



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



In the matter of:)
)
) ISCR Case No. 11-07309
)
Applicant for Security Clearance)

Appearances

For Government: Robert Kilmartin, Esq., Department Counsel
For Applicant: *Pro se*

08/28/2013

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 September 19, 2012, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F. This action was taken 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 March 13, 2013, Applicant answered the SOR and requested a hearing. The case was assigned to me on June 24, 2013. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on July 15, 2013, and the hearing was convened as scheduled on August 7, 2013. At the hearing, Department Counsel offered

Government's Exhibits (GE) 1 through 5. Applicant testified and offered no exhibits. The record was left open until August 21, 2013, for Applicant to submit matters. He submitted documents that were marked as Applicant's Exhibits (AE) A through D. All of the proffered exhibits were admitted into evidence without objection. DOHA received the hearing transcript (Tr.) on August 15, 2013.

Findings of Fact

Applicant is a 31-year-old electronic technician who works for a defense contractor. He has been working for his current employer since October 2010. He graduated from high school in 2000 and earned an associate's degree in mechanical engineering technology in 2008. He served in the U.S. Marine Corps from September 2001 to March 2005, attained the grade of lance corporal (E-3), and received an honorable discharge. He married in August 2001 and divorced in March 2005. He married his current wife in May 2005, and they separated about two months before the hearing. He has custody of his two children, ages 10 and 12. He stated that he has not held a security clearance in the past.¹

The SOR alleged that Applicant had 11 delinquent debts totaling \$65,462; that he filed Chapter 13 bankruptcy in 2002 that was dismissed in 2003; and that he filed Chapter 7 bankruptcy in 2005 that resulted in a discharge of his debts later that year. In his Answer, Applicant admitted 12 of the 13 SOR allegations. He denied the largest debt, SOR ¶ 1.c, claiming he hired a lawyer to dispute that debt. His admissions are incorporated herein as findings of fact.²

In June 2002, Applicant filed Chapter 13 bankruptcy. Because he failed to make payments on that bankruptcy, it was dismissed in January 2003. He then filed Chapter 7 bankruptcy in September 2005 that resulted in a discharge of his debts in December 2005. In an Office of Personnel Management (OPM) interview on March 16, 2011, Applicant stated that his accounts in the bankruptcy became delinquent because he and his ex-wife were spending beyond their means. He noted that he did try a debt consolidation loan while in the Marine Corps, but was unable to pay that loan. At the time of his bankruptcy, his financial liabilities were approximately \$61,000.³

During his OPM interview, Applicant first attributed his current financial problems to his current wife missing work for several months following her surgery in 2010. She then worked part-time until about two months before the hearing when she returned to fulltime work. In the OPM interview, he also attributed his financial problems to paying about \$20,000 in legal fees during a child custody dispute that he had with his ex-wife. He went through that child custody dispute about a year or two after his divorce. During the OPM interview, he stated that he intended to set up payment arrangements for all of

¹ Tr. at 6-8, 27, 38-39, 60, 66-67; GE 1, 2.

² SOR; Applicant's Answer to the SOR.

³ Tr. at 53-54, 65-69; GE 1, 2, 5.

his delinquent debts in the next couple of days as he and his wife were in a position to begin paying them again.⁴

The debt in SOR ¶ 1.c for \$57,689 arose from an employment contract. Under that contract, Applicant's employer paid him a salary and his tuition while he was a fulltime student at a community college. Applicant did not work at the company while attending school, but would work there during school breaks. As noted above, Applicant completed his studies at the community college in 2008 and earned an associate's degree. After completing his schooling, Applicant was apparently supposed to work for the employer for a specified period.⁵

Applicant claimed that, after he earned his associate's degree, the employer attempted to change the employment contract and reduce his salary. He refused to work for the employer. The debt in SOR ¶ 1.c is apparently the employer's attempt to recoup the amount of salary and tuition Applicant was paid while he attended school. Applicant testified that he hired a lawyer to dispute this debt in 2009. At the hearing, he testified that he did not know the status of the dispute. In his post-hearing submission, he provided an email in which the lawyer acknowledged providing Applicant legal services during that period. Applicant also submitted a credit bureau report dated August 22, 2013, that reflected the debt in SOR ¶ 1.c has been deleted from his credit report.⁶

Appellant did not provide any proof that he made payments on the remaining ten debts (SOR ¶¶ 1.a, 1.b, and 1.d through 1.k) totaling about \$7,773. Most of those debts had dates of first delinquency/dates of last activity in 2010. Other than stating that he was "trying to work towards getting to the point where [he] can start knocking those [debts] off [his] credit report," he presented no specific plan for resolving those debts.⁷

While serving in the Marine Corps, Applicant and his ex-wife sought financial counseling before filing bankruptcy. In his post-hearing submission, he provided a monthly budget that reflected his monthly income was \$2,260 and his monthly expenses were \$1,921, which left him a net monthly remainder of \$339. The budget did not reflect any payments toward the delinquent debts. He testified that he owed the Federal Government about \$1,000 in past-due taxes for 2012. He also believed that he and his wife were about one month behind on their mortgage payments.⁸

In the Marine Corps, Applicant received a Good Conduct Medal. He was discharged from the Marine Corps due to a personality disorder. His discharge occurred

⁴ Tr. at 25-28, 42-49, 54-55; GE 2.

⁵ Tr. at 28-35; GE 2-5.

⁶ Tr. at 35-38, 68-69; GE 2-5; AE B, D.

⁷ Tr. at 57-58, 72-73; GE 2-5.

⁸ Tr. at 39-49, 52-65, 70-72; GE 2; AE C.

about a year before his military service obligation was due to expire. He served in Kuwait and Iraq during Operation Iraqi Freedom.⁹

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 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

⁹ Tr. at 49-52; GE 2.

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.

In December 2005, Applicant was granted a Chapter 7 bankruptcy discharge. He filed bankruptcy because he and his ex-wife spent beyond their means. Since the bankruptcy, he accumulated delinquent debts that he was unable or unwilling to satisfy for an extended period. 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;

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

(e) the individual has a reasonable basis to dispute the legitimacy of the past due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

Applicant's delinquent debts are ongoing, significant, and cast doubt on his current reliability, trustworthiness, and good judgment. From the evidence presented, I am unable to determine that his financial problems are unlikely to recur. AG ¶ 20(a) does not apply.

In 2010, his wife had surgery and missed several months of work. She then worked part-time until about two months before the hearing when she returned to fulltime employment. In 2006 or 2007, he also incurred about \$20,000 in legal fees during a child custody dispute. These were conditions beyond his control that contributed to his financial problems. To merit full credit under AG ¶ 20(b), an applicant not only must encounter conditions beyond his or her control, but also must act responsibly under the circumstances. In this case, Applicant hired an attorney and disputed the largest debt, SOR ¶ 1.c, which resulted in the deletion of that debt from his credit report. During an OPM interview in March 2011, he was questioned about the debts and stated he intended to set up payment arrangements for all of his delinquent debts within the next couple of days because he and his wife were in position to begin paying them again. He, however, provided no proof of payments toward the remaining debts alleged in the SOR. He also presented no realistic plan for resolving them. Based on the record evidence, I am unable to find that his financial problems are under control or are being resolved. AG ¶¶ 20(c) and 20(d) do not apply. AG ¶ 20(b) partially applies. AG ¶ 20(e) applies to the debt in SOR ¶ 1.c.

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.

Applicant served honorably in the Marine Corps during Operation Iraqi Freedom. Nonetheless, he provided no proof of payments toward his delinquent debts or any meaningful plan for resolving them. Insufficient evidence has been presented to establish that his financial problems are being resolved or are under control.

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 Guideline F.

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.b:	Against Applicant
Subparagraph 1.c:	For Applicant
Subparagraphs 1.d – 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 the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

James F. Duffy
Administrative Judge