



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



In the matter of:)	
)	
-----)	ISCR Case No. 07-02262
SSN: -----)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Jennifer I. Goldstein, Esquire, Department Counsel

For Applicant: *Pro se*

January 31, 2008

DECISION

ROSS, Wilford H., Administrative Judge:

Applicant submitted his Security Clearance Application (SF 86), on September 14, 2005 (Government Exhibit 1). On June 8, 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline F concerning the 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 President Bush on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant submitted an Answer to the SOR on July 2, 2007, and requested a hearing before an Administrative Judge. Department Counsel was prepared to proceed on August 6, 2007. The case was assigned to another Administrative Judge on August 22, 2007. I received the case assignment on August 27, 2007. DOHA issued a notice of hearing on September 10, 2007, and I convened the hearing as scheduled on

September 26, 2007. The Government offered Government Exhibits 1 through 6, which were received without objection. Applicant testified on his own behalf and submitted Applicant's Exhibits A through D, without objection. DOHA received the transcript of the hearing on October 5, 2007. I granted Applicant's request to keep the record open until October 10, 2007, to submit additional matters. On October 10, 2007, he submitted Applicant's Exhibits E through J, without objection. The record closed on October 10, 2007. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

Findings of Fact

The Applicant is 61, married and has a Bachelor of Science degree. He is employed by a defense contractor as a Deputy Manager and seeks to obtain a security clearance in connection with his employment.

Guideline F, Financial Considerations

The Applicant submits that the majority of his financial problems began when he was laid off by his employer in 2001. As a result of this layoff, the Applicant decided to invest in a business franchise in November 2001. The business never took off and, in December 2004, the business was closed down. The Applicant invested his life savings in this franchise, and his total loss was between \$500,000 and \$800,000. (Transcript at 39-42.) In March 2005 the Applicant was re-employed by current employer and has been employed with them since that time.

As will be discussed in more detail below, the Applicant is attempting to pay off his delinquent debts one by one as he can. His intention is to pay all of his past due indebtedness while staying current with his other debts. (Transcript at 26-27.)

1.a. The Applicant admits that he is indebted to Citi in the amount of at least \$15,357.00 as of the date of the hearing. This was a personal credit card that was used for the business. The Applicant has made no payments on this debt and has no current intention to make payments on this debt. (Government Exhibit 2 at 2; Transcript at 23-28.)

1.b. The Applicant admits, and the available evidence indicates, that he has three different credit card accounts with Bank of America. (Government Exhibit 2 at 3.) All have been sold to different collection agencies. Two are discussed under subparagraphs 1.e. and 1.f., below. The Applicant negotiated a settlement on the third account. He has been making payments of \$305.00 a month since December 2006. As of September 2007 the balance had been reduced from \$9,685.03 to \$8,186.30. At the current rate of payment, it will take approximately two years for the Applicant to pay this debt off. (Applicant's Exhibits A and F; Transcript at 28-32.)

1.c. The Applicant admits that he is indebted to Palisades / Bank One Chase in an original amount of \$11,886.64. He made a payment arrangement in November

2006 with the law firm handling the case for the creditor. After an initial payment of \$966.66, he has been paying \$535.96 every month for this debt. As of August 2007 the balance has been reduced to \$9,889.55. At the current rate of payment, it will take approximately two years for the Applicant to pay this debt off. (Applicant's Exhibits B and E; Transcript at 32-36.)

1.d. The Applicant admits that he is indebted to Citi in the amount of at least \$13,812.00 as of the date of the hearing. This was a personal credit card that was used for the business. The Applicant has made no payments on this debt and has no current intention to make payments on this debt. (Government Exhibit 2 at 1; Transcript at 36-37.)

1.e. This is one of the three Bank of America debts incurred by the Applicant. This debt was paid by settlement by the Applicant in April 2007. (Applicant's Exhibit C; Transcript at 37-38.) This subparagraph is found for the Applicant.

1.f. This is one of the three Bank of America debts incurred by the Applicant. He has made arrangements with a successor bank in interest. The debt has been reduced from \$9,750.65 to \$5,000.00. As of September 2007, the Applicant was current on this account and reduced the debt to \$4,355.48. He hopes to pay \$150.00 a month towards this account. At the current rate of payment, it will take over two years for the Applicant to pay this debt off. (Applicant's Exhibit H; Transcript at 43-46.)

1.g. The Applicant made a payment arrangement with this creditor, who was a successor in interest to Sears. He began making payments in September 2006 and completed making payments in April 2007. (Applicant's Exhibit G; Transcript at 46-47.) This subparagraph is found for the Applicant.

1.h. The Applicant's stepson made a \$20,000.00 gift to his father to enable the Applicant to pay off the franchise fees on his business and close it down. The stepson provided a statement saying that he gave this money to his father as a gift, though the Applicant views it as a loan. (Applicant's Exhibit I; Transcript at 42-43.) This subparagraph is found for the Applicant as the understanding of the alleged creditor is that the money is a gift and not a loan.

The records indicate that, in addition to the past due debts discussed above, which total \$51,600.33, the Applicant has 14 other credit cards or debts that were in a current status as of April 2007. He usually pays the minimum amount due on these debts. These debts totaled \$38,508.00 as of April 2007. His total indebtedness is approximately \$90,108.33. (Government Exhibit 6 at 15-16; Transcript at 57-62.)

Mitigation

The Applicant submitted documentary evidence showing that he is a highly respected person and employee. He is described as a person who always displays "a high degree of integrity, responsibility, and dedication to duty." Several of the

correspondents state that the Applicant is a person of high ethical standards. (Applicant's Exhibit D.)

Policies

Security clearance decisions are not made in a vacuum. 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. In addition, the Administrative Judge may also rely on his own common sense, as well as his knowledge of the law, human nature, and the ways of the world, in making a reasoned 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 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. Security clearance decisions include, by necessity, consideration of the possible risk that 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.

Finally, as emphasized by President Eisenhower in Section 7 of Executive Order 10865, “Any determination under this order . . . shall be a determination 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. The Applicant has over \$50,000.00 in past due debts, which have been due and owing for several years. 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.” Applicant’s financial difficulties arose primarily between about 2001 and 2004. However, it took him until 2006 to begin to pay off any of the past due indebtedness. This mitigating condition is not applicable to this case.

AG ¶ 20(b) states that the disqualifying conditions may be mitigated where “the conditions that resulted in the financial problem were largely beyond the person’s control (e.g., loss of employment, a business downturn . . .), and the individual acted responsibly under the circumstances.” The Applicant was laid off from his job. As a result, he attempted a new career and invested in a franchise operation. The business failed. The Applicant, in addition to losing his investment, used credit cards to make business purchases. Three years after the business has closed, there are two creditors who the Applicant has made no payments to at all. The other creditors are being paid very slowly. I cannot find, under these particular circumstances, that the Applicant has acted responsibly under the circumstances.

The Applicant has initiated a good-faith effort to pay off some of his creditors. Accordingly, AG ¶ 20(d) is arguably applicable. However, given the fact that he is \$90,000 in debt, I cannot find that “there are clear indications that the problem is being resolved or is under control,” as required by AG ¶ 20(c).

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.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. The Applicant is a hard-working, highly respected, professional person who has had some tough times. However, by his own admission, the Applicant made some poor business decisions during the time he was laid off. He has begun to make payments on some of his past due debts, but he is at least two years away from being current on all of his debts.

Of course, the issue is not simply whether all the Applicant’s debts are paid - it is whether his financial circumstances raise concerns about his fitness to hold a security clearance. Under AG ¶ 2(a)(3), this conduct is recent. Given the Applicant’s overall debt load, I am not convinced that he has a proper understanding of how he got in these circumstances. Accordingly, I cannot find that there have been permanent behavioral changes under AG ¶ 2(a)(6). Accordingly, at the present time, I cannot find that there is little to no potential for pressure, coercion, exploitation, or duress (AG ¶2(a)8)), or that the likelihood of recurrence is close to nil (AG ¶2(a)9)).

Overall, the record evidence leaves me with questions and/or doubts as to Applicant’s eligibility and suitability for a security clearance. For all these reasons, I conclude the Applicant has not mitigated the security concerns arising from his financial considerations.

On balance, it is concluded that the Applicant has not successfully overcome the Government’s case opposing his request for a DoD security clearance. Accordingly, the evidence supports a finding against the Applicant as to the factual and conclusionary allegations expressed in Paragraph 1 of the Government’s Statement of Reasons.

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 THE APPLICANT
Subparagraph 1.a:	Against the Applicant
Subparagraph 1.b:	Against the Applicant
Subparagraph 1.c.:	Against the Applicant
Subparagraph 1.d:	Against the Applicant
Subparagraph 1.e:	For the Applicant
Subparagraph 1.f:	Against the Applicant
Subparagraph 1.g:	For the Applicant
Subparagraph 1.h:	For the 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.

WILFORD H. ROSS
Administrative Judge