



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



In the matter of:)	
)	
)	ISCR Case No. 07-08316
SSN:)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Daniel F. Crowley, Esquire, Department Counsel
For Applicant: Pro Se

April 10, 2008

Decision

HENRY, Mary E., Administrative Judge:

Based upon a review of the case file, pleadings, exhibits, and testimony, I concluded that Applicant's eligibility for access to classified information must be denied.

Applicant submitted his Security Clearance Application (SF 86), on January 12, 2007. On December 20, 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline F for Applicant. 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 revised adjudicative guidelines (AG) promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant acknowledged receipt of the SOR on December 28, 2007. He answered the SOR in writing on January 14, 2008, and requested a hearing before an

Administrative Judge. DOHA received the request in January 2008. Department Counsel was prepared to proceed on January 30, 2008, and I received the case assignment on January 30, 2008. DOHA issued a notice of hearing on February 12, 2008, and I convened the hearing as scheduled on March 6, 2008. The government offered four exhibits (GE) 1 through 4, which were received and admitted into evidence without objection. Applicant testified on his own behalf. He did not submit any exhibits at the hearing. DOHA received the transcript of the hearing (Tr.) on March 14, 2008. I held the record open until March 27, 2008, for Applicant to submit additional matters. On March 27, 2008, he submitted one exhibit (AE A), which is marked and admitted without objection. The record closed on March 27, 2008.

Findings of Fact

In his Answer to the SOR, dated January 14, 2008, Applicant admitted all the factual allegations in ¶ 1 of the SOR, except the allegation in ¶ 1.p, which he denied on the basis it was a duplicate of the allegation in ¶ 1.m of the SOR. He also provided additional information to support his request for eligibility for a security clearance. After discussion at the hearing, Applicant acknowledged that the allegation in ¶ 1.p is not a duplicate of the allegation in ¶ 1.m in the SOR.¹

Applicant is 30 years old and single. He works as a marine machinist for a Department of Defense contractor. He began this job in December 2006. Applicant also operates a landscaping business part-time.²

Applicant graduate from high school in 1997. After graduation, he worked in the restaurant business for one to two years. He then obtained a job as an independent insurance agent, which he worked until 2002. He worked on commission, which led to a federal tax problem, that has been resolved. He did not have health insurance with this job. When he needed medical care, he used a walk-in clinic or the hospital emergency room.³

In 2002, Applicant moved north when a long term relationship ended. He obtained demolition work, which was not steady work. At first, he had difficulty paying his bills, then after some time, he began working full-time. He paid his current bills, but not his past debts. While home for a visit after being laid off in 2005, the police arrested and charged him with driving while intoxicated (DUI). He could not leave the state and return to his job up north. He did not have a car nor other transportation to any job. He got behind in his bills. He eventually returned to his residence in the north, sold as much of his belongings as he could, and returned home. He started working in construction,

¹Applicant's response to SOR at 4; Tr. 46.

²GE 1 (Security clearance application) at 1, 7, 8; Tr. 28, 30, 35.

³GE 2 (Credit report, dated January 26, 2007) at 3; Tr. 18-22.

doing roofing. He then found a low-paying, full-time job, where he worked until he obtained his current job.⁴

Applicant currently lives with his father and drives a car owned by his father. He has not paid rent, but recently started paying his father \$200 a month for rent. His gross monthly income is \$2,132 from his job and \$500 a month from his business. From both jobs, his net monthly income totals about \$2,000. His monthly expenses in addition to his rent total about \$600. He applied for a loan to repay his debt, but his application was denied because of his credit history. He pays his current bills.⁵

Applicant incurred his unpaid debts while working in the insurance business and while he lived up north. The unpaid judgments are from the years 2002 and 2003, and total \$6,128. His remaining unpaid debts primarily related to utility bills, telephone bills, and medical bills, and an approximate total of \$7,380. Applicant has not made any payments on these debts. By letter dated March 27, 2008, he advised that he would be filing a petition for Chapter 7 bankruptcy through his recently hired attorney.⁶

Policies

When evaluating an Applicant's suitability for a security clearance, the administrative judge must consider the revised 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. The administrative judge's over-arching adjudicative goal is a fair, impartial and common sense 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.

⁴Tr. 23-27.

⁵GE 3 (Answers to Financial Interrogatory, dated September 11, 2007) at 3-4; Tr. at 29-33.

⁶GE 2, *supra* note 3; AE A (Letter, dated March 27, 2008); Tr. 18, 37-45.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the Applicant is responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . .” The Applicant has the ultimate burden of persuasion as to obtaining 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 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 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 accumulated delinquent debt, and unpaid judgments over a substantial period of time. These debts have not been paid. The evidence is sufficient to raise these potentially disqualifying conditions, requiring a closer examination.

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." Creditors obtained judgments against Applicant in 2002 and 2003, which have not been paid. He incurred more debts in 2005 and early 2006, which remain unpaid. He has made no effort to pay these debts. This potentially mitigating condition is not applicable.

Under AG ¶ 20(b), it may be mitigating 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." In 2005, Applicant's employer laid him off his job, a factor beyond his control. On a visit home, he received a DUI. He could not leave his home state. He did not work because he did not have transportation. He eventually moved home and started working. He did not use his excess income to pay any of his old outstanding debts, and has not made any effort to resolve the old debts. He does pay his current bills. I find this potentially mitigating condition partially applies in this case.

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." Applicant has not contacted a financial counseling service nor has he resolved any of his delinquent debts, except the tax lien. I conclude these potentially mitigating conditions do not sufficiently apply to mitigate financial concerns. The remaining mitigating conditions, AG ¶¶ 20(e) and 20(f) are not applicable in this case.

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. Applicant's financial problems are long standing. He paid his federal tax lien, but has not made a sufficient effort to resolve his other debts. He did lose his job in 2005, which is the reason for some of his smaller debts. He, however, has worked for the last two years and has not made paid or otherwise resolved his old debts, even the very small debts, despite sufficient net income each month to make some progress on his delinquent debts. The issue in this case is not simply whether all his debts are paid. It is whether his financial circumstances raise concerns about his fitness to hold a security clearance. Applicant's delinquent debts remain unpaid. He has not taken responsibility for most of his unpaid debts. His lack of financial responsibility raises security concerns. (See AG ¶ 2(a)(1).)

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated 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 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:	For Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	Against Applicant
Subparagraph 1.f:	Against Applicant
Subparagraph 1.g:	Against Applicant
Subparagraph 1.h:	Against Applicant
Subparagraph 1.i:	Against Applicant
Subparagraph 1.j:	Against Applicant
Subparagraph 1.k:	Against Applicant
Subparagraph 1.l:	Against Applicant
Subparagraph 1.m:	Against Applicant
Subparagraph 1.n:	Against Applicant
Subparagraph 1.o:	Against Applicant
Subparagraph 1.p:	Against Applicant
Subparagraph 1.q:	Against Applicant
Subparagraph 1.r:	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

MARY E. HENRY
Administrative Judge