



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



In the matter of:)
)
) ISCR Case No. 11-02941
)
Applicant for Security Clearance)

Appearances

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

06/28/2012

Decision

NOEL, Nichole L., Administrative Judge:

Applicant contests the Defense Department's intent to deny his eligibility for a security clearance to work in the defense industry. Applicant has over \$32,000 in unresolved delinquent debt. He falsified his security clearance application in addition to making false statements in his subject interview and at hearing. Clearance is denied.

Statement of the Case

Acting under the relevant Executive Order (EO) and DoD Directive,¹ the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) on

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 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.

September 2, 2011, notifying Applicant that it was unable to find that it is clearly consistent with the national interest to grant him access to classified information and recommended that his case be submitted to an administrative judge for a determination whether to deny his clearance. The SOR detailed the reasons for the action under financial considerations and personal conduct guidelines.

Applicant answered the SOR and requested a decision without a hearing. However, Department Counsel timely requested a hearing under DoD Directive, Additional Procedural Guidance ¶ E3.1.7. The case was assigned to me on January 24, 2012. The hearing proceeded as scheduled on April 4, 2012. Department Counsel offered Government's Exhibits (GE) 1 through 9, which were admitted without objection. Applicant's Exhibits (AE) A and B were also admitted without objection. I received the transcript (Tr.) on April 11, 2012.

Findings of Fact

Applicant, 30, has worked as an employee of a federal contractor since October 2007. He is married and has no children. This is his first application for a security clearance.²

The SOR alleges and Applicant admits that he is indebted to eight creditors for approximately \$32,113 in delinquent accounts. Consistently employed since graduating from high school in 1999, Applicant attributes his financial problems to financial irresponsibility. In 2004 or 2005, Applicant consulted a consumer credit counseling service for help resolving his delinquent debts. He participated in a debt consolidation plan for three months, but stopped because he could not afford the payment. After terminating the plan, Applicant did not contact any of his creditors to make arrangements to resolve his debts. To date, none of the alleged delinquent debts have been resolved.³

In May 2011, Applicant consulted a lawyer in hopes of filing for bankruptcy protection. He completed the required financial counseling class the same month and paid the retainer fee in December 2011. The lawyer directed Applicant to compile six months of pay stubs. Although he has followed the lawyer's instructions, Applicant does not have any future appointments scheduled with his lawyer or any concrete information regarding his bankruptcy filing.⁴

The SOR also alleges that Applicant falsified his security clearance application by failing to disclose, in response to Section 26: Financial Records, five judgments, a collection account, a charged-off account, and late accounts over 180 days past due.⁵

² Tr. 18-21, GE 1.

³ Tr. 19, 21-31- 54-55.

⁴ Tr. 17-18, 52-53, 61-63; AE AB.

⁵ In relevant part, Section 26: Financial Record reads as follows:

Applicant has repeatedly denied that he intentionally falsified his security clearance application. Instead, he offered conflicting stories blaming his facility security officer (FSO) for the omissions. Initially, he claimed that the FSO, who entered Applicant's handwritten application into an electronic version of the form, answered the questions on her own. Then, he testified at hearing that the FSO instructed him to answer the questions in the negative, explaining that the Government would run a credit report on its own and that he would have the opportunity to provide correct information at his subject interview. During his subject interview, however, Applicant twice denied having any judgments, late accounts, or collection accounts before being confronted with the evidence of his derogatory financial information.⁶

At hearing, Applicant admitted that he directed the FSO to answer "no" to the financial questions. He also admitted he knowingly submitted his application with inaccurate information.⁷

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.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, administrative judges apply the 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.

For the following, answer for the last 7 years, unless otherwise specified in the question. Disclose all financial obligations including those for which you are a cosigner or guarantor.

e. Have you ever had a judgment entered against you?

g. Have you had bills or debts turned over to a collection agency?

h. Have you had any account or credit card suspended, charged off, or cancelled for failing to pay as agreed?

m. Have you ever been over 180 days delinquent on any debt(s)?

⁶ Tr. 34-41, 55-56; GE 2.

⁷ Tr. 39-41, 57-58.

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.

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 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 financial considerations security concern 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 under AG ¶ 19. Two are applicable in this case:

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

Applicant is admittedly indebted to eight creditors for over \$32,000 in unresolved, delinquent accounts. None of the mitigating conditions available under AG ¶ 20 apply. Applicant's financial problems are the result of financial irresponsibility. His failure to take timely, reasonable steps toward the resolution of his delinquent debt prevents a finding that his finances are under control or that he has made a good-faith effort to resolve his indebtedness. An applicant is not required to be debt-free nor to develop a plan for paying off all debts immediately or simultaneously. All that is required is that an applicant act responsibly given his circumstances and develop a reasonable plan for repayment, accompanied by concomitant conduct, that is, actions which evidence a serious intent to effectuate the plan.⁸ Applicant has failed to do so. His decision to file for bankruptcy protection is evidence of his intent to resolve his delinquent debts; however, his unexplained failure to follow through with the plan casts doubts on his security worthiness.

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.

Under AG ¶ 16, the following disqualifying condition applies:

(a) deliberate omission, concealment, or falsification of relevant facts from a personnel security questionnaire, personal history statement, or similar form used conduct investigations, determine employment qualifications, award benefit status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities.

Applicant deliberately falsified his security clearance application when he failed to list derogatory financial information in response to Section 26: Financial Information. He knowingly and willfully submitted an inaccurate document to the Government. In addition, he lied to the investigator about his financial difficulties until he was confronted with evidence of such. Applicant made false statements throughout the investigative and adjudicative processes; as such, none of the mitigating conditions available under AG ¶ 17 apply.

Accordingly, I have reservations and doubts about Applicant's ability to protect classified information. In reaching this conclusion, I have also considered the whole-person factors at AG ¶ 2. In addition to the concerns raised by his precarious finances, Applicant falsified his security clearance application, made false statements in

⁸ See, e.g., ISCR Case No. 08-06567 at 3 (App. Bd. Oct 29, 2009).

his subject interview, and at hearing. An applicant is expected to provide full, frank, and candid answers throughout the investigation and adjudication process. Anything less provides a rational basis for finding against an applicant's security worthiness. Clearance is denied.

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
Subparagraph 1.a.– 1.h.:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraphs 2.a. – 2.d.:	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 a security clearance. Eligibility for access to classified information is denied.

Nichole L. Noel
Administrative Judge