



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



In the matter of:)	
)	
)	ISCR Case No. 11-06178
)	
Applicant for Security Clearance)	

Appearances

For Government: Caroline H. Jeffreys, Esq., Department Counsel
For Applicant: *Pro se*

08/10/2012

Decision

HEINY, Claude R., Administrative Judge:

Applicant has five charged-off accounts totaling approximately \$100,000, which remain unpaid. Applicant has failed to rebut or mitigate the financial considerations security concerns. Clearance is denied.

Statement of the Case

Applicant contests the Department of Defense’s (DoD) intent to deny his eligibility for an industrial security clearance. Acting under the relevant Executive Order and DoD Directive,¹ the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) on February 28, 2012, detailing security concerns under Guideline F, financial considerations.

¹ 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) effective within the DoD on September 1, 2006.

On April 12, 2012, Applicant answered the SOR and elected to have the matter decided without a hearing. Department Counsel submitted the Government's case in a File of Relevant Material (FORM), dated May 21, 2012. The FORM contained eight attachments (Items 1–8). On June 10, 2012, Applicant received a copy of the FORM, along with notice of his opportunity to file objections and submit material to refute, extenuate, or mitigate the potentially disqualifying conditions. Applicant's response was due on July 10, 2012. No response to the FORM was received. On August 1, 2012, I was assigned the case.

Findings of Fact

In Applicant's Answer to the SOR, he admits the five charged-off accounts remain unpaid. His admissions are incorporated herein. After a thorough review of the pleadings and exhibits, I make the following findings of fact.

Applicant is a 33-year-old lead estimator who has worked for a defense contractor since March 2008.

In February 2011, Applicant was interviewed concerning his delinquent accounts. (Item 5) He indicated he, his wife, and two children lived in a home purchased from his grandparents' estate. He owed \$348,000 on the first mortgage and \$56,000 on the second mortgage. In August 2010, on his attorney's recommendation, Applicant stopped making the mortgage payments. (Item 5) He was unable to make the mortgage payments because his wife was not working due to surgery following a staph infection. Additionally, his wife was caring for their two young children. As of February 2011, his attorney was attempting to have the mortgage payments reduced from \$2,200 to \$1,650 monthly.

During the interview, Applicant stated the amounts of the five charged-off debts now listed in the SOR as: \$9,153 credit card debt (SOR 1.a), \$56,000 second mortgage (SOR 1.b), \$15,000 bank debt (SOR 1.c), \$9,475 credit card debt (SOR 1.d), and \$10,000 bank debt (SOR 1.e), were correct and unpaid. (Item 5) The five charge-off accounts total \$99,628. He also stated he had incurred a large amount of medical expenses related to the birth of his second child in June 2008. (Item 5)

In January 2012, Applicant responded to written interrogatories. At that time, his monthly net income (net monthly income of \$4,711 less net monthly expenses of \$2,263 and a \$1,671 first mortgage payment) was \$776. (Item 5) The mortgage lender on his first mortgage modified his monthly loan payment, but the lender on the second mortgage would not modify the monthly payment amount. In January 2011, he stopped paying the second mortgage lender. (Item 5)

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 must be considered 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 interests of 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 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 Executive Order (EO) 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

Adjudicative Guideline (AG) ¶18 articulates the security concerns relating to financial problems:

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.

An individual who is financially irresponsible may also be irresponsible, unconcerned, negligent, or careless in properly handling and safeguarding classified information. Behavior in one aspect of life provides an indication of how a person may behave in other aspects of life.

A person's relationship with his creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to repay debts as agreed. Absent substantial evidence of extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a position of risk that is inconsistent with holding a security clearance. An applicant is not required to be debt free, but is required to manage his finances to meet his financial obligations.

Applicant has five unpaid charged-off accounts, which together total approximately \$100,000. The evidence supports application of disqualifying conditions AG ¶19(a), "inability or unwillingness to satisfy debts" and AG ¶19(c), "a history of not meeting financial obligations."

In February 2011, he was questioned about the five charged-off accounts. Since then, he has made no payments on the accounts and they remain unpaid. Applicant meets none of the mitigating factors for financial considerations. His financial difficulties are both recent and multiple, and did not occur under circumstances not likely to recur. He asserted he was unable to make his mortgage payments when his wife was unemployed following surgery and their decision that she take care of their two young children. Additionally, he stated they incurred large medical expenses when their second child was born in June 2008. He failed to demonstrate that his debts were largely due to circumstances beyond his control, or that he has acted responsibly in addressing his debts. Further, there is no evidence of credit counseling, or that his financial problems are under control. I conclude Guideline F against Applicant.

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.

In requesting an administrative determination, Applicant chose to rely on the written record. In so doing, however, he failed to submit sufficient information or evidence to supplement the record with relevant and material facts to explain his circumstances, articulate his position, or mitigate the financial security concerns. He failed to offer evidence of financial counseling or provide documentation regarding his past efforts to address his delinquent debt. By failing to provide such information, and in relying on only a scant paragraph of explanation as to how his inability to repay his obligations arose, financial considerations security concerns remain.

Based on the totality of the evidence available in this case, it is not clearly consistent with the national interest to grant Applicant access to classified information. He has provided no documentation that he has taken effective action to resolve his debts. Nor is there evidence he has equipped himself to avoid financial problems in the future. Applicant has not mitigated the security concerns arising from his financial considerations.

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, Financial Considerations: AGAINST APPLICANT

Subparagraphs 1.a – 1.e: Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the interests of national security to grant Applicant a security clearance. Eligibility for access to classified information is denied.

CLAUDE R. HEINY II
Administrative Judge

