



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ISCR Case No. 12-12170
)
Applicant for Security Clearance)

Appearances

For Government: Gregg A. Cervi, Esq., Department Counsel
For Applicant: *Pro se*

04/30/2013

Decision

HEINY, Claude R., Administrative Judge:

Applicant contests the Department of Defense’s (DoD) intent to deny his eligibility for a security clearance to work in the defense industry. Applicant has a federal tax debt and three accounts placed for collection, which are unresolved. Applicant failed to rebut or mitigate the financial considerations security concerns. Clearance is denied.

Statement of the Case

Acting under the relevant Executive Order and DoD Directive,¹ the DoD issued a Statement of Reasons (SOR) on October 26, 2012, detailing security concerns under Guideline F, financial considerations. On November 12, 2012, Applicant answered the SOR and elected to have the matter decided without a hearing. Department Counsel

¹ Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (DoD) 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.

submitted the Government's case in a File of Relevant Material (FORM), dated November 15, 2012. The FORM contained ten attachments (Items 1 – 10). On February 15, 2013, Applicant received a copy of the FORM, along with notice of his opportunity to file objections and submit material to refute, extenuate, or mitigate the potentially disqualifying conditions. On March 28, 2013, Applicant's response to the FORM was received. On April 11, 2013, I was assigned the case.

Findings of Fact

In Applicant's Answer to the SOR, he admits the allegations and states he has a monthly repayment plan with the Internal Revenue Service whereby he makes \$105 monthly payments on his tax debt (SOR 1.a). He stated he would pay the remaining delinquent accounts. His admissions are incorporated herein. After a thorough review of the pleadings and exhibits, I make the following findings of fact.

Applicant is a 47-year-old linguist who has worked for a defense contractor since July 2012. His work location was in Afghanistan. He is married and has a four-year-old child. He was previously married from 1997 to 2007. In 2003, Applicant filed for Chapter 7 bankruptcy protection and discharged approximately \$20,000 in debt. (Item 7) He filed after losing his job.

The state had imposed a state tax lien for Applicant's failure to pay his 2006 state income taxes. After paying the tax, the tax lien was removed in May 2010. He failed to pay his 2000, 2002, 2008, and 2009 federal income taxes. On June 11, 2012, Applicant had entered into an installment agreement with IRS to pay his past-due tax. He was required to start making \$105 monthly payments in July 2012. (Item 6) On June 22, 2012, Applicant received a letter from the Department of the Treasury stating the Appeals Office had determined all action by the IRS had been appropriate, but had determined to withdraw the tax lien. (Item 6)

In Applicant's SOR response (Item 4), he alleged he was paying the IRS \$105 monthly and would pay the other four debts when he returned from Afghanistan. The SOR informed him he could introduce evidence on his behalf and the Judge would make a decision based on "all of the written materials provided." (Item 2) The FORM put him on notice that he had to present sufficient evidence to support allegations of payment. He failed to produce any documents showing he had made actual payments. In his response to the FORM he again alleged he was paying \$105 monthly to the IRS.

In August 2012, Applicant completed a personal financial statement (PFS). (Item 6) At that time, his net monthly income was \$4,300, his monthly expenses were approximately \$3,300, and he was paying \$170 on his debts. He listed he was paying \$65 monthly on his student loans and \$105 monthly to the IRS. His monthly net remainder (monthly income less monthly expenses and debt payment) was \$835. On that form he asserts the \$475 medical bill (SOR 1.d) and the \$746 automobile collection debt were his ex-wife's debts. (Item 6) He was a cosigner on his ex-wife's vehicle. On the PFS, he listed \$8,700 in his 401(k) retirement fund.

In a September 2012 interview (Item 6), Applicant indicated when he obtained his telephone he was receiving text messages, which were apparently for the individual who had previously had the telephone number. Applicant received numerous text messages, which were not covered by his telephone service plan. His first month's service bill was more than \$1,000 due to the unwanted text messages. During the interview, he indicated he was disputing this debt. In his SOR response (Item 4), he admitted the \$1,148 debt listed in SOR 1.c. In his FORM response, he said he was paying this debt.

During the same September 2012 interview, Applicant stated he was going to pay the \$475² (SOR 1.d), \$433 (SOR 1.e), and \$746 (SOR 1.f) debts with his first paycheck from his new job. (Item 6) In November 2012, he said he would pay the debts as soon as he returned from Afghanistan. In March 2013, he stated he had paid the \$433 (SOR 1.e) debt and the \$746 (SOR 1.f) debt. He stated he was paying his tax debt (SOR 1.a) and the \$1,148 (SOR 1.c) debt. In March 2013, he said he was unsure about the \$475 (SOR 1.d) debt. In July 2012, when he completed his Electronic Questionnaires for Investigations Processing (e-QIP), he stated he was unsure about this debt and planned on finding out about it. (Item 5)

The FORM provides a good discussion of the rationale for the security concerns at issue. The FORM advised Applicant of his right to submit objections, rebuttal, extenuation, mitigation, or explanation, sufficient to overcome the security concerns raised by the SOR. A February 19, 2013 DOHA letter informed Applicant that before the FORM was sent to the Administrative Judge he had the opportunity "to review the attached copy of the complete file and submit any material you wish the Administrative Judge to consider or to make any objections you may have as to the information in the file."

In response to the FORM, Applicant provided telephone numbers and contact points from various individuals he spoke with concerning the SOR debts. He did not provide any documents from those creditors, copies of cancelled checks, or other documents showing he had actually made payment to those creditors. He also provided a copy of his March 28, 2013 credit bureau report (CBR). There is nothing in the CBR showing he has made payment on his past-due tax obligation or the four SOR debts. The July 2012 CBR (Item 10) lists the tax obligation (SOR 1.a, \$6,844), a collection account (SOR 1.c, \$1,148), an unpaid medical debt (SOR 1.d, \$475), a telephone collection account debt (SOR 1.e, \$433), and a charged-off automobile account (SOR 1.f, \$746).

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

² During the interview, Applicant stated he did not know the origin of this debt, but still intended to pay it with his first check from his new company. (Item 6)

disqualifying conditions and mitigating conditions, which must be considered 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 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 available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the interests of 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 applicant or proven by Department Counsel. . . ." The applicant has the ultimate burden of persuasion to obtain 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. 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 of potential, rather than actual, risk of compromise of classified information.

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

Analysis

Guideline F, Financial Considerations

Adjudicative Guideline (AG) ¶18 articulates the security concerns relating to financial problems:

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.

An individual who is financially irresponsible may also be irresponsible, unconcerned, negligent, or careless in properly handling and safeguarding classified information. Behavior in one aspect of life provides an indication of how a person may behave in other aspects of life.

A person's relationship with his creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to repay debts as agreed. Absent substantial evidence of extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a position of risk that is inconsistent with holding a security clearance. An applicant is not required to be debt free, but is required to manage his finances to meet his financial obligations.

Applicant has a history of financial problems. He had a bankruptcy in 2003, a tax obligation, and four additional unpaid, charged-off accounts, or accounts placed for collection, which total approximately \$9,600. The evidence supports application of disqualifying conditions AG ¶19.a, "inability or unwillingness to satisfy debts" and AG ¶19.c, "a history of not meeting financial obligations."

Applicant has been aware of the security concerns over his unpaid accounts since his September 2012 interview. At that time, he stated was making monthly installment payments on his tax debt and would pay three additional debts with his first pay check from his new company. He provided a copy of the IRS installment plan, but he failed to provide documents establishing that he was making monthly payments to that plan as agreed. He provided no documents from the creditors establishing payment on any of the accounts or that he has arranged repayment plans on the other four delinquent accounts. He asserts he had paid two of the SOR debts, but submitted no documents showing payment. He failed to provide documents such as copies of cancelled checks or bank records showing debits, or other proof that he is actually making the payments.

Applicant has five delinquent debts, which remain unpaid. There is insufficient evidence to conclude his actions happened under unusual circumstances or that they are unlikely to recur. He, at one time, disputed the telephone debt, but has provided no documented proof to substantiate the basis of his dispute. There is no evidence he has received financial counseling in the last several years, that there is a clear indication that his financial problems are being resolved, or that his financial problems are under control.

Applicant's response lacks evidence that he has acted responsibly to address the SOR debts. There is no evidence of a good-faith effort to repay his creditors. I find none of the mitigating conditions apply.

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 the facts and circumstances surrounding this case.

In not requesting a hearing, Applicant chose to rely on the written record. However, in so doing he failed to submit sufficient information or evidence to supplement the record with relevant and material facts regarding his circumstances, articulate his position, and mitigate the financial security concerns. He failed to offer evidence of financial counseling or provide documentation regarding his past efforts to address his delinquent debt. By failing to provide such information, and in relying on only a brief explanation, financial considerations security concerns remain.

Because Applicant chose to have this matter handled without a hearing, I am unable to evaluate his demeanor, appearance, or credibility. From the record, I am unable to find Applicant was sincere, open, and honest. Even if I found for him in these matters, there is no evidence of payment on the delinquent debts.

This decision should not be construed as a determination that Applicant cannot or will not attain the state of true reform and rehabilitation necessary to justify the award of a security clearance. The awarding of a security clearance is not a once in a life time occurrence, but is based on applying the factors, both disqualifying and mitigating, to the evidence presented. Under Applicant's current circumstances a clearance is not recommended, but should Applicant be afforded an opportunity to reapply for a security clearance in the future, having paid the delinquent obligations, established compliance

with a repayment plan, or otherwise addressed the obligations, he may well demonstrate persuasive evidence of his security worthiness. However, a clearance at this time is not warranted.

The issue is not simply whether all his debts are paid. It is whether his financial circumstances raise concerns about his fitness to hold a security clearance. (See AG ¶ 2(a)(1)) Overall, the record evidence leaves me with substantial doubt as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated the security concerns arising from his financial considerations and personal conduct.

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, Financial Considerations: AGAINST APPLICANT

Subparagraphs 1.a – 1.f: Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the interests of national security to grant Applicant a security clearance. Eligibility for access to classified information is denied.

CLAUDE R. HEINY II
Administrative Judge