



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



In the matter of:)	
)	
)	ISCR Case No. 07-09246
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Nichole Noel, Esq., Department Counsel
For Applicant: *Pro Se*

August 26, 2008

Decision

LOUGHRAN, Edward W., Administrative Judge:

Applicant failed to mitigate the security concerns raised by his financial issues. Eligibility for access to classified information is denied.

On May 22, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant, detailing the 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 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 answered the SOR in writing on June 19, 2008, and requested a hearing before an Administrative Judge. The case was assigned to me on July 16, 2008. DOHA issued a notice of hearing on July 17, 2008. I convened the hearing as scheduled on August 14, 2008. The Government offered Exhibits (GE) 1 through 6,

which were received without objection. Applicant testified on his own behalf and submitted Exhibits (AE) A through O, which were received without objection. DOHA received the transcript of the hearing (Tr.) on August 21, 2008.

Findings of Fact

Applicant is a 36-year-old employee of a defense contractor. He has worked for his current employer since about April 2006. He served in the U.S. Army on active duty from 1991 to 1998. He received numerous awards and citations while serving in the Army and was honorably discharged. Applicant has had many health issues since he was discharged which were related to his military service. He is rated at 60% disabled and receives about \$1,100 per month for his disability. Applicant has a Bachelor of Science degree. He is divorced. He reconciled with his ex-wife after the divorce. They live together but have not remarried. They have three children, ages 14, 8, and 18 months.¹

Applicant filed Chapter 13 bankruptcy in November 1997. Schedule D, Creditors Holding Secured Claims listed two debts totaling \$9,163. Schedule F, Creditors Holding Unsecured Nonpriority Claims listed 15 debts totaling about \$12,919. The bankruptcy was dismissed for default in plan payments on November 9, 2000.²

Applicant attributed his financial difficulties that led to his bankruptcy in 1997 to being “[y]oung and dumb.” He was stationed overseas and he and his wife ran up large telephone bills communicating with each other. The 1997 bankruptcy petition also lists six accounts for checks returned for nonsufficient funds plus service charges.³

Applicant worked for the same company from 2001 through 2006, and his finances stabilized. He accepted his current job in April 2006. He makes less money at this job and has not received the overtime that he expected would make up the shortfall. When he realized this, he attempted to get his old job back but the company had already filled the position. His ex-wife also became pregnant about this time. He re-financed the mortgage on his house in 2006.⁴ He indicated that he did not receive what he thought he was bargaining for:

In 2006 I also re-financed our home. I was told that our pool would be paid for, our automobiles were to be paid off, as well as our credit cards, and we were to get \$5,000 cash. Our payment was to go up less than \$300.00 per month in return. After I signed the papers, we only had the pool and

¹ Tr. at 12, 20-27, 38; GE 1; AE D-O.

² Applicant's response to SOR; GE 2, 4.

³ Tr. at 35-36; GE 2.

⁴ Tr. at 27-30, 32-35; GE 1; AE F.

credit cards paid for, and we still had the almost \$900.00 per month in automobile payments going out.⁵

Applicant filed Chapter 13 bankruptcy again on November 6, 2007. The plan called for Applicant to pay the \$9,871 in arrears on his mortgage; \$17,137 on the secured claims for his two cars; and \$8,292 on his unsecured debts. He was to pay \$700 per month for 60 months and also contribute his 2007 and 2008 tax refunds. He made about three or four payments on the plan and then stopped paying in about January or February 2008.⁶

The SOR lists 13 delinquent debts. With the exception of SOR ¶ 1.h, Applicant either admitted to owing the debts or admitted the debts were part of his Chapter 13 bankruptcy. The medical debts in the SOR are unrelated to Applicant's claims against the Department of Veterans Affairs (VA). SOR ¶ 1.h alleges that Applicant's mortgage was past due in the amount of \$211,000 as of April 22, 2008. The credit report of April 22, 2008, does not state that he was past due \$211,000. It states that he owed \$211,000 and \$15,505 was past due. He testified that he is about seven or eight months behind on his mortgage. Similarly, SOR ¶ 1.i alleges that Applicant's auto loan was past due in the amount of \$13,113. The credit report of April 22, 2008 states he owed \$13,113 on the loan and it was past due in the amount of \$4,381.⁷

The transmission in Applicant's car broke earlier in this year. He testified that it would have cost \$3,000 or \$4,000 to fix the transmission. Instead he used his income tax refund as a down payment to buy another car. He would like to convert the Chapter 13 bankruptcy into a Chapter 7. He is not able to do that at this time.⁸ As stated by his bankruptcy attorney:

Because the chapter 7 trustee would be entitled to your tax refund if we converted your case from chapter 13 to 7, we will not be able to convert your case to a chapter 7 unless you are able to pay to the chapter 7 trustee, in a short period of time, an amount that equaled your tax refund. If not, you should allow your chapter 13 to be dismissed and file a chapter 7 later.⁹

Applicant hopes to file a Chapter 7 bankruptcy but has not yet done so. He has made no payments on his mortgage or delinquent debts since the last payment to the Chapter 13 plan. He has received financial counseling pursuant to his bankruptcy. He is

⁵ AE F.

⁶ Tr. at 14, 30-32, 36; GE 1; AE F, G.

⁷ Tr. at 32-33, 36-39; Applicant's response to SOR; AE F, G.

⁸ Tr. at 14, 30-31, 46-47; GE 1; AE F, G.

⁹ AE C.

looking into a side business of building wooden furniture, which could give him additional income and options.¹⁰

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 to be 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, Administrative Judges apply the guidelines 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.

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 the 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.

¹⁰ Tr. at 29-30, 37, 39, 44-45; AE A, B.

Section 7 of Executive Order 10865 provides that adverse 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. Two are potentially applicable in this case:

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

Applicant accumulated a number of delinquent debts and was unable to pay his obligations for a period of time. The evidence is sufficient to raise both of these potentially disqualifying conditions.

Five Financial Considerations Mitigating Conditions under AG ¶¶ 20(a)-(e) 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;

(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 still owes the debts alleged in the SOR. AG ¶ 20(a) is not applicable. He attributed the financial difficulties that led to his bankruptcy in 1997, to being “[y]oung and dumb.” His finances stabilized for a period and then worsened when he accepted a job for less pay, refinanced his house, and his ex-wife became pregnant. Those were not conditions that were largely beyond his control. To be fully applicable, AG ¶ 20(b) also requires that the individual act responsibly under the circumstances. Applicant used his income tax refund as a down payment on a car. He has not paid his mortgage in many months and has made no payments outside the bankruptcy plan. I am unable to find that Applicant acted responsibly under the circumstances. AG ¶ 20(b) is not applicable.

Applicant has received financial counseling but his financial problems are not resolved or under control. AG ¶¶ 20(c) is partially applicable. The three or four payments to the bankruptcy plan are insufficient to qualify as a good-faith effort to repay overdue creditors. He may file a Chapter 7 bankruptcy in the future, but his debts currently remain unresolved. He has not disputed any of the debts. AG ¶¶ 20(d) and (e) are not applicable.

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 common sense judgment based upon careful consideration of the guidelines and the whole person concept.

