



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



In the matter of:)	
)	
-----)	ISCR Case No. 07-05858
SSN: -----)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Jeff A. Nagel, Esquire, Department Counsel
For Applicant: *Pro Se*

June 24, 2008

Decision

ABLARD, Charles D., Administrative Judge:

Applicant failed to mitigate security concerns regarding Guideline F (Financial Considerations). Clearance is denied.

Statement of the Case

On October 6, 2005, Applicant submitted an Electronic Questionnaires for Investigations Processing (e-QIP), also known as Security Clearance Application (SF 86). On October 22, 2007, 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*, dated February 20, 1960, as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended, modified and revised. The SOR alleges security concerns under Guideline F (Financial) of the Adjudicative Guidelines (AG).

The SOR detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant

or continue a security clearance for him, and recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

Applicant responded to the SOR allegations in a sworn statement signed on November 26, 2007, and elected to have his case decided on the written record in lieu of a hearing. One document was attached to the answer.

A complete copy of the file of relevant material (FORM), dated February 4, 2008, was provided to Applicant, and he was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. He provided some additional information which was received by DOHA on April 15, 2008, and admitted without objection. The case was assigned to me on May 9, 2008. Additional information was submitted on June 11 and 19, 2008, and they were admitted without objection. Two documents were credit reports that were already in the record (Exhs. 6 and 8). Two others were receipts for payments made on two debts (SOR ¶¶ 1.c. and d.). The final document concerned payment of \$226 on an account not alleged in the SOR.

Findings of Fact

Applicant admitted in his answer to the SOR seven of the eight allegations in the SOR of financial considerations relating to delinquent debts. After a complete and thorough review of the evidence of record, I make the following findings of fact:

Applicant is a 38-year-old employee of a defense contractor. He has worked there since February 2005 as a security officer. He had a motorcycle accident in April 2003 and sustained injuries resulting in medical expenses and a one-third reduction in salary for the following year before he moved to his present location. Over several years in his former employment and a one-year period of unemployment before obtaining his present job, he incurred debts of approximately \$20,000 and they have become delinquent. He moved from the west coast where he was employed because of the high cost of living and drug crimes near his residence. However, he had difficulty obtaining employment and the expenses they incurred were for moving costs, utilities, a computer, vehicle repossession, rent, and other living expenses.

Applicant is married with one child. Their daughter has a learning disability and requires full attention so his wife does not now work except as a school aide working with their daughter. They are now able to keep up with present financial obligations but not able to resolve the delinquent debts at issue. They do not have a credit card or an automobile. He commutes to work on a borrowed motorcycle. He has a net income of \$2,000 per month and, after expenses, has \$93 remaining (Exh. 5). He was in the Army for approximately six months in 2001.

Financial Considerations

Applicant admits to over \$18,000 of the \$20,000 debts alleged in the SOR. He denies one debt of approximately \$1,200 (SOR 1.f.). He is investigating the status of the debt but did not supply any additional information in the response to the FORM. Two of the remaining delinquent debts have been resolved or is being resolved. The smallest is a utility bill for \$54 which has been paid (Exh. B). He has paid \$100 (Exh. C) on a \$226 garbage bill (SOR ¶ 1. d.) and is making payments. He avers that several other debts have been charged off but does not deny that he owes them. The largest single debt is approximately \$14,000 (SOR ¶ 1.g.) for an automobile repossession that has not been paid.

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.

In the decision-making process, the government has the initial burden of establishing controverted facts alleged in the SOR by "substantial evidence," demonstrating, in accordance with the Directive, that it is not clearly consistent with the national interest to grant or continue an applicant's access to classified information. Once the government has produced substantial evidence of a disqualifying condition, the burden shifts to Applicant to produce evidence "to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel, and [applicant] has the ultimate burden of persuasion as to obtaining a favorable clearance decision." Directive ¶ E3.1.15. The burden of disproving a mitigating condition never shifts to the government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

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* Executive Order 12968 (Aug. 2, 1995), Section 3.

Analysis

Upon consideration of all the facts in evidence, and after application of all appropriate legal precepts, factors, and conditions, including those described briefly above, I conclude that Guideline F provides the standard for resolution of the allegations set forth in the SOR. It states:

Guideline F Financial Considerations

AG ¶ 18 articulates the security concern relating to financial problems:

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.

AG ¶ 19 provides two Financial Considerations Disqualifying Conditions that could raise a security concern and may be disqualifying in this case, “(a) inability or unwillingness to satisfy debts,” and “(c) a history of not meeting financial obligations.”

Applicant’s history of delinquent debt is documented in his credit report (Exh. 6). At least seven of the debts remain unresolved. Only the one for \$226 has been proven to be partially paid in the amount of \$100. The government established the disqualifying conditions in AG ¶¶ 19(a) and 19 (c).

Five Mitigating Conditions (MC) are provided under AG ¶¶ 20(a)-(e) in the Guideline and have been considered:

(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;

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; 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 provided documentation in his answer and his response to the FORM to establish mitigation for two of the debts. However, his statements concerning his intent to make payments to creditors are insufficient because he did not provide any proof that such was being done or his financial ability to do so. While his income appears insufficient to materially resolve the debts, he has not acted responsibly under the circumstances since he has only resolved two of the smallest debts and admits that he has insufficient resources to resolve the others. Thus, AG ¶¶20 (a) and (b) do not apply.

AG ¶¶ 20(c) and 20(d) do not apply because there are no clear indications that the problem is being resolved or is under control, and he did not establish that he acted in good faith to resolve his debts. AG ¶ 20(e) is not applicable to his one disputed debt because he did not provide "documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue."

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) 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.

Applicant did not provide sufficient evidence to mitigate the disqualifying conditions previously discussed through application of the whole person concept. After weighing the disqualifying and mitigating conditions, and all the facts and circumstances, in the context of the whole person, I conclude he has not mitigated the security concerns pertaining to financial considerations. He has made some progress in resolving the smallest debts but currently has substantial unresolved, delinquent debt. While he admittedly does not have sufficient income in his present circumstances to make much progress resolving the delinquent debt, he has not entered debt counseling or taken other steps that would justify applying mitigating conditions.

I take this position based on the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), a careful consideration of the whole person factors and supporting evidence, application of the pertinent factors under the Adjudicative Process, and interpretation of my responsibilities under the Guidelines. Applicant has not mitigated or overcome the government's case. For the reasons stated, I conclude he is not eligible for access to classified information.

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.: For Applicant
Subparagraph 1.e.: Against Applicant
Subparagraph 1.f.: Against Applicant
Subparagraph 1.g.: Against Applicant
Subparagraph 1.h.: Against Applicant

Conclusion

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue eligibility for a security clearance for Applicant. Clearance is denied.

Charles D. Ablard
Administrative Judge