



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



In the matter of:)
)
 -----) ISCR Case No. 14-00767
)
 Applicant for Security Clearance)

Appearances

For Government: Tovah Minster, Esq., Department Counsel
For Applicant: *Pro se*

01/26/2015

Decision

MARSHALL, Jr., Arthur E., Administrative Judge:

Applicant failed to mitigate security concerns related to Guideline F, but mitigated those security concerns related to Guideline J. Applicant’s eligibility for a security clearance is denied.

Statement of the Case

On April 28, 2014, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F (Financial Considerations) and Guideline J (Criminal Conduct). 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 adjudicative guidelines (AG) effective within the DOD on September 1, 2006.

In an undated response to the SOR, Applicant addressed the SOR allegations and admitted the 20 allegations set forth under Guideline F, but neglected to respond to the sole allegation noted under Guideline J. He also requested a hearing before an administrative judge. The case was assigned to me on November 11, 2014. The

Defense Office of Hearings and Appeals (DOHA) issued a notice of video-teleconference hearing on December 3, 2014, setting the hearing for December 30, 2014. The hearing was convened as scheduled.

During the hearing, Applicant offered testimony and referenced several documents for post-hearing submission. Such documents were to be received by January 7, 2015. The Government offered two exhibits, which were accepted into the record as Government Exhibits (GE) 1-2. The transcript of the proceeding (Tr.) was received on January 7, 2015. With no additional materials received by January 7, 2015, the record was closed. As of January 22, 2015, no such materials had been received.

Findings of Fact

Applicant is a 33-year-old armed security officer who has worked in that capacity for the same defense contractor since July 2013. He assumed his present position directly after leaving a job as an unarmed security officer. Applicant served in the United States military from August 1999 through June 2000, when he was granted an honorable discharge under medical conditions. He earned a high school diploma and, in 2010, briefly attended college. Since that time, Applicant married. He and his wife have a pre-school child and are expecting a baby.

Applicant appeared at the video-teleconference hearing without first having submitted any relevant documentation. Provision was made for him to submit materials he referenced during the hearing within a reasonable time following the conclusion of the hearing. (Tr. 31) None were forthcoming.

At issue in the case are 19 delinquent debts and an outstanding bench warrant for failing to appear or comply with a local court in a matter related to a 2007 tax code violation. At the onset of the hearing, Applicant noted that he had a letter from the city at issue indicating that the bench warrant should be dismissed, and evidence that he had made payments to the city for the related infraction. Such documentation, however, was never submitted to substantiate these claims, which are at issue here in SOR allegations ¶ 1.t and ¶ 2.a.

Remaining at issue are the delinquent debts reflected in SOR allegations ¶¶ 1.a-1.s, which represent over \$22,000 in debt. Applicant testified that he had, he believed he had, or could obtain documentary evidence showing that he had addressed the delinquent student loan debts noted at ¶¶ 1.b and 1.c (\$7,457 and \$3,916) through garnishment; he similarly argued that he had satisfied an unidentified city credit union account and the telecommunication debt noted at 1.e (\$415).

Applicant believes that most of the remaining delinquent debts at issue had been forwarded to a specific collection agency. (Tr. 16) That agency consolidated the debts it held and contacted him. (Tr. 28) He never sought out a debt consolidation plan himself. (Tr. 28) Applicant claimed he is paying this agency \$75 a month to address an

undefined “lump of [his] bills.” (Tr. 16-17) Applicant conceded he was unable to identify which debts at issue were being addressed in this manner. (Tr. 17)

The majority of allegations at issue are related to Applicant’s finances. Applicant is aware he “has terrible credit.” (Tr. 19) He has not pursued financial counseling. (Tr. 27) He intends to continue paying his delinquent debts in the same manner he is now paying them, mostly through garnishment and a creditor-imposed debt consolidation plan. Although he concedes he did have some periods of unemployment, he attributes his financial situation and the debts at issue to his having been an irresponsible person while in his 20s. (Tr. 25) He currently lives “very tightly” under a “strict budget,” but one was not submitted for review. (Tr. 25-26) Applicant describes his family lifestyle as being neither poor, nor extravagant. His wife is a primary school teacher. They maintain separate bank accounts. While she has a savings account, Applicant does not. He does, however, have a retirement account through his workplace.

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, which are 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, 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 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 not drawn inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an “applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel and 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.

Section 7 of Executive Order 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

Under Guideline F, AG ¶ 18 sets forth that the security concern under this guideline is that 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 engaging in illegal acts to generate funds.

Here, the Government introduced credible evidence showing Applicant has multiple delinquent debts, amounting to over \$22,000, and an outstanding bench warrant related to a city tax issue. Such facts are sufficient to invoke two of the financial considerations disqualifying conditions:

AG ¶ 19(a): inability or unwillingness to satisfy debts, and

AG ¶ 19(c): a history of not meeting financial obligations.

Five conditions could mitigate these finance-related security concerns:

AG ¶ 20(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;

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): 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(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 provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

Applicant specifically attributed the origin of his delinquent debts to his own irresponsibility. He presented no documentary evidence substantiating his claims to having made some progress on his delinquent debts. He has not pursued or received financial counseling, nor has he disputed any of the delinquent debts noted in the SOR. There is no evidence that Applicant has initiated a good-faith effort to repay his creditors or otherwise address his delinquent debts. Indeed, despite some testimony to the contrary, there is no evidence substantiating his claims with regard to his debts at all. Finally, insufficient evidence was provided to fully illustrate Applicant's present fiscal situation. Consequently, I find none of the mitigating conditions apply.

Guideline J, Criminal Conduct

The security concern regarding criminal conduct is explained at AG ¶ 30. Criminal activity creates doubt about a person's judgment, reliability and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules and regulations. The city bench warrant for Applicant concerning his failure to appear or comply with regard to a 2007 tax issue raises security concerns, and triggers application of the following Guideline J disqualifying conditions:

AG ¶ 31(a): a single serious crime or multiple lesser offenses; and

AG ¶ 31(c): allegation or admission of criminal conduct, regardless of whether the person was formally charged, formally prosecuted or convicted.

The guideline also sets forth a number of conditions that may mitigate the criminal conduct concern. I have considered all the listed mitigating conditions and only the following warrant full discussion:

AG ¶ 31(a): so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances that it is unlikely to recur or does not cast doubt on the individual's reliability, trustworthiness, or good judgment; and

AG ¶ 31(d): there is evidence of successful rehabilitation; including but not limited to the passage of time without recurrence of criminal activity, remorse or restitution, job training or higher education, good employment record, or constructive community involvement.

Applicant claimed to have documentary evidence indicating that this bench warrant was to have been dismissed, but he failed to submit such evidence for consideration. It is noted that the bench warrant was issued in response to a tax code violation from 2007. That was several years ago and would have occurred during the period of time Applicant stated that he exhibited “irresponsible” behavior. Such factors open AG ¶ 31(a) and AG ¶ 31(d) for consideration. Few facts regarding the 2007 city tax code violation are known, however, and little more is known of Applicant’s life at the time. Since that time, however, Applicant attempted college, married, settled, became a father, maintained continuous employment in the same field for over two years, and now contrasts his present level of maturity to the “irresponsibility” he stated characterized his behavior in his 20s. In light of these considerations, and noting that this is the only infraction (criminal, civil, or administrative) cited, I find that AG ¶ 31(d) applies.

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). 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. I incorporated my comments under the guidelines at issue in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but some warrant additional comment.

Applicant recently achieved the maturity that comes when one accepts the responsibility of a profession, marriage, and parentage. Although he still has financial issues, there is no evidence he is still acquiring new or delinquent debt. What, if anything, has been done to the delinquent debts cited in the April 2014 SOR, however, is unclear. Applicant’s testimony indicates that some strides were made toward addressing some of those accounts, but most of those strides were made by creditors, not Applicant. Moreover, lacking any documentary evidence regarding those accounts and their present condition, there is no way to assess their current financial status. Lacking such documentary evidence, financial considerations security concerns remain unmitigated.

Clearer is the situation regarding the city tax court bench warrant from 2007. Much has happened in Applicant’s life since that era, mostly for the positive and

pointing to a more mature and responsible individual. Whether the warrant at issue is actually criminal is unclear. Regardless, it appears to have been an isolated infraction from many years ago. Sufficient facts exist to conclude that Applicant has been rehabilitated with regard to this allegation.

This process does not require that an Applicant satisfy all of his debts. It does, however, demand that an Applicant articulate a workable plan for addressing one's debts and evidence that such a plan has been successfully implemented. Based on the lack of documentary evidence presented here regarding the present status of his debts, I find that financial considerations security concerns remain unmitigated.

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.t:	Against Applicant
Paragraph 2, Guideline J:	FOR APPLICANT
Subparagraph 2.a:	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 a security clearance. Eligibility for access to classified information is denied.

Arthur E. Marshall, Jr.
Administrative Judge