



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 05-09229
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Julie R. Edmunds, Esquire, Department Counsel
For Applicant: *Pro Se*

March 31, 2008

Decision

CURRY, Marc E., Administrative Judge:

On August 29, 2007, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) detailing the security concern under Guidelines F. 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 on September 26, 2007, and requested a hearing before an administrative judge. I received the case assignment on December 3, 2007. DOHA issued a notice of hearing on January 14, 2008, and I convened the hearing as scheduled on February 5, 2008. During the hearing, I received nine government exhibits, three Applicant exhibits, and Applicant's testimony. At the conclusion of the hearing, I left the record open at Applicant's request to allow him to submit additional documents. Within the allotted time, he submitted five additional exhibits that I

incorporated into the record. I received the transcript on February 14, 2008. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

Rulings of Evidence

On December 18, 2008, department counsel moved to amend the SOR by adding the following allegations:

Subparagraph 1.g: You are indebted to [State X] for a state tax lien filed on October 21, 2007, in the amount of \$1,487. As of December 18, 2007, this debt had not been paid.

Subparagraph 1.h: You are indebted to [State X] for a state tax lien filed on August 27, 2007, in the amount of \$9,591. As of December 18, 2007, this debt had not been paid.

At the hearing, department counsel moved to withdraw SOR Paragraph 3.¹ Applicant did not object, and I granted both motions.

Findings of Fact

Applicant is a 45 year old man with two adult children, ages 18 and 24. His marriage ended in divorce in 1995. He has a bachelor of arts degree in physics, and is planning on returning to school to finish a master's degree in computational math (Tr. 20).

Applicant is a network engineer who provides subject matter expertise in the policies and technology associated with upgrading large, government network systems (*Id.*).

In 1995, the Internal Revenue Service (IRS) filed a lien against Applicant's property in the approximate amount of \$14,005 for tax years 1991, 1992, and 1994. Approximately \$10,500 of this delinquency stemmed from tax year 1991. Through 1990, he and his wife filed income taxes jointly. Applicant claimed payroll deductions based upon their joint filing status. In 1991, he and his wife grew estranged, and they stopped filing their income taxes jointly. Because Applicant never adjusted his payroll deductions to reflect his new filing status, he owed a deficit at the year's end that he was unable to pay. By the time the IRS entered the lien in 1995, the delinquency had grown to \$10,350 (Tr. 24).

The remainder of the lien covers tax years 1992 and 1994. These delinquencies were generated because Applicant continued to struggle to calculate his payroll deductions accurately, and was unable to pay the deficits when due.

¹There is no Paragraph 2.

Applicant negotiated a payment plan with the IRS (Tr. 14). By 1998, he had paid the delinquency, and the IRS released the lien (Ex. B).

SOR subparagraphs 1.a, 1.g, and 1.h allege three state tax liens totalling approximately \$19,000 for tax years 2002 through 2004. Applicant admits he owed a tax delinquency, but denied the amount due. The state has been applying his tax returns to the delinquency since 2005. In approximately June 2007, Applicant contacted the taxing authority to confirm the amount due, and to arrange a payment plan (Exhibit 2). Because of a discrepancy involving his electronic tax filings for those years, the state told Applicant he needed to re-file his returns. He was unable to do so because all of his old tax records were destroyed when his basement flooded (Tr. 22).²

After the government filed the SOR, Applicant again contacted the taxing authority to obtain paperwork confirming the remaining amount of the delinquent taxes (Tr. 31). Two weeks after the hearing, he received correspondence from the taxing authority that states he owes nothing for tax year 2003, that all of the outstanding tax liens had been satisfied and released (Exhibits E through H), and that he owed \$253 for tax year 2006 (Exhibit D at 1). Applicant then satisfied the 2006 delinquency.

As of January 2007, Applicant owed three commercial delinquencies, listed in SOR subparagraphs 1.c through 1.e, in the approximate amount of \$850. He paid SOR subparagraph 1.c, a dental bill, in September 2007 (Answer at 3). He received oral confirmation that he had paid the obligation in SOR subparagraph 1.d, a phone bill, (Tr. 25). He is waiting for written confirmation. He satisfied the debt in SOR subparagraph 1.e, a bank, in September 2007 (Answer at 4, Tr. 25).

SOR subparagraph 1.f is a debt allegedly owed on a corporate credit card Applicant used in the late 1990s. When he left the company and returned the card in January 1999, it had a zero balance (Exhibit 3 at 3). Applicant continued to receive charges through April 1999 (Tr. 26). He disputed them, and made numerous requests to resolve the issue over the years. He last wrote the creditor in May 2007 (Exhibit 2 at 7). In August 2007, he spoke with a representative of the creditor and provided his social security number, the date the account should have been terminated, and his address. He has received neither a written nor oral response (Tr. 37).

Applicant was unemployed nearly all of 1999, and for 14 months between 2003 and 2004 (Tr. 14). Currently, he earns approximately \$128,000 per year (Tr. 43). He has approximately \$110,000 in savings (Exhibit 2 at 3). He has \$700 remaining each month after expenses have been paid (Tr. 46).

Applicant has physical custody of his 18 year old child who is severely disabled and requires the assistance of a home care aide. This service costs Applicant \$275 per week.

²Applicant requested and received software from the online software company he used to prepare his taxes, but has thus far been unable to retrieve the old returns (Tr. 29).

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 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 overarching adjudicative goal is a fair, impartial and common sense decision. According to AG ¶ 2(c), the entire process is a 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. 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.

Analysis

Financial Considerations

Under this guideline, "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" (AG ¶ 18). Moreover, "an individual who is financially overextended is at risk of having to engage in illegal acts to generate funds" (*Id.*).

Applicant's accrual of delinquent income tax indebtedness and other miscellaneous indebtedness, between 1991 and 2006 triggers the application of AG ¶¶ 19(a), "history or unwillingness to satisfy debts, 19(c), "a history of not meeting financial obligations," and 19(e), "consistent spending beyond one's means, which may be indicated by excessive indebtedness, significant negative cash flow, high debt-to-income ratio, and/or other financial analysis."

Applicant's tax delinquencies in the early 1990s stemmed from problems separating his finances from his wife's finances during their estrangement preceding

their divorce. He negotiated a payment plan, and satisfied these tax delinquencies by 1998.

Between 1999 and 2004, Applicant was unemployed intermittently for nearly two and a half years. Since then, he has satisfied all of the delinquencies he admitted, and provided a credible explanation supported by documentation for the one delinquency he denied. AG ¶ 20(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, AG ¶ 20(c) “. . . there are clear indications that the problem is being resolved or is under control,” AG ¶ 20(d), “the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts,” and AG ¶ 20(e), “the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provide[d] documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue,” apply. He has mitigated the financial considerations security concern.

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.

Applicant struggled with his finances in the early 1990's and his financial problems recurred ten years later. These problems were caused by a divorce and two lengthy periods of unemployment rather than by any irresponsible spending. Currently, Applicant is financially stable, has satisfied all of his delinquencies, and has substantial savings. Upon evaluating this case in the context of the whole person concept, I conclude the likelihood of recurrence is minimal. Applicant’s past financial problems no longer pose a security concern. Clearance is granted.

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:	FOR APPLICANT
Subparagraphs 1.a - 1.h:	For Applicant
Paragraph 3, Guideline E:	WITHDRAWN

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

MARC E. CURRY
Administrative Judge