



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 07-00250
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Candace Le'i, Esquire, Department Counsel

For Applicant: *Pro Se*

May 29, 2008

DECISION

ROSS, Wilford H., Administrative Judge:

Applicant submitted his Security Clearance Application (SF 86), on December 8, 2003 (Government Exhibit 1). On August 13, 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 Answers to the SOR on September 11, 2007, and November 16, 2007, and requested a hearing before an Administrative Judge. Department Counsel was prepared to proceed on January 13, 2008. I received the case assignment on January 25, 2008. DOHA issued a notice of hearing on February 6, 2008, and I convened the hearing as scheduled on March 4, 2008. The Government

offered Government Exhibits 1 through 10, which were received without objection. Applicant testified on his own behalf, called one witness, and submitted Applicant's Exhibits A and B, without objection. DOHA received the transcript of the hearing on March 14, 2008. The record closed on that date. 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 29, divorced and has a high school diploma. He has one child with his ex-wife, and another child with his current girlfriend. He is employed by a defense contractor as a Refurbisher and seeks to retain a security clearance in connection with his employment.

Guideline F, Financial Considerations

The Applicant admits all of the allegations in the SOR. The Applicant submits that the majority of his financial problems began when he was a young man serving in the military. However, the Applicant also admits that he has recently spent a considerable amount of money helping the mother of his second child with expenses. The mother is in the military and is deploying overseas along with her now one year old child. (Transcript at 41-43.) The Applicant also stated that, with the exception of the creditor in subparagraph 1.g., he has not been in contact with any of his creditors since 2006. (Transcript at 31-33.)

On February 27, 2008, the Applicant signed an agreement with a Consumer Credit Counseling Service (Service) to repay all of his past due indebtedness. (Applicant's Exhibit A.) As of the date of the hearing he had not completed all the requirements to begin the program and had made no payments to the Service as of the date of the hearing. The Service estimates that the Applicant will repay all of his past due indebtedness under their plan by 2012. (Transcript at 43-52; Applicant's Exhibit A at 4.)

1.a. The Applicant admits that he is indebted to Wells Fargo Bank in the amount of at least \$7,652.00. This was the remaining debt for an automobile that was repossessed. The Applicant has made no payments on this debt and has no current intention to make payments on this debt. If he fulfills his agreement with the Service, this debt is due to be paid off in 2012. (Government Exhibit 6 at 3; Applicant's Exhibit A at 4; Transcript at 27.)

1.b. The Applicant admits that he is indebted to a collection agency on an account placed for collection by Zales in the amount of \$748.00. The Applicant has made no payments on this debt and has no current intention to make payments on this debt. If he fulfills his agreement with the Service, this debt is due to be paid off in 2011. (Government Exhibits 3 at 7, and 6 at 4; Applicant's Exhibit A at 4; Transcript at 29.)

1.c. The Applicant admits that he is indebted to Portfolio on an account placed for collection by Sears in the amount of \$2,621.00. The Applicant has made no payments on this debt and has no current intention to make payments on this debt. If he fulfills his agreement with the Service, this debt is due to be paid off in 2011. (Government Exhibits 3 at 1, and 6 at 3; Applicant's Exhibit A at 4.)

1.d. The Applicant admits that he is indebted to WFNNB on an account placed by a jeweler in the amount of at least \$467.00. The Applicant has made no payments on this debt and has no current intention to make payments on this debt. This debt is not included in his agreement with the Service. (Government Exhibits 3 at 6, and 6 at 4.)

1.e. The Applicant admits that he is indebted to Household Bank in the amount of at least \$1,009.00. The Applicant has made no payments on this debt and has no current intention to make payments on this debt. This debt is not included in his agreement with the Service. (Government Exhibits 3 at 4, and 6 at 2.)

1.f. The Applicant admits that he is indebted to Glopayrec, the successor in interest to Check Rite, in the amount of \$50.00 for an insufficient funds check. The Applicant has made no payments on this debt and has no current intention to make payments on this debt. If he fulfills his agreement with the Service, this debt was due to be paid off in March 2008. As stated earlier, the Applicant has made no payments to the Service. (Government Exhibits 2 at 3; Applicant's Exhibit A at 4; Transcript at 29.)

1.g. The Applicant admits that he is indebted to a law firm in the amount of at least \$27.00 for an insufficient funds check. The Applicant has made no payments on this debt and has no current intention to make payments on this debt. This debt is not included in his agreement with the Service. The Applicant contacted this creditor in 2006. (Government Exhibit 6 at 3; Transcript at 29, 31-33.)

1.h. The Applicant admits that he is indebted to a collection agency in the amount of at least \$460.00. The Applicant has made no payments on this debt and has no current intention to make payments on this debt. This debt is not included in his agreement with the Service. (Government Exhibits 3 at 2, and 6 at 2; Transcript at 29-31.)

1.i. The Applicant admits that he is indebted to Midland on an account placed for collection by a telephone company in the amount of \$1,863.00. The Applicant has made no payments on this debt and has no current intention to make payments on this debt. If he fulfills his agreement with the Service, this debt is due to be paid off in 2011. (Government Exhibits 8 at 3; Applicant's Exhibit A at 4; Transcript at 34.)

1.j. The Applicant admits that he is indebted to a collection agency in the amount of at least \$9,249.00. This was the remaining debt for an automobile that was repossessed. The Applicant has made no payments on this debt and has no current intention to make payments on this debt. If he fulfills his agreement with the Service,

this debt is due to be paid off in 2012. (Government Exhibit 6 at 6; Applicant's Exhibit A at 4; Transcript at 27.)

1.k. The Applicant admits that he is indebted to Verizon in the amount of at least \$178.00. The Applicant has made no payments on this debt and has no current intention to make payments on this debt. This debt is not included in his agreement with the Service. (Government Exhibit 6 at 6; Transcript at 34.)

1.l. The Applicant admits that he is indebted to a collection agency in the amount of at least \$149.00, for medical services. The Applicant has made no payments on this debt and has no current intention to make payments on this debt. This debt is not included in his agreement with the Service. (Government Exhibit 6 at 5; Transcript at 34-35.)

1.m. The Applicant admits that he is indebted to a collection agency in the amount of at least \$77.00 for an insufficient funds check. The Applicant has made no payments on this debt and has no current intention to make payments on this debt. If he had fulfilled his agreement with the Service, this debt was due to be paid off in May 2008. (Government Exhibit 6 at 5; Applicant's Exhibit A at 4; Transcript at 35-36.)

1.n. The Applicant admits that he is indebted to a collection agency in the amount of at least \$466.00. The Applicant has made no payments on this debt and has no current intention to make payments on this debt. This debt is not included in his agreement with the Service. (Government Exhibit 6 at 5; Transcript at 37.)

1.o. The Applicant admits that he is paying back child support for the child he had with his ex-wife. As of the date of the SOR, the amount of this debt was \$3,301.00. In March 2007, the Internal Revenue Service applied his tax refund of \$1,050.00 to part of this debt. The Applicant was not clear as to what his current indebtedness was. He is currently having his child support obligation taken directly out of his paycheck. (Government Exhibit 6 at 6, 9; Applicant's Exhibit B; Transcript at 38-39.)

1.p. The Applicant admits that a judgment was entered against him for a repossessed automobile in 2007. The amount of the judgment was \$4,980.00. His pay is being garnished to pay this judgment. The Applicant was not clear as to what his current indebtedness was. (Government Exhibit 7 at 1; Applicant's Exhibit B; Transcript at 27.)

The records indicate that the past due debts discussed above total \$25,016.00. This excludes subparagraphs 1.o. and 1.p. The current totals of these two debts is unknown. The Service estimates his indebtedness, including debts that were not included in the SOR, at \$30,327.00, excluding the same two debts. (Applicant's Exhibit A at 4; Transcript at 44-45.)

Mitigation

The Applicant's supervisor testified. He described the Applicant as a person who is of good character. The witness did not believe the Applicant to be any kind of a security risk. (Transcript at 61-71.)

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 \$25,000.00 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, the Applicant made no attempt to even begin to try to pay these debts voluntarily until just before the hearing. This mitigating condition is not applicable to this case.

The Applicant has barely begun any efforts to use the Service to resolve his indebtedness. As of the date of the hearing, he had not even completed compiling the paper work the Service needs to do their job. Under the particular facts of this case, I cannot find that the Applicant has initiated a good-faith effort to pay off his creditors. Accordingly, AG ¶20(d) is 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) 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 made poor decisions concerning his debts. Just as an example, one of the Applicant's debts is for \$27.00. This debt has been owing for five years. Even after receiving the SOR, the Applicant has made no attempt to pay this very small debt.

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 complete failure to begin to resolve these debts until just days before the hearing, 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

Subparagraphs 1.a. through 1.p.: Against 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