



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



In the matter of:)
)
) ISCR Case No. 11-00260
)
Applicant for Security Clearance)

Appearances

For Government: Gregg A. Cervi, Esquire, Department Counsel
For Applicant: *Pro se*

04/30/2012

Decision

ANTHONY, Joan Caton, Administrative Judge:

After a thorough review of the administrative record, I conclude that Applicant failed to rebut or mitigate the Government's security concerns under Guideline F, Financial Considerations. His eligibility for a security clearance is denied.

Statement of the Case

On September 9, 2010, Applicant completed and certified an Electronic Questionnaire for Investigations Processing (e-QIP). On October 17, 2011, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing the 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 (AG) effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant provided a notarized answer to the SOR, dated November 28, 2011, and requested that his case be determined on the record in lieu of a hearing. The Government compiled its File of Relevant Material (FORM) on December 30, 2011. The FORM contained documents identified as Items 1 through 9. By letter dated January 5, 2012, DOHA forwarded a copy of the FORM to Applicant, with instructions to submit any additional information or objections within 30 days of receipt. Applicant received the file on January 19, 2012. His response was due on February 18, 2012. Applicant did not submit additional information within the required time period. On April 17, 2012, the case was assigned to me for a decision.

Findings of Fact

The SOR contains three allegations of disqualifying conduct under AG F, Financial Considerations (SOR ¶¶ 1.a., 1.b., and 1.c.). In his Answer to the SOR, Applicant admitted the allegations at ¶¶ 1.a. and 1.b. SOR ¶1.a. alleges that Applicant owes a judgment debt of \$21,483. SOR ¶ 1.b. alleges that Applicant owes a judgment debt of \$6,208. SOR ¶ 1.c. alleges that Applicant was approximately 120 days past due in making a payment on his \$73,661 mortgage. In his answer to the SOR, Applicant denied the allegation and stated that he was 15 days late on his mortgage payment. Applicant's admissions are admitted as findings of fact. (Item 1; Item 4.)

The facts in this case are established by the record provided by the Government and by information provided by Applicant in his Answer to the SOR. The record evidence includes Applicant's September 2010 e-QIP; official investigation and agency records; Applicant's responses to DOHA interrogatories;¹ and Applicant's credit reports of January 28, 2011 and September 18, 2010. (See Items 5 through 9; Applicant's answer to the SOR.)

Applicant, who has a high school diploma, is 50 years old, married, and the father of four teenaged children. He is employed part-time by a federal contractor as a security officer. He has worked for his present employer since August 2010. He seeks a security clearance for the first time. (Item 5.)

From September 1989 until April 2010, Applicant was self-employed and operated a courier company. The business earned \$90,000 a month before deducting for expenses. To manage his cash flow, Applicant opened two accounts in his name only with a credit card company. He used the credit cards to acquire cash advances of between \$15,000 and \$21,000 to pay the courier business employees. (Item 5; Item 6.)

¹On March 28, 2011, in response to DOHA interrogatories, Applicant signed a notarized statement affirming that he had read the summary of his interview with the OPM investigator. He made two factual corrections to the investigator's summary. He provided the correct name for his business, and he stated that he was last in contact with his former business partner in April 2010. Subject to the changes he made, he then adopted the investigator's summary as accurately reflecting his interview. (Item 6.)

In 2006, when some of Applicant's former employees started a competing courier business, he and his business partner lost about 50 percent of their clients. In 2007, Applicant helped his business partner by agreeing to continue to take out the cash advances, and the partner agreed to reimburse Applicant. The business continued to decline, however, and the courier service closed in April 2010. (Item 6.)

After the business closed in April 2010, Applicant was unemployed for four months until he found his current employment. His business partner did not reimburse him for the cash advances he took from his personal credit card accounts. Applicant lacked sufficient funds to make the required monthly payments to the credit card company. He contacted the credit card company to request an alternative method of payment, but the credit card company refused his request. (Item 6.)

Applicant told the investigator that both debts were unresolved. When he learned from the investigator in October 2010 that the debts had been reduced to judgments against him, he stated that he would attempt to arrange an alternative payment plan with the creditor within 30 days. (Item 6.)

In March 2011, in response to DOHA interrogatories, Applicant stated that the two judgment debts remained unresolved. He further reported that his last payments on the debts were made in June 2007. He said that because he is employed part-time, he lacks the money to pay the debts. (Item 7.)

Applicant also stated in his March 2011 response to DOHA interrogatories that his current balance on his mortgage was \$15,000. He further stated that his last payment on his mortgage debt was made in December 2010. He provided no information on the current status of his mortgage debt. (Item 7.)

The record does not contain a personal financial statement from Applicant. Therefore, there is no information on his monthly income, living expenses, and commitment to debt payment. The record is also silent regarding Applicant's wife's sources of income, Applicant's savings, and his other sources of income or employment. Nothing in the record indicates that Applicant has had financial credit counseling.

Burden of Proof

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 in seeking to obtain a favorable security decision.

Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security, and it has emphasized that “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information. *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant an applicant’s eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended.

When evaluating an applicant’s suitability for a security clearance, an 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 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, the administrative judge applies these 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.

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 conditions that could raise security concerns in this case. Under AG ¶ 19(a), an “inability or unwillingness to satisfy debts” is potentially disqualifying. Similarly under AG ¶ 19(c), “a history of not meeting financial obligations” may raise security concerns.

Applicant obtained two credit cards, and he used them to obtain cash advances to pay his employees. In 2006, Applicant’s business began to decline when former employees opened a competing business. The business closed in 2010, and Applicant was unemployed for four months. His credit card debts became delinquent, and, eventually, the creditor sought judgments against Applicant for payment. Since August 2010, he has been employed part-time by his current employer. He stated in response to DOHA interrogatories that he lacked sufficient funds to pay the judgments resulting from his credit card debts. The judgment debts total approximately \$27,691. Additionally, Applicant is delinquent on his home mortgage payments. This evidence is sufficient to raise security concerns under AG ¶¶ 19(a) and 19(c).

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Several Guideline F mitigating conditions could apply to the security concerns raised by Applicant’s financial delinquencies. Unresolved financial delinquency might be mitigated if it “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(a)). Additionally, unresolved financial delinquency might be mitigated if “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(b)). Still other mitigating circumstances that might be applicable include evidence that “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” (AG ¶ 20(c)) or “the individual initiated a good faith effort to repay overdue creditors or otherwise resolve debts.” (AG ¶ 20(d)). Finally, security concerns related to financial delinquencies might be mitigated if “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.” (AG ¶ 20(e)).

Applicant has a history of financial delinquency. He has not resolved two judgment debts that arose from credit card delinquencies in 2007, although he told an authorized investigator in 2010 that he would attempt to arrange a payment plan with the judgment creditor within 30 days of his interview. Because he has been employed part-time since August 2010, he lacks sufficient funds to pay his judgment creditor. While he denied he was delinquent on his home mortgage payments, he indicated he last made a payment on his mortgage in December 2010. He failed to provide documentation to corroborate that he was current on his mortgage payments.

The record in this case is sparse. Absent from the record is information about Applicant’s family income, living expenses, and resources available for debt payment. From the information in the record, it appears that Applicant’s financial situation is precarious, and it is likely that that his financial delinquencies will recur, thereby casting doubt on his reliability, trustworthiness, and judgment. I conclude that AG ¶ 20(a) does not apply to the facts of Applicant’s case.

While the failure of Applicant’s business was in part a condition beyond his control, he failed to take action to resolve the two judgment debts resulting from the business failure as he said he would. He failed to act responsibly to resolve financial delinquencies that arose as a result of his unpaid business debts. I conclude that AG ¶ 20(b) does not apply.

Applicant failed to provide documentation to show he was not delinquent on his home mortgage. Nothing in the record suggests that Applicant has pursued financial credit counseling, and he has not initiated good-faith efforts to resolve his delinquent debts. He provided no documentation to show that he had disputed his delinquent debts. I conclude, therefore, that AG ¶¶ 20(c), 20(d), and 20(e) also do not apply to the facts.

Whole-Person Concept

Under the whole-person concept, an administrative judge must evaluate an applicant’s eligibility for a security clearance by considering the totality of an 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 the facts and circumstances surrounding this case. Applicant is experienced in business and a mature adult. He has not sought financial credit counseling to help him through a difficult financial situation. He has been underemployed and working part-time since August 2010. Even though his business partner failed to reimburse Applicant for using his personal credit cards to obtain cash advances to support the business, Applicant remains responsible for the debts that arose when the accounts became delinquent. Additionally, he failed to meet his burden of persuasion to demonstrate that he was not also delinquent on his home mortgage payments.

Overall, the record evidence leaves me with doubts about Applicant's eligibility and suitability for a security clearance. I conclude that Applicant failed to mitigate the security concerns arising from his financial delinquencies.

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.c.:	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.

Joan Caton Anthony
Administrative Judge