



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



In the matter of:)
)
-----) ISCR Case No. 06-24090
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Nichole Noel, Esq., Department Counsel
For Applicant: Pro Se

January 28, 2008

Decision

ABLARD, Charles, Administrative Judge:

Applicant submitted his Security Clearance Application (SF 86) on January 24, 2006. On June 27, 2007, the Defense Office of Hearings and Appeals (DOHA), issued a Statement of Reasons (SOR) detailing the security concerns under Guideline F (Financial) for Applicant. The action was taken pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, (February 20, 1960) as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended and modified, 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. DOHA recommended the case be referred to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

On July 27, 2007, Applicant responded to the SOR allegations and requested a hearing before an Administrative Judge. DOHA received the request and the Department Counsel was ready to proceed on August 20, 2007. The matter was

assigned to me on August 22, 2007. A notice of hearing was issued on August 28, 2007, for a hearing on September 10, 2007, and held that day. The government and Applicant each offered two exhibits. The transcript was received on September 18, 2007. Applicant requested that the record be left open for 30 days for Applicant to provide post-hearing submissions. He subsequently requested an extension of time until December 3, 2007, which was granted. Submissions were made on October 11, 2007, October 26, 2007, November 15, 2007, and December 3, 2007. All of the offered exhibits were admitted in evidence without objection.

Findings of Fact

Applicant admitted five of the seven SOR allegations totaling \$146,000 relating to delinquent debts. He denied two with explanation. After a complete review of the record, I make the following additional findings of fact:

Applicant is a 30-year-old employee of a defense contractor working as an assembly line worker for the past two years. He holds an associate degree in applied science in avionics technology. He is an Air Force veteran with four years service ending in 1999 as an E 3. He has served in the state National Guard for four years and is now an E 5. He comes from a military family and both parents were in the Navy (Tr. 41). He has held a security clearance since 1996.

An analysis of the debts alleged in the SOR from testimony and documentary evidence submitted in the record indicates as follows:

1. Par. 1.a.: Judgment of \$9, 451 entered in December 2006 for credit card debt.
2. Par. 1.b.: Real estate mortgage of \$113,000 mitigated by sale of the property in April 2007 (Exhs. A and B).
3. Par. 1.c.: Judgment of \$6,108 entered in December 2004. (Exh. B).
4. Par. 1.d.: Credit card debt for \$5,744 placed for collection in September 2003. Applicant believes it is a duplicate of 1.a. which reflects charges and fees accumulated on the debt.
5. Par. 1.e.: Credit card debt of \$8,603 charged off in 2003. This debt is now over \$10,000 with interest and fees and is being paid by a payroll deduction of \$300 per pay period obtained by the creditor.
6. Par. 1.f.: Credit card debt of \$3,941 placed for collection in 2003.
7. Par. 1.g.: Account debt of \$85 charged off in March 2002 based on damages to an apartment which Applicant had stated in his answer that he would pay by August 27, 2007. In testimony at the hearing he stated that he now challenges the debt and could not find the documentation on it.

Applicant made some efforts to work with creditors, but when one creditor obtained the deduction from his salary, he became concerned that others might obtain additional payroll deductions which might leave him with very little disposable income. He then stopped contacting them (Tr. 21).

Applicant was unemployed for several weeks in 2002 after which time he had several contract jobs as a temporary employee. The jobs did not pay well and he was not fully employed until his present job began in April, 2005 (Exh. 1). It was during this three year period that his debts accumulated and became delinquent. He recognized the problem in 2003 and engaged a credit counseling service to work with his four major creditors. When he discovered the service was paying only one debt, he canceled it (Tr.32). His annual salary from his present employer is approximately \$33,000 based on hourly wages of \$17. He lives with his fiancé and their three year old child. She is employed with an annual salary of approximately \$15,000. He and his fiancé share some household expenses and pay others individually. He receives approximately \$2,500 per annum from the Air National Guard (Tr. 38).

Applicant is current on all household debts. He owns his own car without debt and pays \$800 per month in rent. His fiancé has a car note and pays it herself. They pay \$280 per month for childcare (Tr. 27). They have been working with a counseling/consolidation service since the sale of his home. They advised him regarding the sale. The same service now helps him analyze the debts to determine the best way to resolve them and in what order. Such service is required by bankruptcy procedures as a precedent to filing (Exh. D 2). As a result of the sale of his home in April 2007, Applicant received \$13,000 which was held in a savings account in the name of his fiancé (Tr. 12, 13, and 29). He hoped he would realize \$30,000 from the sale and these profits could then be use to resolve all of the outstanding delinquencies (Tr. 11). However, the house sold for less than he expected. During a conference call on January 22, 2007, he stated that there was only \$1,200 left in the account since he had spent the remainder on living expenses, auto repairs, and the fee to his attorney. He has a 401k with his employer valued at \$6,000 of which over \$2,000 is available to him.

At the time of the hearing in September, Applicant had engaged bankruptcy counsel who later filed under Chapter 7 on November 7, 2007. The reason for Chapter 7 as indicated by his counsel is that the debts are unsecured, he met the means test, and feared a garnishment was likely from a creditor (Exh. F 1). He has paid a retainer of \$1,800 for the services (Exh. D 4). The bankruptcy petition was filed November 14, 2007, by his counsel (Exh. F 1). The current outstanding delinquent debts as indicated in the bankruptcy filings are now approximately \$35,000 (Exh. F 4). This is roughly the same amount as the SOR debts less the home mortgage debt that has been mitigated. However, some of the bankruptcy debts appear to be for some different debts and other debts are listed in the bankruptcy but without dollar values.

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 over-arching adjudicative goal is a fair, impartial and common sense 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 avoided drawing 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, 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.

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. Decisions include, by necessity, consideration of the possible risk the Applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of 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

Upon consideration of all the facts in evidence, and after application of all appropriate adjudicative factors under the revised Adjudicative Guidelines (AG) and factors in the Directive, I conclude the following with respect to all allegations set forth in the SOR:

Applicant's delinquent debts prompted the allegation of security concern under Guideline F because an individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. AG ¶ 18. Conditions that could raise a security concern and may be disqualifying include a history of not meeting financial obligations. AG ¶ 19(c). and evidence of inability or unwillingness to satisfy debts. AG ¶ 19(a). Mitigating Conditions (MC) that might apply include the fact that the behavior happened so long ago or 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(a)), or the conditions that resulted in the behavior were largely beyond the person's control and that the person acted responsibly (AG ¶ 20(b)), or the person has received counseling for financial problems and there are clear indications that the problem is being resolved or is under control. AG ¶ 20(c).

Applicant was unemployed briefly and underemployed for several years and this was partially the cause of his delinquent debts. The funds of \$13,000 received from the sale of his house were in his possession for approximately six months held in his fiancé's account but none were distributed to creditors pending the development of a plan to do so with his attorney and counselor. Now those funds are largely unavailable to help pay any of the debts. His salary is being partially withheld to pay one creditor but that is the only delinquent debt being resolved. The smallest debt on the SOR for \$85.00 that he admitted owing and agreed to pay in August 2007 remains unpaid and he now has challenges the debt.

Applicant has filed a Chapter 7 bankruptcy petition as a result of advice of his credit counselor but the action is too late to mitigate the security concerns raised by his delinquent debts. While his current monthly income of \$3,600 exceeds his expenses by \$800 it does not factor in any income from his fiancé since the bankruptcy is only in his name (Exh. F 4). The documentation and testimony at the hearing indicated the use of a counselor and a plan to pay creditors over a period of time, which are factors to be considered in mitigation. However, the bankruptcy action taken since that time takes a totally different approach (discharge rather than payment of his delinquent debts) , which is inconsistent with his representations in the hearing testimony. His overall conduct in the resolution of his delinquent debt raises security concerns that are not mitigated.

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.

After considering all the evidence in its totality, I conclude that Applicant has not mitigated the security concerns arising from his delinquent debts by his present action to eliminate them. While he undertaken to absolve himself of responsibility for his debts, his actions have not met the necessary criteria for mitigating security concerns. Once his delinquent debts are resolved, he is likely to have the assets to remain out of debt, but it is too late for the present concerns regarding security issues. Thus, it is premature to grant a security clearance.

Formal Findings

Formal findings as required by the Directive are as follows:

Paragraph 1. Guideline F: AGAINST APPLICANT

Subparagraph 1.a.: Against Applicant
Subparagraph 1.b.: For Applicant
Subparagraph 1.c.: Against Applicant
Subparagraph 1.d.: For Applicant
Subparagraph 1.e.: For Applicant
Subparagraph 1.f.: Against Applicant
Subparagraph 1.g.: Against 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 or renew a security clearance for Applicant. Clearance is denied.

Charles D. Ablard
Administrative Judge