



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



In the matter of:)
)
) ISCR Case No. 12-10278
)
)
Applicant for Security Clearance)

Appearances

For Government: Ray T. Blank Jr., Esq., Department Counsel
For Applicant: *Pro se*

02/21/2014

Decision

COACHER, Robert E., Administrative Judge:

Applicant has not mitigated the financial considerations security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On May 22, 2013, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations. DOHA acted under Executive Order (EO) 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 adjudicative guidelines (AG) effective within the DOD on September 1, 2006.

Applicant answered the SOR on June 10, 2013, and requested a hearing before an administrative judge. The case was assigned to another administrative judge on November 12, 2013, and reassigned to me on December 11, 2013. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on December 20, 2013,

and the hearing was convened as scheduled on January 28, 2014. The Government offered exhibits (GE) 1 through 5, which were admitted into evidence without objection. Department Counsel's exhibit index was marked as Hearing Exhibit (HE) I. Applicant testified, but did not offer any exhibits or witness testimony. The record was held open for Applicant to submit additional information, but he did not do so. DOHA received the hearing transcript (Tr.) on February 6, 2014.

Findings of Fact

Applicant admitted SOR allegations ¶¶ 1.a - 1.c. He denied ¶¶ 1.d - 1.g. The admissions are incorporated as findings of fact. After a review of the pleadings and evidence, I make the following additional findings of fact.

Applicant is a 27-year-old employee of a government contractor. He does interior construction work at various foreign locations. He is a high school graduate. He is married, but currently seeking a divorce, and has two children. He has no military experience. He currently holds a security clearance.¹

The SOR alleges seven delinquent debts for a total for all of about \$17,430. The debts were listed in credit reports from June 2012, and February 2013.²

Applicant's financial delinquencies accrued before he began his federal contractor position in December 2011. Some of these debts are related to his victimization by identity theft by a relative as more fully explained below. Two debts are medically-related for which he believes Medicaid and workers compensation should have paid. Specifically, the debts are as follows.³

The debt alleged in ¶ 1. is a medical debt incurred by Applicant's wife in the amount of \$1,022. A February 2013 credit report shows a date of last activity as March 2010. Applicant admitted this debt, but believed that Medicaid should have paid it. He did not provide any documentation to support his claim, or offer any evidence concerning his plans to resolve the debt. This debt is unresolved.⁴

The debt alleged in SOR ¶ 1.b is a delinquent medical debt in the amount of \$1,683 that Applicant incurred when he suffered the loss of a finger due to a workplace accident. The debt is for ambulance service. Applicant admitted this debt, but believed it was covered by workers' compensation coverage. There is evidence showing that he was compensated in June 2010 (\$1,800) and July 2010 (\$300) for his workers' compensation claim. There is no evidence to show that these amounts or any other

¹ Tr. at 7, 22-23, 35; GE 1.

² GE 4-5.

³ Tr. at 25-26, 30-31; AE A.

⁴ Tr. at 25; GE 5.

amount were used to pay this debt. He has not formally disputed this debt. This debt is unresolved.⁵

The debt alleged at SOR ¶ 1.c is a collection account in the amount of \$1,647. Applicant admitted this debt was related to an apartment he leased in 2008. After he missed a payment, the debt was sent to a collection service and he did not follow-up on it. He has not set up payments for this debt, but indicated he would use this year's tax refund to pay the debt. This debt is unresolved.⁶

The debts alleged at SOR ¶¶ 1.d through 1.g are delinquent credit card accounts (\$6,165; \$1,621; \$1,573; and \$3,719). Applicant denied these debts claiming that he was a victim of identity theft regarding these accounts. He believed his mother opened the accounts using his name and information. He submitted an identity-theft affidavit that supported his claim. As a result of the affidavit, several delinquent accounts (non-SOR related) were removed from his credit report and "disputed" notations were made on his credit reports concerning the debts listed at SOR ¶¶ 1.e through 1.g. No annotations were made concerning the debt listed at SOR ¶ 1.d, and this debt remains listed on the February 2013 credit report. The debts listed at SOR ¶¶ 1.e through 1.g. are resolved, but the debt listed at SOR ¶ 1.d is unresolved.⁷

Applicant has not received any credit counseling. He testified that he lives "week to week" on his paycheck. His personal financial statement shows that after expenses he should have about \$1,343 in disposable income at the end of the month. He is geographically separated from his family, but he provides financial support by insuring that half of his pay goes to them.⁸

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions that are to be used 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, administrative judges apply the guidelines in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense 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

⁵ Tr. at 25-26; GE 2, 4-5.

⁶ Tr. at 28-29; GE 3-5.

⁷ Tr. at 30-33; GE 2-5.

⁸ Tr. at 35-36; GE 2.

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.” In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record.

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 the applicant or proven by Department Counsel.” The applicant has the ultimate burden of persuasion to obtain a favorable 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. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that adverse 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.” See *also* Executive Order 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline F, Financial Considerations

The security concern for financial considerations is set out in AG ¶ 18 as follows:

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. Two are potentially applicable in this case:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant has numerous delinquent debts that remain unpaid. The evidence is sufficient to raise the above disqualifying conditions.

Several financial considerations mitigating conditions under AG ¶ 20 are potentially applicable:

- (a) 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;
- (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;
- (c) 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;
- (d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and
- (e) 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.

Applicant's debts are recent, multiple, and cast doubt on his reliability, trustworthiness, and good judgment. AG ¶ 20(a) is not applicable.

Although Applicant and his wife encountered medical care that resulted in two of the delinquent debts and could be considered beyond their control, he did not put forth responsible efforts to resolve the issues associated with those debts. AG ¶ 20(b) is partially applicable.

There is no evidence of financial counseling. Additionally, he has not established any type of payment plan for the unresolved debts. A promise to pay using his expected tax refund does not amount to a good-faith effort to pay the debt. Neither AG ¶¶ 20(c) nor 20(d) apply.

Applicant provided sufficient documentation to support the disputed debts listed at SOR ¶¶ 1.e through 1.g and those debts are resolved in his favor. However, there is

insufficient documentation to support the dispute of SOR ¶ 1.d, and it remains unresolved. AG ¶ 20(e) partially applies. At this point, Applicant's finances remain a concern despite the presence of some mitigation.

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 relevant 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) the 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 relevant facts and circumstances surrounding this case. I have incorporated my comments under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

I considered the circumstances by which Applicant's financial situation was affected by his medical debts and the fraudulent credit card accounts opened up using his name. However, I also considered that despite his these factors, the remaining accounts remain unaddressed. His past financial track record reflects a troublesome financial history that causes me to question his ability to resolve his debts.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated the financial considerations security concerns.

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 APPLICANT

Subparagraphs: 1.a – 1.d: Against Applicant

Subparagraphs: 1.e – 1.g: For 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.

Robert E. Coacher
Administrative Judge