



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



In the matter of:)	
)	
)	ISCR Case No. 11-02782
)	
Applicant for Security Clearance)	

Appearances

For Government: Stephanie Hess, Esq., Department Counsel
For Applicant: *Pro se*

03/11/2013

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the Government’s security concerns under Guideline G, alcohol consumption, and Guideline F, financial considerations. Applicant’s eligibility for a security clearance is denied.

Statement of the Case

On May 16, 2012, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guidelines G and F. 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 DOD on September 1, 2006.

Applicant answered the SOR on June 8, 2012, and requested a hearing before an administrative judge. The case was assigned to another administrative judge on November 13, 2012, and reassigned to me on January 10, 2013. The Defense Office of

Hearings and Appeals (DOHA) issued a notice of hearing on January 28, 2013. I convened the hearing as scheduled on February 13, 2013. The Government offered Exhibits (GE) 1 through 10, which were admitted into evidence without objection. Applicant testified and did not offer any exhibits. DOHA received the hearing transcript (Tr.) on February 22, 2013

Findings of Fact

Applicant admitted all SOR allegations. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is 52 years old. He graduated from high school in 1977. He was in the Marine Corps from 1977 to 1983 and was honorably discharged. He completed trade school in 1983. He married in 1984. He has a 35-year-old stepson, a biological son age 27, and biological daughter age 24. His biological children live at home. Both have a child. Applicant's daughter's child resides with him.¹

Applicant attributes his financial difficulties to unemployment and underemployment. He was laid off from a job he held for 18 years in May 2007. During the period May 2007 to May 2010, he was unemployed and underemployed. He withdrew a total of about \$250,000 from his 401K retirement account. Applicant estimated his current indebtedness to the Internal Revenue Service (IRS) is about \$49,000. It is alleged that he had a \$39,000 tax lien and owed the IRS \$67,000. He stated that the amount has been reduced. Applicant explained that in 2009, he was working almost full-time and incurred a tax debt he did not pay. He was using the money to pay his bills. From 2007 to 2009, he would periodically withdraw money from his 401K to help pay living expenses, but also so he could pay some of his annual income tax debt. He attempted to pay some of his income tax debt with the 401K money. He stated he decided to not pay his taxes because he knew he would need the money for living expenses.²

Applicant began paying the IRS for his tax debt sometime in the middle of 2010. He believes he was paying around \$1,200 monthly. When he was able to get the IRS debt below \$50,000 he was eligible to participate in the program "Operation Fresh Start" with the IRS. He now pays \$800 a month that is automatically withdrawn from Applicant's bank account. He anticipates paying off his car in October and thinks he will have additional monies to use toward paying his delinquent debts. Applicant did not provide supporting documents to verify his current status with the IRS.³

Applicant owes a state tax debt of about \$3,500. He stated he is making payments toward that debt. He estimated he has about \$55,000 in other consumer

¹ Tr. 20-23.

² Tr. 23, 26-29, 31-43.

³ Tr. 26-29, 31-43, 87-89.

credit card debts that are not delinquent. He is making small payments toward their balances.⁴

Applicant got behind on his mortgage when he was unemployed. He was able to get a loan modification on his mortgage, and it is no longer delinquent.⁵

Applicant makes \$120,000 in annual salary and also receives bonuses. The bonuses are unpredictable, but in 2012 he earned \$137,000 with bonuses. He estimated he has, on average, about \$500 remaining at the end of the month. He has no savings and about \$230 in checking, but had current bills to pay, so it is likely less.⁶

Applicant also attributes his financial problems to his wife whom he described as having problems with money. She is currently employed and was employed when Applicant was not. She has been earning about \$50,000 annually. She does not contribute anything to the household expenses. Applicant testified she spends all of her income and did not help out with the family expenses when he was unemployed.

Applicant's wife used their joint credit cards. He was aware that she was using the cards. They had a jewelry store credit card that his wife charged \$4,000 worth of jewelry in 2010 that she gifted to their daughter. He has no fiscal controls over her spending habits. He stated he will sometimes "gently prod" her about their finances.⁷ He knows very little about her finances because she does not contribute to the household, and he does not question her about them. He stated it was pointless to have a discussion with his wife on finances. He closed some joint accounts in 2009 because she would take money out of them, and he could not control her spending. He explained that he has never gotten a clear answer from his wife on how she spends her money. He stated "I have no control over my wife's finances." He stated "I have no idea if she has credit cards. I am unaware of my wife's finances. I pay all of the household expenses. I have closed some of the accounts. I was shocked when I saw the jewelry store account. I thought it had a zero balance." He stated his wife is not helping with his debt but is instead adding to it.⁸

Applicant's daughter and her child live with him. His daughter works about 35 hours a week in a retail store. She does not contribute to the household expenses. Applicant does not think his daughter receives child support, but he does not want to pry and ask.⁹

⁴ Tr. 43-49.

⁵ Tr. 28-29; 86 GE 3.

⁶ Tr. 30-31, 49-51.

⁷ Tr. 57.

⁸ Tr. 57-65.

⁹ Tr. 52-55.

Applicant's son was released from prison in December 2012. He was sentenced to six years for felony breaking and entering and grand larceny. He also had a substance abuse problem. He is ordered to pay restitution for his crimes, pay fines, and pay child support. He recently got a job, but has not been paid yet. He does not contribute anything to the household expenses.¹⁰

Applicant admitted that in March 17, 2007, and May 4, 2007, he was charged with misdemeanor drunk in public. He received a fine. On 12 other occasions from December 2007 to December 2011, the police were called to his home for a domestic incident. He admitted in his answer to the SOR that he had been drinking alcohol prior to the incidents. At his hearing, he stated that he did not believe he was intoxicated and could not recall the specifics of each incident, but attributed most of them to his wife or daughter calling the police. He stated his wife "would go off the deep end" and had an anger issue, and she would get violent and vulgar. Sometimes he would take it and sometimes he would not.¹¹

In December 2007, Applicant was charged with malicious wounding. He explained he was the victim because his son had hit him on the head with a ceramic cat, and he was knocked unconscious. The police arrived but because his son was already on probation his wife lied and said it was Applicant who was the aggressor. The case was eventually *nolle prosequi*.¹²

In November 2010, Applicant's wife was issued a temporary restraining order to stay away from the residence. She was destroying Applicant's personal property and had hit him with a cabinet door.¹³

Applicant also admitted that since receiving the SOR, the police were called by his daughter in October 2012 and on December 25, 2012, because he and his wife were fighting.¹⁴

Applicant and his wife have not been to any counseling for mental health issues or alcohol issues. Applicant stated his wife does not really drink alcohol. He does not believe his wife will benefit from any counseling. Applicant's wife was never arrested in relation to any of the incidents alleged in the SOR. Applicant admitted that he continues to consume alcohol on a regular basis, but stated not to intoxication.¹⁵

¹⁰ Tr. 24-25, 52, 55, 80, 84-86.

¹¹ Tr. 25, 66-78, 82-83.

¹² Tr. 71-74.

¹³ Tr. 70.

¹⁴ Tr. 67-70.

¹⁵ Tr. 76-78, 84.

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 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. Likewise, I have not drawn inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must 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 applicant or proven by Department Counsel and has the ultimate burden of persuasion to obtain 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 safeguard 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 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 several conditions that could raise security concerns. I have considered all of the disqualifying conditions under AG ¶ 19, and the following two are potentially applicable:

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

Applicant has a federal tax lien and owes money to the IRS. He also owes state taxes. His delinquent mortgage has been rehabilitated. I find there is sufficient evidence to raise the above disqualifying conditions.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. The following mitigating conditions under AG ¶ 20 are potentially applicable:

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

Applicant made financial choices when he was unemployed and underemployed that created a federal tax lien and state tax debts. Although his employment situation was beyond his control, Applicant did not and still does not have a realistic grasp on his finances. He has approximately \$55,000 in consumer debt. His wife was working when he was unemployed, but he did not talk to her about contributing to the household expenses. Instead, he chose to withdraw from his 401K, incur penalties, and owe the IRS. He attributes some of his financial problems to his wife's spending habits, but has not reined them in, and nothing has changed. AG ¶ 20(a) is not established because he has not changed his behavior and future financial problems are likely to recur. His choice to incur tax debts was within his control. He could have discussed with his wife and children contributing to their household expenses during this time, but he chose not to so. He was aware that his wife was misusing their credit cards and did not take action to prevent her from incurring new debts. AG ¶ 20(b) only partially applies because Applicant did not act responsibly under the circumstances.

Applicant did not provide evidence that he has had financial counseling. It appears Applicant is resolving his tax debts, but he did not provide documentary evidence to support his actions with the IRS. Applicant does not have a grasp on his finances, and I am not convinced that his financial problems are under control. I find AG ¶ 20(c) does not apply. Applicant's testimony was credible that he is resolving his tax debts, but he failed to provide documentary evidence. I find AG ¶ 20(d) partially applies.

Guideline G, Alcohol Consumption

AG ¶ 21 expresses the security concern pertaining to alcohol consumption:

Excessive alcohol consumption often leads to the exercise of questionable judgment or the failure to control impulses, and can raise questions about an individual's reliability and trustworthiness.

I have considered all of the disqualifying conditions under AG ¶ 22, and the following is potentially applicable:

(a) alcohol-related incidents away from work, such as driving under the influence, fighting, child or spouse abuse, disturbing the peace, or other incidents of concern, regardless of whether the individual is diagnosed as an alcohol abuser or alcohol dependent;

Appellant was involved in 14 alcohol-related incidents from 2007 to 2011, where the police were called to his home for domestic problems. I find the above disqualifying conditions apply.

I have considered all of the mitigating conditions under AG ¶ 23, and the following are potentially applicable:

(a) so much time has passed, or the behavior was so infrequent, or it happened under such unusual circumstances that it is unlikely to recur or does not cast doubt on the individual's current reliability, trustworthiness, or good judgment; and

(b) the individual acknowledges his or her alcoholism or issues of alcohol abuse, provides evidence of actions taken to overcome this problem, and has established a pattern of abstinence (if alcohol dependent) or responsible use (if an alcohol abuser).

Applicant continues to consume alcohol. He believes that many of the alleged incidents were not his fault, and alcohol was not an issue. He does not think he and his wife would benefit from counseling. Applicant's conduct did not happen under unusual circumstances and the evidence supports that his behavior is likely to recur and casts doubt on his reliability, trustworthiness, and good judgment. Since 2011, the police have been at his house twice more for incidents. Applicant does not acknowledge that alcohol may be playing a role in his problems. The above mitigating conditions do 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 the 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. I have incorporated my comments under Guidelines F and G in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but some warrant additional comment.

Applicant is 52 years old. He was unemployed and underemployed for a period of time that affected his financial stability. He incurred a tax lien for failing to pay all of his federal income taxes, and he withdrew funds from his retirement account that

created tax issues. His wife was employed the entire period of time Applicant was unemployed, but did not contribute to the monthly expenses. Applicant has about \$55,000 in consumer debt on which he is making minimum payments. He has no savings. He does not have a grasp on his financial situation. Since 2007, the police have been to his house at least 16 times regarding domestic incidents where alcohol was involved. He disputes that alcohol was involved in some of the incidents, and he continues to consume alcohol. He does not believe counseling will help his situation. Under the circumstances, Applicant's finances and alcohol consumption are a security concern, and he has not met his burden of persuasion. Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the security concerns arising under the financial considerations and alcohol consumption guidelines.

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 G:	AGAINST APPLICANT
Subparagraphs 1.a-1.o:	Against Applicant
Paragraph 2, Guideline F:	AGAINST APPLICANT
Subparagraphs 2.a-1.b:	Against Applicant
Subparagraph 2.c:	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 a security clearance. Eligibility for access to classified information is denied.

Carol G. Ricciardello
Administrative Judge