



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



In the matter of:)
)
) ISCR Case No. 11-09590
)
Applicant for Security Clearance)

Appearances

For Government: Raashid S. Williams, Esquire, Department Counsel
For Applicant: *Pro se*

05/31/2012

Decision

GALES, Robert Robinson, Administrative Judge:

Applicant failed to mitigate the security concerns regarding financial considerations. Eligibility for a security clearance and access to classified information is denied.

Statement of the Case

On May 16, 2011, Applicant applied for a security clearance and submitted an Electronic Questionnaire for Investigations Processing (e-QIP) version of a Security Clearance Application (SF 86).¹ On January 5, 2012,² the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to him, pursuant to Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended and modified; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as

¹ Item 3 (SF 86), dated May 16, 2011.

² Although Department Counsel stated the SOR was issued on January 5, 2012, the actual SOR is undated. The letter of transmittal, with its attached Receipt, is dated January 5, 2012. See Item 2 (Letter of transmittal, dated January 5, 2012).

amended and modified (Directive); and the *Adjudicative Guidelines for Determining Eligibility For Access to Classified Information* (December 29, 2005) (AG) applicable to all adjudications and other determinations made under the Directive, effective September 1, 2006. The SOR alleged security concerns under Guideline F (Financial Considerations), and detailed reasons why DOHA was unable to find that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. The SOR recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

Applicant acknowledged receipt of the SOR on January 18, 2012. In a statement, notarized January 18, 2012,³ Applicant responded to the SOR allegations and elected to have his case decided on the written record in lieu of a hearing. A complete copy of the Government's file of relevant material (FORM) was provided to Applicant on March 29, 2012, and he was afforded an opportunity, within a period of 30 days after receipt of the FORM, to file objections and submit material in refutation, extenuation, or mitigation. Applicant received the FORM on April 5, 2012, but as of May 23, 2012, he had not submitted any further documents or other information. The case was assigned to me on May 24, 2012.

Findings of Fact⁴

In his Answer to the SOR, Applicant admitted all of the factual allegations pertaining to financial considerations in the SOR (§§ 1.a. through 1.e.). Applicant's admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence in the record, and upon due consideration of same, I make the following additional findings of fact:

Applicant is a 47-year-old employee of a defense contractor. He has been serving as a supply chain quality engineer since November 2007. He was previously employed as a quality inspector from October 1987 to November 2007.⁵ Applicant has never served in the U.S. military,⁶ and has never held a security clearance.⁷ In the mid-1980s, he attended a university for one year, followed by another year at a community college, but did not receive a degree.⁸ Applicant was married in August 1992, and he

³ Item 1 (Applicant's Answer to the SOR, dated January 18, 2012).

⁴ Because of the paucity of information in the record (there is no personal subject interview, no personal financial statement, no Office of Personnel Management (OPM) report of investigation, no financial records other than two 2011 credit reports, and no narrative from the Applicant) – referred to as “gaps in the documentary record” by Department Counsel – the only available sources for evidence are the SF 86, the Answer to the SOR, and the two credit reports.

⁵ Item 3, *supra* note 1, at 10-12.

⁶ Item 3, *supra* note 1, at 13.

⁷ Item 3, *supra* note 1, at 29.

⁸ Item 3, *supra* note 1, at 8-9.

and his wife have four children, born in July 1994, September 1996, January 1998, and September 2004.⁹

Financial Considerations

It is unclear when Applicant first started having financial problems, but it would appear that they commenced some time before 1996, for in November 1996, he filed for bankruptcy under Chapter 7 of the U.S. Bankruptcy Code.¹⁰ Unspecified debts, totaling about \$22,000, were discharged that same year.¹¹ Eventually, accounts again started to become delinquent, and were placed for collection or charged off.¹²

The SOR identified one 1996 bankruptcy and four continuing delinquencies, totaling approximately \$37,583. One of those accounts (SOR ¶ 1.a.) is a 120 day delinquency of \$176 on a credit card with a balance of \$578;¹³ another account (SOR ¶ 1.b.) is a second mortgage, in the amount of \$27,807, that was charged off;¹⁴ another account with a mail order company, appears three times under three separate creditors in the same credit report (SOR ¶ 1.c.), initially with a past-due balance of \$828,¹⁵ but the account was charged off and transferred or sold to another collection agent in 2010.¹⁶ The balance was increased to \$898 by the new collection agent, and it too charged off the account and transferred or sold it to another collection agent.¹⁷ In November 2011, the current collection agent maintained the account in collection.¹⁸ The last account (SOR ¶ 1.d.) was the result of Applicant failing to report the closure of his 401(k) in 2008, leaving a tax liability of \$8,300.¹⁹

Although Applicant indicated he was either making payments or had already settled other non-SOR accounts, and was working on a repayment plan with the Internal Revenue Service (IRS) to resolve his 401(k) account, he has not submitted any

⁹ Item 3, *supra* note 1, at 18-20.

¹⁰ Item 1, *supra* note 3, at 2.

¹¹ Item 1, *supra* note 3, at 2; Item 3, *supra* note 1, at 32.

¹² Item 5 (Combined Experian, TransUnion, and Equifax Credit Report, dated May 27, 2011); Item 4 (Equifax Credit Report, dated December 7, 2011).

¹³ Item 4, *supra* note 12, at 2.

¹⁴ Item 4, *supra* note 12, at 2.

¹⁵ Item 4, *supra* note 12, at 2.

¹⁶ Item 4, *supra* note 12, at 2.

¹⁷ Item 4, *supra* note 12, at 2.

¹⁸ Item 4, *supra* note 12, at 2.

¹⁹ Item 3, *supra* note 1, at 33-34.

documentation to support his claims. As far as the SOR-accounts are concerned, as of the date of the SOR, the accounts remain unpaid.²⁰

There are no indications that Applicant's financial problems are being resolved or are under control. There is no evidence that Applicant has received any financial counseling regarding money management, debt consolidation, or repayment plans.

Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security emphasizing, "no one has a 'right' to a security clearance."²¹ As Commander in Chief, the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information. The President has authorized the Secretary of Defense or his designee to grant an applicant eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so."²²

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the AG. In addition to brief introductory explanations for each guideline, the AG list potentially disqualifying conditions and mitigating conditions, which are used in evaluating an applicant's eligibility for access to classified information.

An administrative judge need not view the guidelines as inflexible, ironclad rules of law. Instead, acknowledging 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. 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 meaningful decision.

In the decision-making process, facts must be established by "substantial evidence."²³ The Government initially has the burden of producing evidence to establish a potentially disqualifying condition under the Directive, and has the burden of establishing controverted facts alleged in the SOR. Once the Government has produced

²⁰ Item 1, *supra* note 3, at 1-2.

²¹ *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

²² Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.

²³ "Substantial evidence [is] such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all contrary evidence in the record." ISCR Case No. 04-11463 at 2 (App. Bd. Aug. 4, 2006) (citing Directive ¶ E3.1.32.1). "Substantial evidence" is "more than a scintilla but less than a preponderance." *See v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994).

substantial evidence of a disqualifying condition, under Directive ¶ E3.1.15, the applicant has the burden of persuasion to present evidence in refutation, explanation, extenuation or mitigation, sufficient to overcome the doubts raised by the Government's case. The burden of disproving a mitigating condition never shifts to the Government.²⁴

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 as well. It is because of this special relationship that the Government must be able to repose a high degree of trust and confidence in those 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. Furthermore, "security clearance determinations should err, if they must, on the side of denials."²⁵

Clearance decisions must be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned."²⁶ Thus, nothing in this decision should be construed to suggest that I have based this decision, in whole or in part, on any express or implied determination as to Applicant's allegiance, loyalty, or patriotism. It is merely an indication the Applicant has or has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance. 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.

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 overextended is at risk of having to engage in illegal acts to generate funds. . . .

²⁴ See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

²⁵ *Egan*, 484 U.S. at 531

²⁶ See Exec. Or. 10865 § 7.

The guideline notes several conditions that could raise security concerns. Under AG ¶ 19(a), an *“inability or unwillingness to satisfy debts”* is potentially disqualifying. Similarly, under AG ¶ 19(c), *“a history of not meeting financial obligations”* may raise security concerns. Applicant’s financial problems go as far back as 1996, when his delinquent debts, in the amount of about \$22,000 were discharged in a Chapter 7 bankruptcy. Despite being afforded a clean financial slate to begin again financially unencumbered, his financial difficulties resurfaced and remain unresolved. AG ¶¶ 19(a) and 19(c) apply.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Under AG ¶ 20(a), the disqualifying condition may be mitigated where *“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.”* Also, under AG ¶ 20(b), financial security concerns may be mitigated where *“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.”* Evidence that *“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”* is potentially mitigating under AG ¶ 20(c). Similarly, AG ¶ 20(d) applies where the evidence shows *“the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.”*²⁷

AG ¶¶ 20(a), 20(b), 20(c), and 20(d) do not apply. The nature, frequency, and recency of Applicant’s continuing financial difficulties since about 1996 make it difficult to conclude that it occurred “so long ago” or “was so infrequent.” Applicant has offered no evidence that his financial problems were caused by conditions that were largely beyond his control. While he stated in 2011 that he was working on a repayment plan with the IRS, and had resolved one non-SOR account and was working on others, he submitted no documentation to support his claims. Applicant has offered little evidence of a good-faith effort to resolve his delinquent accounts. Furthermore, there is no evidence that Applicant’s financial situation is such that his monthly family income can even support any delinquent debt payments. There is no evidence to indicate Applicant

²⁷ The Appeal Board has previously explained what constitutes a “good-faith” effort to repay overdue creditors or otherwise resolve debts:

In order to qualify for application of [the “good-faith” mitigating condition], an applicant must present evidence showing either a good-faith effort to repay overdue creditors or some other good-faith action aimed at resolving the applicant’s debts. The Directive does not define the term ‘good-faith.’ However, the Board has indicated that the concept of good-faith ‘requires a showing that a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation.’ Accordingly, an applicant must do more than merely show that she or she relied on a legally available option (such as bankruptcy [or statute of limitations]) in order to claim the benefit of [the “good-faith” mitigating condition].

(internal citation and footnote omitted) ISCR Case No. 02-30304 at 3 (App. Bd. Apr. 20, 2004) (quoting ISCR Case No. 99-9020 at 5-6 (App. Bd. June 4, 2001)).

has ever received counseling in money management, debt management, debt repayment, or budgeting. In light of Applicant's substantial period of continuing financial problems, it is unlikely that they will be resolved in the short term, and they are likely to continue. The evidence does not support a conclusion that Applicant acted responsibly under the circumstances. Accordingly, Applicant failed to mitigate his financial situation, and under the circumstances, his actions do cast doubt on his current reliability, trustworthiness, and good judgment.²⁸

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. Moreover, I have evaluated the various aspects of this case in light of the totality of the record evidence and have not merely performed a piecemeal analysis.²⁹

There is some evidence in favor of mitigating Applicant's conduct. He has a good employment history, having served with one employer for 20 years.

The disqualifying evidence under the whole-person concept is more substantial. Applicant encountered substantial financial delinquencies that were discharged in bankruptcy in 1996, but since that time, his financial problems resurfaced. It is unclear why Applicant has encountered continuing financial problems. There is no evidence that he ever sought financial counseling to assist him in addressing those problems. His track record for addressing his delinquent debts is unsatisfactory. Applicant could have made some reasonable timely efforts to resolve some of his SOR accounts, but there is no evidence that he has done so. Applicant's actions indicate poor self-control and a

²⁸ See ISCR Case No. 09-08533 at 3-4 (App. Bd. Oct. 6, 2010).

²⁹ See *U.S. v. Bottone*, 365 F.2d 389, 392 (2d Cir. 1966); See also ISCR Case No. 03-22861 at 2-3 (App. Bd. Jun. 2, 2006).

lack of judgment, which raise questions about his reliability, trustworthiness and ability to protect classified information. See AG ¶ 2(a)(1) through AG ¶ 2(a)(9).

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

ROBERT ROBINSON GALES
Administrative Judge