



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



In the matter of:)	
)	
[Name Redacted])	ISCR Case No. 11-06965
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Julie R. Mendez, Esquire, Department Counsel
For Applicant: *Pro se*

04/12/2012

Decision

HOGAN, Erin C., Administrative Judge:

On November 28, 2011, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant 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.

On January 19, 2012, Applicant answered the SOR and requested that his case be decided on the written record. Department Counsel prepared a File of Relevant Material (FORM) on February 2, 2012. The FORM was forwarded to Applicant on February 2, 2012. Applicant received the FORM on February 7, 2012. He had 30 days to submit a response to the FORM. He did not submit additional information. On March 29, 2012, the FORM was forwarded to the hearing office and was assigned to me on April 3, 2012.

Based upon a review of the case file, pleadings, and exhibits, eligibility for access to classified information is denied.

Findings of Fact

In his answer to the SOR, Applicant admits SOR allegations 1.a – 1.j, 1.l, and denies SOR allegations 1.k and 1.m. (Item 3)

Applicant is a 41-year-old male employed by a Department of Defense contractor seeking to obtain a security clearance. He has been employed with the company since June 2006. He divorced in 2008 and has an 19-year-old son who currently resides with him. Applicant indicated on his security clearance questionnaire in response to question 25(b) that he applied for and was denied a security clearance in 2007 because of “bad credit/debts.” (Item 4; Item 6 at 5, 7)

After Applicant completed his most recent security clearance questionnaire on January 13, 2011, a background investigation was initiated. (Item 4) His background investigation revealed 13 delinquent accounts, a total approximate balance of \$47,633. The delinquent accounts include a \$7,344 unpaid judgment filed against Applicant in March 2007 (SOR ¶ 1.a: Item 7 at 1,13; Item 8 at 3; Item 9 at 3-4); two vehicle repossessions with an outstanding balance of \$5,592 and \$9,735 (SOR ¶¶ 1.g and 1.h: Item 7 at 2; Item 8 at 3; Item 9 at 6); four accounts that were charged off, a total approximate balance of \$19,849 (SOR ¶¶ 1.c, 1.d, 1.e, 1.j: Item 7 at 2; Item 8 at 2-3; Item 9 at 4-5, 12-13); and six delinquent accounts placed for collection, a total approximate balance of \$5,473 (SOR ¶¶ 1.b, 1.f, 1.i, 1.k, 1.l, and 1.m: Item 7 at 1-2; Item 8 at 1-2; Item 9 at 6-7, 11).

On August 10, 2011, Applicant prepared a budget with the assistance of his local credit union. Applicant’s net monthly income is \$2,400. Monthly expenses include: \$747 rent; \$85 electric; \$75 cell phone; \$130 cable; \$50 water and gas; \$196 groceries; and \$365 transportation expenses; and \$84 life insurance. He pays \$47 each month towards a credit card account. The creditor in SOR ¶ 1.a is garnishing his wages approximately \$640 each month. He appears to have sufficient income to cover his monthly expenses, but is unable to pay his delinquent accounts. (Item 5 at 7-11)

On February 11, 2011, Applicant was interviewed as part of his background investigation. He admitted most of the debts. He did not recognize the debts alleged in SOR ¶¶ 1.e, 1.k, 1.l, and 1.m. He indicated the debts became delinquent because of poor financial planning. From April 2006 to April 2008, he lived with a friend, her six children, and grandchildren. He took out loans in his name for his friend’s benefit on the condition that she make the loan payments. She defaulted on all of the loans that Applicant took out on her behalf, which include debts alleged in SOR ¶¶ 1.g, 1.h, and 1.j. Several of the debts alleged in the current SOR (SOR ¶¶ 1.a, 1.c, 1.d, 1.f) became delinquent in 2006 and may have been considered in his previous security clearance investigation. Applicant currently lives alone with his son. He states that he is not creating additional debt and his expenses are simple. (Item 6)

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which must be considered when 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.

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 for obtaining 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 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 over-extended is at risk of having to engage in illegal acts to generate funds.

The guideline notes several disqualifying conditions that could raise security concerns. I find Financial Considerations Disqualifying Condition AG ¶19(a) (an inability or unwillingness to satisfy debts) and AG ¶19(c), (a history of not meeting financial obligations) apply to Applicant's case. Applicant incurred numerous delinquent debts that he has been unable or unwilling to pay over the past five years.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Several mitigating conditions potentially apply to Applicant's case.

AG ¶ 20(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) does not apply. The debt alleged in SOR ¶ 1.a is being resolved through garnishment. All remaining delinquent accounts are unresolved. Applicant was previously denied a security clearance in 2007 for unresolved debts. Some of his unresolved delinquent accounts date back to that time. Applicant did not take steps to improve his financial situation even after he was denied a security clearance five years ago. Applicant's extensive unresolved debt indicates irresponsible behavior and continues to cast doubt on his reliability, trustworthiness, and good judgment.

AG ¶ 20(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) partially applies because of Applicant's separation and divorce from his wife in 2008. However, Applicant has been consistently employed since June 2006. Most of his delinquent accounts resulted from purchasing items he could not afford or trusting friends to repay loans which he signed in his name for their benefit. Applicant has not demonstrated that he acted responsibly under the circumstances.

AG ¶ 20(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) does not apply. Applicant recently prepared a budget with the assistance of his local credit union. However, his budget reveals that he is not capable of paying his delinquent accounts. Applicant's financial situation is unlikely to be resolved in the near future.

AG ¶ 20(d) (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts) does not apply. The only delinquent account that is being repaid is being repaid through involuntary garnishment, not through a voluntary act on Applicant's behalf. He has not initiated a good-faith effort to resolve his debts.

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 the 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 considered Applicant's employment history with a defense contractor. I considered his divorce in 2008 may have had an impact on his financial situation. I also considered that Applicant was denied a security clearance in 2007. He does not appear to have learned from that experience. Several of the accounts alleged in the most recent SOR have been delinquent since 2006. Applicant incurred additional delinquent debt after he was denied a security clearance. He incurred more debt than he could afford.

The concern under financial considerations is not only about individuals who are prone to engage in illegal acts to generate funds. Another concern is that failure 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 which raises questions about an individual's reliability, trustworthiness, and ability to protect classified information. In other words, if an individual has trouble managing their

finances, this can raise doubts about an individual's ability to handle and protect classified information. Applicant's history of financial problems raises doubts about his ability to handle and protect classified information. Mindful of my duty to resolve cases where there is doubt in favor of national security, I find Applicant failed to mitigate the concerns raised under 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, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a – 1.m:	Against Applicant

Conclusion

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

ERIN C. HOGAN
Administrative Judge