



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



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| In the matter of: |) | |
| |) | |
| SSN: |) | ISCR Case No. 07-00693 |
| |) | |
| Applicant for Security Clearance |) | |

Appearances

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

For Applicant: *Pro se*

April 30, 2008

Decision

ROSS, Wilford H., Administrative Judge:

Applicant submitted his Electronic Questionnaires for Investigations Processing (e-QIP), on February 14, 2006 (Government Exhibit 1). On October 3, 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 filed an Answer to the SOR on October 26, 2007, and requested a hearing before an Administrative Judge. Department Counsel was prepared to proceed on January 7, 2008. I received the case assignment on January 9, 2008. DOHA issued a notice of hearing on January 15, 2008, and I convened the hearing as scheduled on February 21, 2008. The government offered Government Exhibits 1 through 4, which

were received without objection. Applicant testified on his own behalf and submitted Applicant's Exhibits A through E, without objection. I granted Applicant's request to keep the record open until February 29, 2008, to submit additional matters. On February 25, 2008, he submitted Applicant's Exhibit F, without objection. DOHA received the transcript of the hearing on February 29, 2008. The record closed on February 29, 2008. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

Findings of Fact

The Applicant is 39, single and has a Bachelor of Science degree. He is employed by a defense contractor as a network security manager and seeks to retain a security clearance previously granted in connection with his employment.

Guideline F, Financial Considerations

Subparagraphs 1.a. and 1.b. These two debts are actually part of the same debt to the same financial institution (Credit Union). The Applicant has been in a years long dispute with the Credit Union, and it's successor collection agencies, about the validity and amount of this debt. He has also attempted to settle this debt over the years.

The Applicant bought an automobile from the Credit Union in 1996. The original loan amount was \$19,000.00. The car had many problems and for two years the Applicant attempted to fix them. In 1998 he got in a dispute with the Credit Union concerning their reimbursing him for auto repairs he states were authorized by them. He refused to pay any more on the loan for the car until he was reimbursed, and the car was eventually repossessed, also in 1998. When the car was repossessed the Applicant still owed about \$15,000.00. (Transcript at 27-43.)

Since that time the Applicant has repeatedly attempted to reach a resolution with either the Credit Union or its collection agencies. The Applicant spoke at great length about his problems with how the Credit Union and the collection agencies have handled his account. He submitted written evidence confirming that, on several occasions, he has made reasonable offers to resolve this situation. His most recent written offer was made on February 6, 2007. He last spoke with the financial institution about this debt about two weeks before the hearing. The Applicant is willing to resolve this dispute, and has the money to do so, but no one will work with him to resolve the situation. (Government Exhibit 2 at 2-6; Applicant's Exhibit F at 3-8; Transcript at 50-55, 76-83, 90-98.)

Subparagraph 1.c. The Applicant has consistently denied that he has ever had an account with Bank One, or that he owes any money to this creditor. Once again, the Applicant thoroughly documented his attempts since at least 2004 to resolve this

situation. (Government Exhibit 2 at 7-8; Applicant's Exhibits A, B and F at 10-12; Transcript at 43-49, 56-70.)¹

Mitigation

The Applicant submitted evidence showing that on at least one occasion his identity has been confused with someone else's concerning other debts. (Government Exhibit 2 at 13-14; Transcript at 49-50, 66-70.)

The Applicant is a member of the Reserves, as well as working for a Defense contractor. He submitted documentation from his Armed Service showing that he is a respected non-commissioned officer who is considered to have great potential. (Applicant's Exhibits C, D and E.)

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.

¹There are three credit reports in evidence. Both debts in the SOR are referenced in Government Exhibit 4, dated March 10, 2006. The Applicant disputed the Credit Union account and it was removed from his credit file, as shown in Applicant's Exhibit A, dated September 30, 2006; and Government Exhibit 3, dated December 11, 2007. The Bank One debt does appear in Applicant's Exhibit A, but not in Government Exhibit 3.

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 admits that he owed the debts set forth in SOR subparagraphs 1.a. and 1.b. In addition, there is some documentary evidence showing that he may owe the debt in subparagraph 1.c. 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.” Almost ten years ago, the Applicant got into a reasonable dispute with the Credit Union, a dispute he has been totally unable to resolve, despite his best efforts. I find the behavior occurred under such unusual circumstances that it is unlikely to recur, and it does not raise concerns about her current reliability, trustworthiness, or good judgment. The evidence raises this potentially mitigating condition.

Evidence that “the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts” is also mitigating under ¶ 20(d). The Applicant never denied he owed the Credit Union some amount of money. To the best of his ability over several years he attempted to resolve this situation without success. With regards to Bank One, he has consistently denied having an account with them or owing them money, and thoroughly documented his disputes about that debt. I conclude these potentially mitigating conditions apply.

Finally, ¶ 20(e) states that it may be mitigating where “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.” As set forth at length above, the Applicant has a legitimate dispute with both creditors. He has thoroughly documented his efforts to resolve these debts. This mitigating condition clearly applies to the facts of 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) 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 has a good credit history, with the exception of the debts of concern here. He has legitimate disputes with these creditors, and has behaved reasonably and appropriately in trying to resolve

