



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



In the matter of:)	
)	
)	ISCR Case No. 11-09333
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Pamela Benson, Esq., Department Counsel
For Applicant: *Pro se*

07/31/2012

Decision

LYNCH, Noreen A., Administrative Judge:

On September 14, 2011, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) listing security concerns arising 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 (DoD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG), implemented in September 2006.

Applicant timely answered the SOR and requested an administrative determination in lieu of a hearing. Department Counsel submitted a File of Relevant Material (FORM), dated January 12, 2012.¹ Applicant received the FORM on May 24, 2012. He did not submit additional information. On July 17, 2012, the Director, DOHA, forwarded the case for assignment to an administrative judge. I received the case

¹The Government submitted eleven items in support of its case.

assignment on July 19, 2012. Based on a review of the case file, I find Applicant did not meet his burden regarding the security concerns raised. Security clearance is denied.

Findings of Fact

In his answer to the SOR, Applicant admitted the majority of the allegations under Guideline F, with the exception of SOR ¶¶ 1.h, 1.i, 1.m, 1.o, and 1.q, which he denied. (Item 4)

Applicant is 29 years old. He graduated from high school in 2000 and attended community college for a short period. He is married and has two children. He served in the U.S. Army from June 2000 until June 2010, and he was deployed on several occasions to Afghanistan. (Item 5) Applicant has been employed with his current employer since September 2010. (Item 4) He has held a security clearance since approximately 2004. (Item 11)

The SOR lists 19 delinquent debts that total approximately \$142,382.29. The credit reports confirm them. (Items 8, 9 and 10) Applicant has recently settled debts alleged in SOR ¶¶ 1.a, 1.b, 1.c, 1.d, 1.e, 1.f, 1.i, 1.j, 1.k, and 1.p, and provided documentation to verify the paid settlement amounts. (Documentation in file) The amount not resolved is approximately \$126,447, which includes an unpaid judgment and a home foreclosure with the balance due on the mortgage of approximately \$109,198.00. (Items 1 and 4)

Applicant admits in his answer to the SOR that as to SOR ¶ 1.g for a home mortgage loan balance of \$109,198.00, the account was foreclosed. He did not provide any additional details or information. Although in a 2009 interview, he stated that he thought that his wife sold that home while he was deployed to a couple who were going to fix the home and “flip it.” Applicant also stated that the mortgage balance was zero and should not have been on his credit report. It is not clear from the latest credit report that the balance is zero. (Item 10)

Applicant denied several debts including SOR ¶¶ 1.h, 1.i, 1.m, 1.o, and 1.q, but did not provide any documentation for his reasons. (Item 4) He claims he has disputed SOR ¶ 1.n because he has paid the account to the phone company and still has current service. He also states that SOR ¶ 1.b is a duplicate of SOR ¶ 1.n. (Item 4) Applicant believes that he has provided sufficient evidence to show that he has resolved or is in the process of getting information on “questionable” accounts. (Item 4) He also submitted documentation for debts paid in 2011 that did not appear on the SOR.

Applicant did not report long periods of unemployment or provide any insight into the origin of the debt. When interviewed in 2009, he reported that he made sufficient income to live within his means. However, when deployed, his wife managed the finances. He recognized the accounts, but stated that he had no knowledge that the accounts were past-due. Applicant was cooperative and stated that he would resolve any unpaid debts that were valid. (Item 6) In 2011, Applicant notified his personnel security specialist that he was enlisting the services of a credit counseling agency to

help him with some of the issues he was encountering with some companies. (Letter in File)

Applicant has a monthly net income of approximately \$8,759, not including his wife's net income of \$700 a month. After listing total monthly expenses of \$3,163 and his monthly payments on his car and truck, he has a net monthly remainder of \$5,895. He listed bank savings of \$14,997. (Item 6)

Policies

When evaluating an applicant's suitability for a security clearance, an 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. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, they are applied in conjunction with the factors listed in the adjudicative process. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. Under AG ¶ 2(c), this process is a conscientious scrutiny of a number of variables known as the "whole-person concept." An 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

The United States Government must present evidence to establish controverted facts alleged in the SOR. An applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." ² The burden of proof is something less than a preponderance of evidence. ³ The ultimate burden of persuasion is on the applicant. ⁴

A person seeking access to classified information enters into a fiduciary relationship with the Government based on 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 protect classified information. Such

² See also ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

³ *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

⁴ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

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 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.”⁵ “The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”⁶ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such information.⁷ The decision to deny an individual a security clearance does not necessarily reflect badly on an applicant’s character. It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense established for issuing a clearance.

Analysis

Guideline F, Financial Considerations

The security concern for Financial Considerations is set out in AG ¶ 18:

Failure or an 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.” It also states that “an individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

Applicant has delinquent debts amounting to \$142,382. Although he denied some debts in his answer to the SOR, he acknowledged others in his interview and his security clearance application. Consequently, Financial Considerations Disqualifying Conditions (FC DC) AG ¶ 19(a) (inability or unwillingness to satisfy debts), and FC DC AG ¶ 19(c) (a history of not meeting financial obligations) apply. With such conditions raised, it is left to Applicant to overcome the case against him and mitigate security concerns.

Applicant’s debts are recent and ongoing. He intends to pay his bills but he has not presented documentation concerning the mortgage foreclosure. He has recently paid some debts. Consequently, Financial Considerations Mitigating Condition (FCMC) AG ¶ 20(a) (the behavior happened so long ago, was so infrequent, or occurred under

⁵ See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information), and EO 10865 § 7.

⁶ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

⁷ *Id.*

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.

Financial Considerations Mitigating Condition (FC MC) AG ¶ 20(b) (the conditions that resulted in the behavior 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) does not apply. As noted, Applicant has not had long periods of unemployment. He suggested at one point that his wife handled the finances while he was deployed, but he did not present specific information to prove that the delinquencies were beyond his control. This mitigating condition does not apply.

FC MC AG ¶ 20(d), (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts) applies. Applicant provided documentation that he has recently resolved several debts listed in the SOR. He claims that other accounts have been disputed, but did not produce any evidence to support his assertion. He did not present evidence that he received financial counseling which obviates the applicability of FC MC AG ¶ 20(c) (the person has received or is receiving counseling for the problem. I do not find that there are clear indications that the problem is being resolved or is under control.

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 an 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. As noted above, the ultimate burden of persuasion is on the applicant seeking a security clearance.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case, as well as the whole-person factors. Applicant is 29 years old. He served in the military and was deployed to Afghanistan. He has held a security clearance. He has worked for his current employer since 2010. He has delinquent debts that are still unresolved. He did pay some debts, but he did not

produce documentation or evidence that he has resolved the remaining debts, or is in the process of resolving them. He has not sought financial counseling.

Applicant submitted insufficient information or evidence to mitigate the security concerns raised in his case. 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
Subparagraphs 1.a- 1.f:	For Applicant
Subparagraph 1.g:	Against Applicant
Subparagraph 1.h:	Against Applicant
Subparagraphs 1.i-1.k:	For Applicant
Subparagraphs 1.l-1.o:	Against Applicant
Subparagraph 1.p:	For Applicant
Subparagraph 1.q:	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. Clearance is denied.

NOREEN A. LYNCH.
Administrative Judge