



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



In the matter of: XXXXXXXXXXXXXXXX Applicant for Security Clearance))))))	ISCR Case No. 11-12835
---	----------------------------	------------------------

Appearances

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

08/20/2013

Decision

HOWE, Philip S., Administrative Judge:

On February 8, 2011, Applicant submitted his electronic Questionnaire for Investigations Processing/Security Clearance Application (e-QIP/SF 86). On February 6, 2013, the Department of Defense (DoD) issued Applicant a Statement of Reasons (SOR) detailing 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 on September 1, 2006.

Applicant acknowledged receipt of the SOR on February 21, 2013. He answered the SOR in writing on March 7, 2013, and requested a hearing before an administrative judge. Defense Office of Hearings and Appeals (DOHA) received the request on or about March 12, 2013. Department Counsel was prepared to proceed on April 30, 2013, and I received the case assignment on May 9, 2013. DOHA issued a Notice of Hearing on June 7, 2013, and I convened the hearing as scheduled on June 24, 2013. The

Government offered Exhibits 1 through 7, which were received without objection. Applicant testified and submitted Exhibits A through M, without objection. Applicant had until July 15, 2013, to submit additional documents concerning his delinquent debts. He did not submit anything. The record closed on July 15, 2013. DOHA received the transcript of the hearing (Tr.) on July 10, 2013. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

Findings of Fact

In his Answer to the SOR, Applicant admitted the factual allegations in ¶¶ 1.b, 1.d, and 1.g of the SOR, with explanations. He denied the factual allegations in ¶¶ 1.a, 1.c, 1.e, 1.f, and 1.h to 1.i of the SOR. He also provided additional information to support his request for eligibility for a security clearance.

Applicant is 51-years old and has seven children, five of whom are adults. The two oldest children were from his first marriage. Applicant is a retired military member who had a security clearance while on active duty. From 2004 to 2008 Applicant worked as a security specialist for the military. He was laid off when the company was bought by another organization. He was unemployed from December 2008 until May 2011, having only his retirement income to support his family. He works now for an insurance company on military veterans policies. A defense contractor is sponsoring him for a security clearance because of a network security position it has available. Applicant may also take a position with another insurance company, for which he would not need a security clearance. He also volunteers at the local Veterans Hospital in various capacities, including as the curator of the local military history museum. (Tr. 19-22, 24, 26, 34, 35; Exhibits 1, 6, A to M)

The SOR lists 12 delinquent debts, totaling \$79,521.90. Some of the delinquencies began in 2008 and continue up to the present day. He admitted owing three delinquent debts enumerated in Subparagraphs 1.b (a telephone bill for \$624), 1.d (a bank debt for \$11,628), and in 1.g (a student loan for \$21,779). They total \$36,393.

Applicant denies the remaining nine delinquent debts totaling \$43,128.90. Those debts include a judgment (Subparagraph 1.a for \$2,986), a cable television debt (Subparagraph 1.c for \$120), a department store debt (Subparagraph 1.e for \$855), a collection debt (Subparagraph 1.f for \$175), a telephone bill (Subparagraph 1.h for \$177), a mortgage loan in foreclosure (Subparagraph 1.i for \$36,745), a city tax (Subparagraph 1.j for \$2,986.34), another tax owed to the same city (Subparagraph 1.k for \$1,246.56), and a homeowners association fee (Subparagraph 1.l for \$200). (Tr. 22-24, 26, 28, 29, 42-46; SOR; Exhibits 2-5, 7)

None of the delinquent debts listed in the SOR are resolved. Applicant claims the \$175 debt is paid (Subparagraph 1.f), but has no documentary proof to show that action. The tax debts resulted from city income tax that Applicant says his former employer paid to the wrong city. He objects to paying the debt because of the employer's mistake. He also feels his city of residence deceived him when a staff

member asked him to sign a blank form he assumed was a power of attorney but was really an amended tax return. The taxes are unpaid. Applicant has not paid the \$2,986 judgment because he asserts he never received a copy of it. He refuses to pay any debt he does not think is legitimate. Applicant also claims he does not have the income to pay any of these debts and that the creditors will not “work with him” to resolve them for less than the full value or allow him to pay on installment payment plans. In addition to his unemployment from February 2009 to May 2011, Applicant was unemployed for nine months after a layoff in 2003. His house mortgage was foreclosed and Applicant moved from that building into an apartment. (Tr. 22-65; Exhibits 2-5, 7)

Applicant submitted 12 character reference letters. All authors of the letters write about the strong moral character, reliability, capability, intelligence, and trustworthiness of Applicant. Several letters acknowledge Applicant was unemployed for three years. (Exhibits A to M)

Applicant has not sought any financial counseling. Nor has he obtained any such advice or guidance to attempt to resolve his debts. (Tr. 79)

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, these guidelines are applied in conjunction with the factors listed in the adjudicative process (AG ¶ 2(a)). 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under 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.

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 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. Three conditions are applicable to the facts found in this case:

(a) inability or unwillingness to satisfy debts;

(c) a history of not meeting financial obligations; and

(g) failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same.

Applicant accumulated \$79,521.90 in delinquent debt from 2008 to the present time that remains unpaid. Applicant has 12 delinquent debts listed in the SOR. They include the two delinquent city income tax debts, which Applicant objects to as unfair.

The guideline in AG ¶ 20 contains six conditions that could mitigate security concerns arising from financial difficulties. Two conditions may be applicable:

(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; 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 has not paid any of the debts enumerated in the SOR. He claims not to have the income for the past three years to repay the debts. His periods of unemployment resulted in reliance on his military retired pay for an income, insufficient to repay the debts. He will only resolve the debts when he has sufficient income to do so. There is no proof from Applicant that he has acted responsibly under the circumstances to resolve his debts. He did not submit any documents to demonstrate his attempts to resolve the debts. Applicant did not dispute any debts in writing, and was unable to submit proof of such action.

Applicant disputes the local income tax debt. He contends his former employer paid the wrong city. Then, his residence city could not or would not obtain the money from the first payee municipality. Applicant testified that the city employees where he lives deceived him and instead of a power of attorney to be used to rectify the situation, it was an amended tax return he signed without reading. Applicant did not submit any documents to show this alleged deception or that the local judge who entered the tax judgment against him acted illegally. There is a presumption of regularity and legality on the actions of the municipal officials that Applicant did not overcome with any credible evidence.

Applicant's reason for justifying a security clearance is his past honorable military service, his good character, and the character references he submitted. None of these explanations are sufficient to overcome his lack of action on his substantial debts.

AG ¶ 20 (b) does not apply because of Applicant's lack of proof that he acted responsibly in attempting to avoid or repay his debts when his income was insufficient to repay them. The same result occurs under AG ¶ 20 (e).

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.

AG ¶ 2(c) requires each case must be judged on its own merits. 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. Applicant incurred debts, which he was financially unable to pay. He did not appear from his statements at the hearing to have made continuous and diligent efforts to resolve the debts in the past few years. Nor did he engage in a dispute process for most of the debts. He claimed he tried to resolve his city income tax debts but was deceived and denied due process by the local taxing authorities. He did not offer any documents to demonstrate his efforts to contest these taxes that he claimed his former employer paid to the incorrect city. Applicant was not persuasive in his presentation about these issues. He failed to meet his burden of proof that any of the mitigating conditions should apply. Applicant did retire from the military after 20 years of honorable service. Since then he has been employed in professional positions.

Overall, the record evidence leaves me with significant questions or 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 from his financial considerations.

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
Subparagraphs 1.a to 1.i:	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