



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



In the matter of:)
)
) ISCR Case No. 11-06633
)
Applicant for Security Clearance)

Appearances

For Government: Richard Stevens, Esq., Department Counsel
For Applicant: *Pro se*

04/12/2012

Decision

DUFFY, James F., Administrative Judge:

Applicant failed to mitigate the security concerns arising under Guideline F (Financial Considerations). Eligibility for access to classified information is denied.

Statement of the Case

On November 10, 2011, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F. DOHA acted under Executive Order (EO) 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) implemented on September 1, 2006.

On January 5, 2012, Applicant answered the SOR and requested a hearing. The case was assigned to another administrative judge on February 9, 2012, and was reassigned to me on February 13, 2012. DOHA issued a notice of hearing on February 16, 2012, and the hearing was convened as scheduled on March 7, 2012. At the hearing, Department Counsel offered Government Exhibits (GE) 1 through 4 that were admitted into evidence without objection. Applicant testified and offered Applicant

Exhibits (AE) A through E that were admitted into evidence without objection. The record was left open until March 14, 2012, to provide Applicant an opportunity to submitted additional matters. He timely submitted AE F through H that were admitted into evidence without objection. Department Counsel's email reflecting that he had no objection to Applicant's post-hearing submission was marked as Hearing Exhibit (HE) 1. DOHA received the hearing transcript (Tr.) on March 16, 2012.

Findings of Fact

Applicant is a 51-year-old employee of a defense contractor. He has worked for his current employer since September 2008. He graduated from high school in 1979 and has earned about 60 credits towards a college degree. He served on active duty in the Army from June 1979 to June 1983 and from November 1983 to June 1997, attained the grade of staff sergeant (E-6), and received an early retirement after 17 and a half years of service. He is married and has two children, ages 22 and 26, and a step-child, age 35. While in the military, he held a security clearance without incident.¹

The SOR alleged that Applicant had ten delinquent debts totaling about \$76,670. In his answer, Applicant admitted each of the alleged debts. His admissions are incorporated as findings of fact.²

Applicant and his wife successfully operated several businesses for a number of years. Before retiring from the Army, he and his wife purchased and operated an apartment building near an Army base. They eventually purchased three apartment buildings and operated a restaurant for about two years. They held two of the apartment buildings for about five years and sold them for a profit. They tried unsuccessfully to acquire a fourth apartment building and lost about \$42,000 in that failed transaction. None of the alleged delinquent debts pertain to the apartment buildings or restaurant.³

Applicant attributed his financial problems to a failed female clothing business that he and his wife operated in 2003 and 2004. They started the clothing store while they still owned one apartment building. His wife managed the store, and he worked there occasionally. They rented the property where the store was located. The clothing store was initially successful. A new strip mall opened in the area, and his wife decided they needed to move the store to the mall to increase their business traffic. He opposed the move, but the store eventually was moved to the mall. The rent and other expenses at mall were much higher than the first store. In operating this business, they would travel to New York or Los Angeles to buy female clothing for the store using credit cards. They would carry or ship the merchandise back to the store. As a large number of the troops assigned to the nearby Army base deployed to Iraq and Afghanistan, the local economy slowed down. At certain points, they used money derived from the

¹ Tr. 6-7, 12-16, 25-30; GE 1; AE F, G.

² Applicant's Answer to the SOR; GE 1-4.

³ Tr. 30-38; GE 2.

remaining apartment building to keep the clothing business running. However, the clothing business eventually failed in 2004. All of the allegations in the SOR are credit card debts arising from the clothing business. About 20% of the alleged indebtedness is fees and penalties.⁴

After the clothing business failed, Applicant worked in Iraq from March 2005 to June 2007. While in Iraq, his annual salary was about \$130,000. Because he was in a combat zone, a major portion of that salary, approximately \$80,000, was not subject to federal income taxes. Following his stint in Iraq, he was unemployed for about 12 months from June 2007 to June 2008. During that period of unemployment, he lived off of his savings and received unemployment compensation starting in about December 2007. He estimated his gross income for 2011 was \$80,000. After the clothing business failed, his wife began attending college. He expects that she will graduate soon.⁵

Applicant testified that he paid as much as he could on the delinquent debts, but provided no proof of payments towards those debts. He stated that his wife contacted the creditors about two years ago, but was unable to arrange settlements. She also consulted an attorney about the debts and was advised they would fall off their credit reports after seven years of delinquency. Applicant and his wife weighed the pros and cons of bankruptcy as well as the debts falling off the credit reports in seven years. He stated that waiting the seven years would give him a fresh start without the stigma of a bankruptcy. He also thought there was nothing he could do to resolve the charged-off debts. Two weeks before the hearing, he contacted the creditors of the debts that were not charged off. They offered him settlement arrangements, but he did not enter into any agreements. He also testified that he has not made any payments towards the delinquent debts in the last two years. He expects the debts will be removed from his credit reports in 2012.⁶

Applicant disclosed his delinquent debt on his e-QIP. At the hearing, he testified openly and honestly about his financial problems. During an interview with an Office of Personnel Management investigator in January 2011, he reportedly told the investigator that he did not plan to do anything regarding the charged-off accounts. During that interview, he also indicated that he had a net monthly income of \$4,400 and had a net monthly remainder of about \$1,850 after his monthly expenses were deducted. At the hearing, however, he testified that he is basically living paycheck to paycheck. He and his wife have no tax deficiencies and are current on the credit cards they now use. Currently, he works in one state and his wife resides in another. They own a home that has two mortgages and their mortgage payments are current.⁷

⁴ Tr. 36-42, 44-46, 55-59; GE 2.

⁵ Tr. 38, 41-43, GE 2.

⁶ Tr. 43-46, 60-66; GE 2.

⁷ Tr. 47-55, 59; GE 2, 4.

Applicant submitted a number of character references. They attest to his loyalty, honest, reliability, and trustworthiness. One reference indicated that he is still a soldier working in civilian clothes. In his latest annual performance assessment, his overall rating indicated that he “exceeds requirements.” The assessment also indicated that he conducted himself according to the highest possible ethical standards. While serving in the Army, he earned the Army Commendation Medal (two awards), Army Achievement Medal, Army Good Conduct Medal (four awards), and other service medals and ribbons.⁸

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 that 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.

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 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

⁸ AE A-H.

extrapolation about 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* Executive Order 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 as follows:

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 potentially applicable in this case:

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

Applicant accumulated delinquent debts that he was unable or unwilling to satisfy over a number of years. This evidence is sufficient to raise the above disqualifying conditions.

Several Financial Considerations 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 has multiple unresolved delinquent debts totaling over \$76,000. His financial problems are ongoing and significant. Those problems arose when a clothing store that he and his wife owned failed due to an economic downturn in 2004. The failure of that business and a subsequent period of unemployment were conditions beyond his control. However, he has failed to establish that he acted responsibly following those events. He earned about \$130,000 per year from March 2005 to June 2007, and about \$80,000 last year, but provided no proof of payments towards, or settlement agreements for, the alleged debts. His wife consulted with an attorney about their financial problems, but no meaningful steps were taken to resolve the debts. His apparent plan is to wait for the delinquent debt to fall off of his credit reports. In short, no evidence was presented to show that these debts are being resolved or are under control. His financial problems continue to cast doubt on his current reliability, trustworthiness, and good judgment. AG ¶¶ 20(a), 20(b), 20(c), and 20(d) do not apply. Applicant has failed to mitigate the delinquent debts. His financial problems remain a security concern.

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 relevant facts and circumstances surrounding this case. I have incorporated my comments under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

I considered Applicant's military service and his years of service in the defense industry. His debts arose from a failed business. He is apparently just meeting his current financial obligations. For a number of years, however, he was earning a significant annual salary, but failed to take any meaningful steps to resolve the alleged delinquent debts. 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 has not mitigated the Financial Considerations security concerns.

Formal Findings

Formal findings 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.j: 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.

James F. Duffy
Administrative Judge