



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 11-10539

Appearances

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

05/17/2013

Decision

HOWE, Philip S., Administrative Judge:

On May 16, 2011, Applicant submitted his electronic version of the Security Clearance Application (SF 86) (e-QIP). On October 25, 2012, the Department of Defense issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F. 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 on September 1, 2006.

Applicant answered the SOR in writing on November 28, 2012. Applicant admitted the allegations in the SOR. Applicant requested his case be decided on the written record in lieu of a hearing.

On February 18, 2013, Department Counsel submitted the Department's written case. A complete copy of the file of relevant material (FORM) was provided to the

Applicant on February 19, 2013. He was given the opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant received the file on February 26, 2013. Applicant filed a Response to the FORM on March 19, 2013, within the 30 day time allowed that would have expired on March 28, 2013. The Department Counsel had no objection to the Response. I received the case assignment on April 25, 2013. Based upon a review of the complete case file, pleadings, and exhibits, eligibility for access to classified information is denied.

Findings of Fact

Applicant admitted all allegations in the SOR. (Items 3, 4)

Applicant is 43 years old. He is not married. Applicant works for a defense contractor and has for 10 years. He maintains equipment owned by the U.S. government. From 2001 to 2003, Applicant cohabitated with his girlfriend; however their relationship terminated in 2003. Applicant currently resides with another woman and her three children in a rented home in his new state of residence. (Item 5, FORM Response)

During the time Applicant lived with the first woman, she purchased clothing on credit using Applicant's credit card. When the relationship terminated in 2003, Applicant attempted for two years to pay the credit card debts. He employed a debt consolidation company, paying them \$1,000 monthly for a short time in 2005 to attempt to resolve his delinquent debts. Then Applicant decided to file Chapter 7 bankruptcy in May 2005. He discharged about \$80,000 of unsecured debt on August 15, 2005. Applicant did not submit information from his bankruptcy to verify that the debts did result from his girlfriend's purchases. (Items 6-11)

In September 2007 Applicant purchased a home in the state in which he formerly lived. The sale price was \$255,000. His monthly mortgage payments were \$1,800. Applicant intended to improve the home and then sell it. He claims homes in that area were worth about \$350,000. Applicant moved to another state in November 2010 when he transferred with his company. He put the house on the sale market at that time. The housing market in Applicant's former city of residence collapsed and the house allegedly is now worth \$120,000. This house was for sale for \$114,000 because Applicant could not continue to pay the mortgage, and his rent on an apartment in his new state of residence. He sought permission to have a "short sale" of the property to remove this debt from his financial record. As of June 2011 Applicant owed \$251,176.45 on the mortgage. The File contains an October 2011 purchase agreement for Applicant's house in the amount of \$85,000. In October 2012 the house was auctioned for sale at an undisclosed price in the File, though there is a document showing a purchaser paid \$3,800 for the property. (Items 6-11)

Applicant admitted to the government investigator in June 2011 that he never sought nor received credit or financial counseling. His personal financial statement

submitted on September 12, 2012, showed Applicant has \$107 remaining each month as discretionary income from his employment. His statement shows five debts on which he pays \$860 monthly. Applicant also owns a 1999 Chevrolet Corvette worth about \$11,000. (Items 6-11)

Applicant submitted a copy of a letter from his corporate chief executive officer congratulating him on 10 years of service. He also included a copy of a customer satisfaction award he received in October 2012. (FORM Response)

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 are useful 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, the administrative judge applies 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.

According to Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an "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, and has the ultimate burden of persuasion as to obtaining a favorable clearance 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 protect or

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

The guideline at AG ¶ 19 contains nine disqualifying conditions that could raise security concerns. From these nine conditions, two conditions are applicable to the facts found in this case:

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

From 2005 to the present, Applicant accumulated several delinquent credit card debts that were not paid. Those credit card debts totaled about \$80,000. Applicant filed Chapter 7 bankruptcy in 2005 when he thought it would be easier to resolve his debts through that method than pay a debt consolidation company \$1,000 monthly to pay the debts. Applicant also had a house he purchased in 2007 for \$255,000 which he could not afford after he moved. The house went into foreclosure in 2011 and was sold at auction in 2012 for an amount which is not disclosed exactly in the File, though it may have been for \$3,800. Totaling all of his unpaid financial obligations, Applicant did not repay about \$335,000 he borrowed from banks and credit card companies.

The guideline in AG ¶ 20 contains six conditions that could mitigate security concerns arising from financial difficulties. Two mitigating conditions might have partial applicability:

- (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; and

(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.

Applicant filed Chapter 7 bankruptcy seven years ago on \$80,000 worth of credit card debt as he asserted in his government background investigation. These debts allegedly arose from a former girlfriend charging her clothing purchases to credit cards on which Applicant's name appeared. The Chapter 7 bankruptcy was seven years ago. The debts were not infrequent when they accumulated. Bankruptcy is a legally permissible method to resolve delinquent debts. But it also means Applicant did not pay his delinquent debts.

Two years after his bankruptcy discharge Applicant incurred a debt of \$255,000 when he purchased a house with no or little down payment based on his description of the transaction to the government investigator. Applicant could not afford his house and it was sold at auction in 2012 for a minimal amount of money compared to the original purchase price. The mortgage was in foreclosure before the auction sale in 2012. That debt is recent.

Applicant's personal financial statement shows he continues to have debts on which he is currently paying. These debts exceed \$10,000. Applicant's pattern of indebtedness and failure to pay casts doubt on his reliability, trustworthiness, and good judgment. AG ¶ 20(a) does not apply.

AG ¶ 20(b) would apply if the business downturn were shown by Applicant to have a substantial effect on his ability to sell his house before or after his corporate transfer in 2010 and affected his ability to earn an income. Applicant must also show he acted responsibly under the economic circumstances at the time.

Applicant had no control over the housing market in 2009 or 2010. However, before that downturn occurred he purchased a house that was too expensive for him to afford. His personal financial statement shows a current income in September 2012 of about \$84,000, with a net income of about \$50,000. He might have afforded a home valued at \$150,000 to \$200,000 or less on those salaries, based on a standard of a purchase price of 2.5 times his annual income, either gross or net income. He then extended his credit even more by not making a down payment that exceeded 1% of the purchase price based on the information he told the government investigator. Therefore, he was financially overextended.

The final sale price of the home may have been \$3,800 or the contracted sale price in 2011 of \$85,000, but Applicant did not submit a detailed history of the property

sale. He did not disclose how much money, if any, he continues to owe his mortgage lender because the house sold for less than the \$255,000 he paid for it in 2007.

Applicant failed to prove AG ¶ 20(b) applied because he did not submit sufficient evidence that he acted responsibly when he incurred these debts nor in resolving his delinquent debt after 2010 when the mortgage debt accumulated. He failed to meet his burden of proof on that issue.

Furthermore, the downturn in business conditions under this guideline applies to his income producing position, not the general overall national economic environment. For all these reasons, AG ¶ 20(b) does not apply.

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 facts and circumstances surrounding this case. Applicant was an adult when he incurred the debts. He has not taken any good-faith action to resolve his delinquent debts. This inaction leaves him vulnerable to pressure, coercion, exploitation, or duress based on the magnitude of his financial obligation. Applicant displayed a lack of good judgment incurring the debts. Next, he exhibited a continued lack of appropriate judgment by failing to make payments on any of his delinquent debts during the past seven years.

Overall, the record evidence leaves me with questions or substantial doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant did not mitigate the security concerns arising under the guideline for Financial Considerations. I conclude the "whole-person" concept against Applicant.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraph 1.a and 1.b:	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.

PHILIP S. HOWE
Administrative Judge