



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



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| In the matter of: |) | |
| |) | |
| |) | ISCR Case No. 11-00046 |
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| |) | |
| Applicant for Security Clearance |) | |

Appearances

For Government: Philip J. Katauskas, Esq., Department Counsel
For Applicant: *Pro se*

December 9, 2011

Decision

LYNCH, Noreen A, Administrative Judge:

On May 25, 2011, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) listing security concerns arising 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 (DoD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG), implemented in September 2006.

Applicant timely answered the SOR and requested a hearing. DOHA assigned the case to me on September 9, 2011. A notice of hearing was issued on September 16, 2011, and the case was heard on November 10, 2011. Department Counsel offered five exhibits (GE) 1-5, which were admitted without objection. Applicant testified on his own behalf and presented the testimony of two witnesses. He submitted four exhibits (AE) A-D at the hearing, which were admitted without objection. DOHA received the hearing transcript on November 21, 2011. Based on a review of the pleadings, submissions, and exhibits, I find Applicant has not met his burden of proof on mitigation regarding the security concerns raised. Security clearance is denied.

Findings of Fact

In his answer to the SOR, Applicant denied the delinquent debts in the SOR with the exception of one account. Applicant is 47 years old. He is married and has four children. He received his undergraduate degree in 1984. He has held a security clearance since 2003. Applicant has been employed with his current employer since October 2007. (AE A)

Applicant and his wife purchased a home in 2003 for \$257,000. Applicant wished to refinance in 2006, and he obtained a low interest rate on an adjustable rate mortgage (ARM). The ARM was for a period of three years. Applicant believed that his home would increase in value so that at the end of the three years, he would obtain a low interest rate at a fixed level. He wanted to consolidate credit card debt that he had at the time. He obtained a home equity loan of \$50,000. However, in 2006, he cosigned a car loan for a friend who defrauded him. (Tr. 48) At the hearing, Applicant acknowledged that he did not know the man for very long and that it was poor judgment on his part. Applicant learned that the man has defrauded others in the area. Due to the added expense of the car loan, Applicant fell behind in his mortgage payments. However, in 2006 or 2007, Applicant purchased an investment property with his brother.

In 2011, Applicant consulted with a bankruptcy attorney. He decided that it was too expensive to file for bankruptcy. (Tr. 35) He then decided to consult with another attorney who persuaded him to file for bankruptcy. He believed it was affordable until he reviewed the preliminary correspondence from the attorney. Also, he had difficulty communicating with the attorney. He finally decided that it was best to work on his own. He researched how he might be able to save his home and what might happen in the event of a foreclosure. (Tr. 36) He found a program on line that would help him understand credit reports and correct any inaccuracies. He also wanted to learn to deal with debt collectors. He wrote to the creditors and asked them to validate the debts. He recently received some responses that he believes are either insufficient or unresponsive. After reading the Fair Debt Collection Protection Act, he decided to dispute the debts. He wants that reflected on his credit report. He believes that his credit report would appear less damaging if accounts were listed as "in dispute" rather than in repossession or in foreclosure.

The SOR lists delinquent accounts totaling approximately \$202,000. The credit reports in the record confirm the debts. (GE 4,5) Applicant acknowledges debts. (GE 5) Applicant satisfied the account listed in SOR 1.a in the amount of \$95 in July 2011. (AE C) The remaining accounts are unpaid. Applicant has a wage garnishment (\$34,000) for the account listed in SOR 1.e, but he intends to challenge that account as well. (Tr. 45) The wage garnishment began in 2010. Each month \$750 is deducted from his salary.

Applicant disclosed on his 2008 security clearance application the repossession and other debts that are listed on the SOR. He knew about the debts and the reason for them. During his 2010 subject interview, he discussed the accounts and his delinquent

debts. In his answer to 2011 interrogatories, he acknowledged that he owed money on credit cards which were sold to collection agencies. He further explained that he fell behind in certain accounts in 2008, due to unemployment for two weeks. He also recalled that his investment property was delinquent in the amount of \$40,000 because tenants did not pay the rent. He denies that there was an actual foreclosure because he contacted the lender to negotiate a loan modification which was denied. He states that he received a letter in October 2010 that the foreclosure proceedings on his primary residence were suspended until further notice.

Applicant's net monthly income is \$5,560, which includes his wife's salary. In a recent personal financial statement, Applicant listed debts, total amount owed, and what is the scheduled monthly payment. He admitted that he is not making any payments other than to his current credit union account for a car loan, and the wage garnishment. He appears to have a net remainder of \$1,000. (GE 3)

At the hearing, Applicant noted at one point that he does not deny the underlying debts for each of the accounts listed on the SOR, but he wants to dispute them to find out who the original account was and who the current collection accounts are. He states that he will make payment arrangements at that time. (Tr. 61) He believes if he sues certain companies who may have broken the law or regulations concerning credit, that he would be awarded damages. He admits that he stopped making mortgage payments on his home in July 2010. (Tr. 75) He was only making minimum payments. He tried to start making payments recently, but the lender refused them.

Applicant submitted two favorable character references. The Director of Operations selected him for his current position. She has known him for two years. He is highly regarded for his competence and dependability. She is aware of the financial issues that raise security concerns about Applicant. (AE B)

The community manager for Applicant's homeowner association has known Applicant for four years. Applicant is now president of the association. Applicant manages and controls the assets of the association. Applicant is a diplomatic and professional member of the Board. He is highly respected by fellow board members, the management company and members of the association. (AE A)

A colleague of Applicant testified that he is cooperative, reliable and trustworthy. (Tr. 15) Applicant follows company policy and procedures. She recommends him for a security clearance and has no reason to believe that Applicant would compromise or reveal any classified information.

Applicant's manager has known him since 2009 when she hired him for his current position. He manages the company assets that include the computers, office equipment, remote equipment, and VTC equipment. These company assets consist of an inventory of approximately \$100,000. Applicant is the senior information technology analyst on the team. She has no reason to believe that Applicant would be a security risk. She recommends him highly. (Tr. 30)

Policies

When evaluating an applicant's suitability for a security clearance, an 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. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, they are applied in conjunction with the factors listed in the adjudicative process. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. Under AG ¶ 2(c), this process is a conscientious scrutiny of a number of variables known as the "whole-person concept." An 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

The U.S. Government must present evidence to establish controverted facts alleged in the SOR. An applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." ¹ The burden of proof is something less than a preponderance of evidence. ² The ultimate burden of persuasion is on the applicant. ³

A person seeking access to classified information enters into a fiduciary relationship with the Government based on 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 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 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

¹ See also ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

² *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

³ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

applicant concerned.”⁴ “The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”⁵ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such information.⁶ The decision to deny an individual a security clearance does not necessarily reflect badly on an applicant’s character. It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense established for issuing a clearance.

Analysis

Guideline F, Financial Considerations

The security concern for Financial Considerations is set out in AG ¶ 18:

Failure or an 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.” It also states that “an individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

Applicant disputed the delinquent debts with the exception of one account for approximately \$36,000. His credit report confirms the delinquent debts. Consequently, Financial Considerations Disqualifying Condition (FC DC) AG ¶ 19(a) (inability or unwillingness to satisfy debts), and FC DC AG ¶ 19(c) (a history of not meeting financial obligations) apply. With such conditions raised, it is left to Applicant to overcome the case against him and mitigate security concerns.

Applicant had financial difficulties due to an ARM and a car loan that he co-signed for with a man who defrauded him. This happened in the 2006 time period, but Applicant still has unresolved delinquent debt with the exception of a \$95 payment on one account and the \$750 monthly wage garnishment. Consequently, Financial Considerations Mitigating Condition (FC MC) 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) applies.

Financial Considerations Mitigating Condition (FC MC) AG ¶ 20(b) (the conditions that resulted in the behavior were largely beyond the person’s control (e.g.,

⁴ See also EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information), and EO 10865 § 7.

⁵ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

⁶ *Id.*

loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation) and the individual acted responsibly under the circumstances) is potentially applicable. As noted, Applicant was unemployed for a few weeks. However, he has had steady income for his adult life. He stopped making payments on his residential mortgage in 2010. He decided not to file bankruptcy but in 2011 decided to dispute the delinquent debts based on alleged malfeasance of the credit collectors. He has spent time and energy disputing debts but did not pay or make partial payments on the debt. Granted the car loan was an unexpected happening. But Applicant acknowledged that it was poor judgment. He has not acted reasonably under the circumstances. This mitigating condition does not apply.

FC MC AG ¶ 20(d) (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts) does not apply.. Applicant has the capability but no motivation to pay the remaining delinquent accounts. He is waiting to see what will happen with the credit companies based on his disputes. He has not received financial counseling. FC MC AG ¶ 20(c) (the person has received or is receiving counseling for the problem and there are clear indications that the problem is being resolved or is under control) does not apply.

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 an 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. As noted above, the ultimate burden of persuasion is on the applicant seeking a security clearance.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case as well as the whole-person factors. Applicant is 47 years old. He obtained his undergraduate degree and has worked steadily with the exception of a few weeks unemployment in 2008. He is praised by his employer. He has worked successfully in handling classified information. He has held a security clearance for many years.

