



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 06-23606
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Allison O’Connell, Esquire, Department Counsel
For Applicant: *Pro Se*

January 16, 2008

Decision

BRAEMAN, Kathryn M., Administrative Judge:

The Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to the Applicant on May 2, 2007. The SOR detailed reasons why the Government could not make the preliminary positive finding that it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant.¹ The SOR alleged specific concerns over Financial Considerations (Guideline F) in paragraph 1 based on the revised Adjudicative Guidelines² issued on December 29, 2005, and implemented by the Department of Defense, to be effective September 1, 2006. Applicant responded to these SOR allegations in a notarized Answer of June 6, 2007 (Item 4), a supplemental answer of July 18, 2007 (Item 5), and a supplemental answer of August 27, 2007 (Item 6). In his answers he admitted some of the allegations, denied some, and requested a decision on the written record.

¹ This procedure is required by Executive Order 10865, as amended, and Department of Defense Directive 5220.6, dated January 2, 1992 (Directive), as amended and revised.

² A copy of the revised Adjudicative Guidelines was sent with his Statement of Reasons (SOR).

Department Counsel on October 2, 2007, prepared a File of Relevant Material (FORM). The FORM sent to Applicant on October 4, 2007, detailed the Government's evidence and his right to respond. After he received the FORM on October 11, 2007, he provided a response on October 29, 2007, (Exhibit A), which was within the 30-day time limit specified. Exhibit A, his evidence, was forwarded on November 2, 2007 to Department Counsel who did not object to my consideration of it. The case was assigned to me on November 9, 2007. Applicant's response to the FORM (Exhibit A), requested assignment of court appointed legal counsel; however, the Directive does not provide for such appointments. He did have a right to a hearing before an administrative judge; however, he waived that right and requested a decision on the written record.

Findings of Fact

After a complete and thorough review of the evidence in the record, and upon due consideration of that evidence, I make the following Findings of Fact:

Applicant is 28 years old and has worked as a mechanical engineer for a defense contractor from August 2005 to present. Applicant completed an Electronic Questionnaires for Investigative Processing (e-QIP) to obtain a security clearance in September 2005. (Item 7)

Applicant was a student from July 1997 to June 2004. He received his Bachelor of Science and Master of Science degrees in September 2005. (Item 7) He was unemployed for several months around September 2005. He was previously employed at his university from January 2002 to September 2003 in the Civil Engineering Department, and from September 2003 to June 2005 in the Aerospace Department.

Applicant has not married and currently has no one financially dependent on him. He became a naturalized U.S. citizen in September 1996. He has not served in the U.S. military, but did register with the U.S. Selective Service System. (Item 7)

Finances

Applicant disclosed on his e-QIP that he was over 180 days delinquent on debt(s) and also over 90 days delinquent of debt(s) in the last seven years. He listed seven creditors: (1) phone bill for \$710 from 2004; (2) credit card debt of \$2,566 since April 2004; (3) credit card debt of \$1,971 from 2004; (4) credit card debt of \$5,517 from 2003; (5) credit card debt of \$3,524 since 2003; (6) credit card debt of \$2,834 from 2003; and (7) credit card debt of \$1,618 since 2003. Credit Reports confirmed Applicant had ongoing issues of delinquent debt. (Items 9, 10, 11)

In response to a Financial Interrogatory sent to him, Applicant admitted constant financial problems despite a monthly net income of \$3,230, expenses of \$1,140, and a net monthly remainder of \$1,557. He acknowledged almost \$30,000 in student loans, and he is making a \$500 monthly payment per month. He also has a health club membership with a monthly cost of \$33. (Item 8) Despite his monthly discretionary

income of over \$1,500, he has made little progress in resolving these ongoing, delinquent debts. (SOR ¶ 1.h) He has not established payment plans to address his delinquent debts. While he stated that he had hired an attorney and had the intent to resolve his debts, he failed to document that he has gone beyond preliminary steps to resolve five of his delinquent debts.

Applicant's debts include several to credit card creditors (SOR ¶1.a to ¶1.g). He provided evidence that in October 2007 he reached a settlement with Debtor #2 and resolved the \$5,194 debt with a settlement payment of \$3,700. (SOR.¶ I.b) (Exhibit A) He said that the \$1,027 debt to Creditor #3 was sold to a collection company, and subsequently settled with a payment of \$531.07. (SOR.¶ I.c) (Item 4; Exhibit A) He failed to document any financial counseling. He did not adequately describe how he has improved his financial practices, since obtaining a full-time job in 2005.

Applicant contended he owes Creditor #4 \$1,778, instead of \$4,548 as alleged in the SOR. However, he failed to provide evidence to prove this contention. (SOR.¶ I.d) (Items 4, 5, 6)

In sum, Applicant has five unresolved, delinquent debts: almost \$2,000 to Creditor #1 (SOR ¶ I.a), \$4,548 to Creditor #4 (SOR ¶ I.d), \$2,600 to Creditor #5 (SOR ¶ I.e), \$1,618 to Creditor #6 (SOR ¶ I.f), and \$3,945 to Creditor #7 (SOR.¶ I.g).

Policies

Enclosure 2 of the Directive sets forth adjudicative guidelines to consider in evaluating an individual's security eligibility which are divided into conditions that could raise a security concern and may be disqualifying and conditions that could mitigate security concerns. In deciding whether to grant or continue an individual's access to classified information, the mere presence or absence of any adjudication policy condition is not decisive.

Based on a consideration of the evidence as a whole in evaluating this case, I weighed the relevant Revised Adjudication Guidelines, and determined the following security concern was relevant to my determination:

Guideline F: Financial Considerations

18. The Concern. Failure or inability to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, clack 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. Compulsive gambling is a concern as it may lead to financial crimes including espionage. Affluence that cannot be explained by known sources of income is also a security concern. It may indicate proceeds from financially profitable criminal acts.

The responsibility for producing evidence initially falls on the Government to demonstrate that it is not clearly consistent with the national interest to grant or continue Applicant's access to classified information. Then the Applicant presents evidence to refute, explain, extenuate, or mitigate in order to overcome the doubts raised by the Government, and to demonstrate persuasively that it is clearly consistent with the national interest to grant or continue the clearance. Under the provisions of Executive Order 10865, as amended, and the Directive, a decision to grant or continue an applicant's security clearance may be made only after an affirmative finding that to do so is clearly consistent with the national interest. In reaching the fair and impartial overall common sense determination, the Administrative Judge may draw only those inferences and conclusions that have a reasonable and logical basis in the evidence of record.

Section 7 of Executive Order 10865 specifically provides industrial security clearance 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.” The decision to deny an individual a security clearance is not necessarily a determination as to the allegiance, loyalty, and patriotism of an applicant.³ It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a security clearance.

Analysis

Financial Considerations

The government provided substantial evidence of Applicant's financial problems reflecting several credit card debts totaling approximately \$17,000 which remain unpaid. Consequently, Financial Considerations Disqualifying Condition, AG ¶ 19(a), “inability or unwillingness to satisfy debts,” and AG ¶ 19(c), “a history of not meeting financial obligations,” apply.

With the government's case initially established, the burden shifted to Applicant to present evidence of refutation, extenuation, or mitigation to overcome the case against him. He documented that he resolved two of these debts in 2007; however, he has made no significant, demonstrable efforts to resolve the other five delinquent debts. Thus, his financial problems continue to raise security concerns. While he reported he retained an attorney to help him resolve his debts, he failed to document any plan that his attorney developed to resolve his delinquent debts. Nor did he document that he received or is receiving credit counseling as described under AG ¶ 20(c) (stating, “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”).

AG ¶ 20(b) provides that security concerns may be mitigated when, “the conditions that resulted in the behavior were largely beyond the person's control (e.g.,

³Executive Order No. 10865 § 7.

loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation) and the individual acted responsibly under the circumstances.” Applicant described his unemployment in 2005, which is a specified mitigating condition; however, he did not adequately explain how he “acted responsibly under the circumstances.” He continues to accumulate debt, and has failed to adequately address five delinquent SOR debts, despite being employed since 2005. Applicant has demonstrated that he paid two debts, but five remain unresolved. He failed to establish AG ¶ 20(d), which provides “the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.” He did not adequately describe how he maintained contact with his creditors, or why he did not make at least partial, good faith payments to his creditors, especially after being notified of the security concerns in the SOR. Thus, Applicant has not established a case in mitigation. His failure to resolve his delinquent SOR debts results in an ongoing security concern.

Whole Person Analysis

Having considered both the record and Applicant in light of the “whole person” concept, I conclude he is a sincere person who made some efforts to reform his financial practices. However, his progress is insufficient. His positive intentions do not satisfy me that he is on the road to financial recovery. He failed to adequately demonstrate he has changed his financial practices, except to acknowledge his efforts to operate on a cash basis as he has no credit. The potential for pressure, coercion, exploitation, or duress remains even though he has improved income and stable employment. He did not submit his employment performance evaluations, or statements from his supervisors about his reliability and trustworthiness.

In sum, the likelihood of financial issues remains a security concern. After weighing the disqualifying and mitigating conditions, and all the facts and circumstances in the context of the whole person, I conclude he has failed to mitigate the security concerns pertaining to financial considerations. I rule For Applicant in subparagraphs 1.b and 1.c because he settled and/or paid those two debts. For the remaining subparagraphs, I rule against Applicant because he did not adequately address those delinquent debts.

After reviewing the allegations of the SOR in the context of the Adjudicative Guidelines in Enclosure 2 and the factors set forth under the Adjudicative Process section, I make the following formal findings:

Formal Findings

Paragraph 1. Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a, and 1.d through 1.h:	Against Applicant
Subparagraphs 1.b and 1.c:	For 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 a security clearance for the Applicant. Clearance is denied.

Kathryn Moen Braeman
Administrative Judge