



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



In the matter of:)	
)	
)	ISCR Case No. 12-02414
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Richard Stevens, Esq., Department Counsel
For Applicant: *Pro se*

12/18/2012

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the Government’s security concerns under Guideline F, financial considerations. Applicant’s eligibility for a security clearance is denied.

Statement of the Case

On July 11, 2012, the Defense Office of Hearings and Appeals (DOHA) issued 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 on July 25, 2012, and requested a hearing before an administrative judge. The case was assigned to me on October 18, 2012. DOHA issued a notice of hearing on October 24, 2012. I convened the hearing as scheduled

on November 28, 2012. The Government offered Exhibits (GE) 1 through 5, and they were admitted into evidence without objection. Applicant testified and did not offer any exhibits. DOHA received the hearing transcript (Tr.) on December 6, 2012.

Findings of Fact

Applicant admitted all SOR allegations. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is 47 years old. He is a high school graduate. He joined the Army when he was 17 years old and was honorably discharged when he was 21 years old. He married in 1989. He and his first wife were separated from 2005 until they divorced in February 2007. They have two children ages 21 and 16 from the marriage. Applicant remarried in 2007. He and his wife have a three-year-old daughter.¹

Applicant worked as a police officer for the city from 1991 to 1996, and then from 1996 to 2001 he worked as a state trooper. Applicant's son was diagnosed with autism when he was about three years old. There was minimal treatment available that was covered by their insurance. After a great deal of research, he and his wife found a program for their son. Because the treatment was expensive, Applicant quit the police force and took a more lucrative job with better health insurance. His job entailed training people in foreign countries to be police. Later he worked doing background investigations for people who needed security clearances for their job and other security-related details. He was deployed the majority of his time and became an absentee husband and father. Before leaving on one of his overseas trips his wife handed him a separation agreement. He signed the papers and left. He admitted he did not read them carefully. It provided he pay \$6,000 a month for child support. Applicant also paid to his wife \$1,000 a month to pay their debts. He stated that he eventually paid her \$12,000 total. She did not use the money to pay their debts. The child support payment was reduced in July 2009 to \$1,800 a month. Applicant estimated he spent about \$9,000 in attorney's fee to change the amount of child support. While Applicant was deployed overseas he was able to pay his child support because of his increased earnings. He stated he did not need much money to live on. However, Applicant's pay would fluctuate depending on where he was deployed in the world. He experienced financial difficulties during this time.²

At some point, Applicant's ex-wife moved to a new location with the children. One of the children had difficulty adjusting to the move, and Applicant returned to the United States so the child could live with him. He quit his job and took a lesser-paying job to ensure he would not travel and be home for his son. After his son graduated from high

¹ Tr. 21.

² Tr. 21-30, 49-50.

school, Applicant returned to a job that required him to travel overseas and his income increased.³

Applicant admitted during most of this time, he was making a good living, but began spending his money frivolously. He described his finances as being in a state of disarray. He purchased a luxury car in 2008 that was later repossessed. He began consuming alcohol and became an alcoholic. He has not consumed alcohol for two years.⁴

Applicant remarried in 2007, and his wife stopped working when they had their daughter in 2009. Applicant and his wife are living with her parents. They contribute to the monthly expenses. He is working with a security company, and his gross earnings are \$1,200 a month. His current child support payment is \$342. He believed he is in arrears about \$1,000. They qualify for food stamps and Applicant receives approximately \$389 monthly disability payment from the Veterans Affairs Department.⁵

Applicant has not contacted any of the creditors listed in the SOR because he does not have the money to pay any of them. He owes approximately \$205,000 to 23 creditors. He admitted he squandered his money for a period of time. He stated that during this time he was living his life like it was over. He stated he “went off the deep end.”⁶

Applicant sought financial counseling in 2009 to inquire about filing for bankruptcy. He did not file at that time because he believed he could recover financially. He would like to file for bankruptcy now, but he cannot afford the fees associated with filing. If he could, he would file. He intends to figure out a way to file in the future.⁷

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, which are 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, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge’s overarching

³ Tr. 34-35.

⁴ Tr. 37-39, 42-44.

⁵ Tr. 35-40, 50-51.

⁶ Tr. 40-44.

⁷ Tr. 44-47.

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 applicant or proven by Department Counsel and has the ultimate burden of persuasion to obtain a favorable security 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 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.” 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 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 notes several conditions that could raise security concerns. I have considered all of the disqualifying conditions under AG ¶ 19 and the following two are potentially applicable:

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

Applicant admitted he owes the 23 delinquent debts alleged in the SOR totaling approximately \$205,000. I find there is sufficient evidence to raise the above disqualifying conditions.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. The following 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; and
- (d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant has 23 delinquent debts that he is unable to pay. AG ¶ 20(a) does not apply. Applicant experienced a difficult period in his life when he was deployed most of the time, earning a good salary, but became an absentee father and husband. He signed a settlement agreement with his first wife, which had him provide a substantial amount for child support and a payment for debt reduction. Applicant paid the child support and later had it reduced. He admitted for a period of time he spent a lot of his money frivolously. His divorce and settlement agreement were beyond his control and impacted his finances, but there is minimal evidence that Applicant acted responsibly under the circumstances. I find AG ¶ 20(b) does not apply.

Applicant sought financial counseling in 2009 to determine whether he should file for bankruptcy. He decided he could recover financially and did not pursue it. He has since changed his mind and hopes to file when he has enough money to pay the fees. At this juncture, there is not clear evidence Applicant's financial problems are under control. I find AG ¶ 20(c) nominally applies. Applicant has not made good-faith efforts to pay his creditors or otherwise resolve his debts because he does not have the financial means to do so. AG ¶ 20(d) 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 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.

I considered the potentially disqualifying and mitigating conditions in light of all the 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 is 47 years old. He has served his country in the military and was honorably discharged. He has served his community as a police officer and a state trooper. Applicant left the police force because he needed to earn more money so his son could have the best available treatment for his medical condition. Applicant was able to find employment that paid well, but required he be deployed most of the time. This created a difficult family situation, and he and his first wife divorced. He agreed to pay a large amount of money for child support and to pay some of their bills. He did not feel that this strained his finances at the time because he did not need much to live on. He eventually had the child support payment reduced. He spent a period of time spending money carelessly, which eventually impacted his finances and subsequently his ability to obtain a higher paying job due to the security ramifications of his finances. Applicant's delinquent debts total more than \$205,000. He is unable to pay any of them, and he does not have sufficient funds to file for bankruptcy. I find at this time,

Applicant's finances are a security concern and he has not met his burden of persuasion. 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 the financial considerations guideline.

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.w:	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. Eligibility for access to classified information is denied.

Carol G. Ricciardello
Administrative Judge