



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



In the matter of:)
)
-----) ISCR Case No. 07-03673
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Jeff A. Nagel, Department Counsel
For Applicant: *Pro Se*

March 24, 2008

Decision

TESTAN, Joseph, Administrative Judge:

On October 10, 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to applicant detailing the security concerns under Guideline 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 in writing on November 5, 2007, and requested an Administrative Determination by an Administrative Judge (AJ). Department Counsel issued a File of Relevant Material (FORM) on November 27, 2007. Applicant filed an undated response to the FORM. Based upon a review of the case file, pleadings, and exhibits, eligibility for access to classified information is denied.

Findings of Fact

Applicant is a 50 year old employee of a defense contractor.

Two Notices of Federal tax liens were filed against applicant. In February 2004, a Notice of Tax lien in the amount of \$19,233.00 was filed. And, in June 2005, a Notice of Tax lien in the amount of \$9,155.00 was filed. In April 2007, applicant entered into an agreement with the IRS requiring him to make monthly payments of \$650.00 to the IRS in exchange for the IRS withdrawing the tax lien notices. Pay stubs applicant provided in response to the SOR show \$650.00 a month in payments are being deducted from his paycheck. A letter from the IRS he attached to his response to the FORM indicates the IRS has begun the process of withdrawing the tax lien notices.

A State tax lien in the amount of \$5,547.00 was filed against applicant in April 2007. This debt has not been paid. In his response to the SOR, applicant stated it has not been paid because he is "questioning the amount and would like to see a copy of the tax return."

Applicant paid the \$2,287.00 Collectibles Mgmt Resour/Enterprising Leasing debt in January 2006.

The Chase debt appears to be the same debt as the UNIFUND debt, which now stands at \$12,400.23. Applicant entered into a repayment agreement with the creditor on November 2, 2007 which required applicant to make an initial payment of \$1,240.00 by December 2, 2007, and monthly payments of \$232.50 thereafter until the debt is paid in full. There is no evidence that applicant made the required payments.

Applicant satisfied the \$467.00 First Premier debt in or before October 2007.

Applicant satisfied the debt to CAP 1 BANK, in the approximate amount of \$1,100.00, in November 2007.

Applicant satisfied the \$423.00 Arrow Financial debt in November 2007.

Applicant satisfied the \$1,792.00 debt to ANDREWS FCU in November 2007.

Policies

The President has "the authority to . . . control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to occupy a position that will give that person access to such information." (*Department of the Navy v. Egan*, 484 U.S. 518,527 (1988).) In Executive Order 10865, *Safeguarding Classified Information Within Industry* (February 20, 1960), the President set out guidelines and procedures for safeguarding classified information within the executive branch. The President authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." (Exec. Ord. 10865, Section 2.)

To be eligible for a security clearance, an applicant must meet the security guidelines contained in the Directive. Enclosure 2 of the Directive sets forth personnel security guidelines, as well as the disqualifying conditions and mitigating conditions under each guideline.

Initially, the Government must present evidence to establish controverted facts in the SOR that disqualify or may disqualify the applicant from being eligible for access to classified information. (Directive, Paragraph E3.1.14.) Thereafter, the applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate the facts. (Directive, Paragraph E3. 1.15.) An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.” (ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002).) “Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security.” (Directive, Paragraph E2.2.2.)

A person granted access to classified information enters into a special relationship with the government. The government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to classified information. The decision to deny an individual a security clearance is not a determination as to the loyalty of the applicant. (Exec. Ord. 10865, Section 7.) It is merely an indication that the applicant has not met the strict guidelines the President has established for issuing a clearance.

Analysis

Financial Considerations

Paragraph 18 of the new AG sets out the security concern relating to financial considerations:

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 AG note several conditions that could raise security concerns. Under Paragraph 19.a., an “inability or unwillingness to satisfy debts” is potentially disqualifying. Under Paragraph 19.c., “a history of not meeting financial obligations” may raise security concerns. The evidence shows applicant has a history of not meeting his financial obligations based on an inability or unwillingness to do so. These disqualifying conditions are therefore applicable.

The guidelines also set out some potentially mitigating conditions. Paragraph 20.a. may apply where “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.” Applicant has

not provided any reasonable explanation for his failure to honor his financial obligations. Accordingly, it is impossible to conclude this behavior will not recur. This mitigation condition does not apply.

Paragraph 20.d. applies where the evidence shows “the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.” Applicant has resolved, or is in the process of resolving, most of the debts listed in the SOR. This mitigation condition applies.

“Whole Person” Analysis

Under the whole person concept, the AJ must evaluate an applicant’s security eligibility by considering the totality of the applicant’s conduct and all the circumstances. An AJ should consider the nine adjudicative process factors listed at AG Paragraph 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 Paragraph 2c, the ultimate determination of whether to grant a security clearance must be an overall common sense 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. Applicant is a mature man who accumulated and failed to repay a significant amount of debt. Although he has made significant progress in dealing with these debts by either paying them or making arrangements to pay them over time, much of his unsecured debt remains. It is fair to say he still owes over \$30,000.00 in back taxes and approximately \$11,000.00 to UNIFUND. In addition, he has failed to offer any reasonable explanation for accumulating so much delinquent debt. Without such information, there is no way to conclude his history of financial difficulties will not recur. Based on these facts, I have no choice but to conclude applicant failed to mitigate the security concerns arising from Guideline F.

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

Conclusion

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

JOSEPH TESTAN
Administrative Judge