, he has accumulated a number of delinquent debts that he has been unable or unwilling to pay. His misuse of his future brother's-in-law credit card indicates a breach of financial trust. The evidence is sufficient to raise the disqualifying conditions cited above. Although not disqualifying under any specific disqualifying conditions, the 2009 lottery ticket incident is an indication that Applicant may engage in acts of desperation, if not illegal acts, to generate income to support his family. His actions raise concerns about his judgment and trustworthiness.

Of the six mitigating conditions available under AG ¶ 20, two offer partial mitigation of the financial considerations security concern raised in this case:

(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 sought debt management counseling in an attempt to rehabilitate his finances. Because he has no disposable income, relief through a debt consolidation program was not feasible. His financial problems remain unresolved and his financial situation is not under control. He has recently paid \$50 toward his delinquent debts. Given Applicant's tight monthly finances, the two \$25 payments are significant. However, his efforts are not enough to mitigate the financial concerns in this case. His 2005 and 2009 criminal acts were motivated by lack of money. Both events cast doubt on his security worthiness and he has not provided any evidence to show that either of these events is unlikely to recur. On the contrary, the circumstances surrounding his 2010 tax return, though not alleged, reinforce the impression that Applicant may continue to show questionable judgment where his finances are concerned.

Guideline E, Personal Conduct

AG ¶ 15 explains why personal conduct is a security concern:

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.

The guideline notes one disqualifying condition that is relevant to this case under AG ¶ 16:

(c) credible adverse information in several adjudicative areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indication that the person may not safeguard protected information.

Applicant's 2005 and 2009 convictions support a negative whole-person assessment. In both incidents he displayed questionable judgment. In the latter, he exhibited dishonesty. His willingness to cover up his actions fearing the potential repercussions and his willingness to accept the tax refund he believed to be an error casts doubt on the possibility that he would self-report a security clearance violation. For the reasons explained in the financial considerations discussions above, the two convictions cannot be mitigated under any of the personal conduct mitigating conditions.

The evidence as a whole justifies current doubts about Applicant's judgment, reliability, and trustworthiness. Following *Egan*⁸ and the clearly-consistent standard, I resolve these doubts in favor of protecting national security. In reaching this conclusion, I gave due consideration to the whole-person concept. Nevertheless, Applicant did not meet his ultimate burden of persuasion to obtain a favorable clearance decision. This case is decided against Applicant.

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.b:	Against Applicant
Subparagraphs 1.c. – 1.e:	For Applicant
Subparagraphs 1.f. – 1.h:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraphs 2.a. – 2.b.	Against Applicant

⁸ *Navy v. Egan*, 484 U.S. 518 (1988).

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 a security clearance. Eligibility for access to classified information is denied.

Nichole L. Noel
Administrative Judge