



Applicant for Security Clearance

Appearances

For Government: Rita O'Brien, Esquire, Department Counsel
For Applicant: *Pro Se*

February 12, 2008

Decision

LYNCH, Noreen A., Administrative Judge:

Applicant submitted his Security Clearance Application (SF 86), on March 1, 2005. On August 17, 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline F for Applicant. 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 acknowledged receipt of the SOR on August 27, 2007, and elected to have his case decided on the record in lieu of a hearing. Department Counsel submitted the Government's written case on October 23, 2007. Applicant received a complete file of relevant material (FORM) on October 30, 2007, and was provided the opportunity to file objections and submit material to refute, extenuate, or mitigate the Government's

case.¹ Applicant did not submit additional information. The case was assigned to me on January 28, 2007. Based upon a review of the case file, eligibility for access to classified information is denied.

Findings of Fact

In his Answer to the SOR, dated October 19, 2007, Applicant admitted the factual allegations in ¶¶ 1.a-1.d, of the SOR, with explanations. He denied the factual allegation in ¶ 1.e of the SOR.²

Applicant is a 59-year-old employee of a defense contractor. He worked as a design manager from 1989 until 2000. He is married and has two children. He has worked for his current employer since December 2003.³

Applicant had his own business for several years.⁴ However, in 1999 his business began to fail. His debt occurred from 1999 until 2002 because he tried to keep the business in operation with his own funds.⁵ He was forced to close his business in August 2002. He was unable to pay his business debts.

Applicant experienced no difficulty finding employment after the close of his business. He has been steadily employed for the past five years. His spouse had been employed on a part time basis in 2002 and most recently on a full time basis in 2007. He elected to pay the college tuition for his children rather than pay his delinquent debt.⁶

The debts alleged in the SOR total approximately \$35,000.⁷ Applicant admits the debts in ¶¶ 1.a through 1.d. He claims that he made payments in 2007 on four of the accounts. However, he provided no evidence or documentation to support the claim. The charged off accounts remain on his 2007 credit report. Applicant also reported that he is "waiting for settlement" figures on the debts in 1.b, 1.c and 1.d of the SOR. He has not paid on the fifth debt (1.e) because it is "contested." The debt in 1.a is admitted but then disputed because he claims all his medical bills are paid. The account in 1.a is for a medical bill. At the same time, Applicant disputed the debt but there is nothing in the

¹The Government submitted eight items in support of its contentions.

²Item 3 (Applicant's answer to SOR, dated September 11, 2007).

³Item 4 (Security Clearance Questionnaire, dated March 2005).

⁴*Id.*

⁵Item 5 (Applicant's Affidavit, signed January 31, 2006).

⁶*Id.*

⁷The total outstanding debt is likely more because allegation 1.d lists a debt of \$7,008 which is the past due portion. The charged off debt for this account was approximately \$15,000. This additional amount, as shown on the 2007 credit report, brings his total delinquent debt to \$42,571.

record to support either a payment or the dispute.⁸ In addition, Applicant disputed debt 1.e based on high interest charges.

In 2005, Applicant listed his substantial debts on his security clearance application. On that March 2005 application, he remarked that he had every intention of paying his delinquent obligations. He further explained he began a debt management program through an Employee Assistance Program at work and would pay off his debt in 2006. However, there is no record of this financial plan in 2007.

Applicant's current employment is stable and provides a steady income. Since 2002 he has been gainfully employed. His net monthly income in June 2007 was \$4,450. He has a monthly net remainder of \$800. He notes that he is trying to pay back his creditors while providing for his family. However, he is waiting for settlement figures from three of the debts as discussed above. His June 2007 personal financial statement lists his monthly expenses including "miscellaneous" but does not list any scheduled or reported payments— it affirms "waiting for settlements to be arranged."⁹

Applicant has not received any financial counseling according to his answer to the SOR. Although he did mention in 2005 that he began a program through his work, but there is nothing in the record to support this claim. He did not contact his creditors to arrange any settlements or even small payments on any of the delinquent accounts.

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, 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

⁸Item 6 (Applicant's Response to DOHA Interrogatory, dated June 26, 2007).

⁹*Id.*

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. 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 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

The security concern relating to the guideline for Financial Considerations is set out in AG ¶ 18:

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(a), an “inability or unwillingness to satisfy debts” is potentially disqualifying. Similarly under AG ¶ 19(c), “a history of not meeting financial obligations” may raise security concerns. Applicant accumulated substantial delinquent debt and was unable to pay some obligations for a period of time. His credit reports confirm that he has not paid the charged off collection accounts. The activity for the delinquent debts ranges from

2001 until the present. The evidence is sufficient to raise these potentially disqualifying conditions, requiring a closer examination.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Under AG ¶ 20(a), the disqualifying condition may be mitigated 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’s financial worries arose between about 2001 and 2003. He accumulated some delinquent debt due to his failed business venture. While that situation may have precipitated the debt, the inquiry does not end at that point. The Applicant’s problems have been ongoing and he has not resolved the significant delinquent debts. His inaction after being employed raise concerns about his current reliability, trustworthiness, or good judgment. This potentially mitigating condition does not apply.

Under AG ¶ 20(b), it may be mitigating where “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.” As noted above, some of the financial problems arose from his downturn and the ultimate close of his business. However, he did not act responsibly in identifying and resolving his delinquent debts. He did not set up a plan to repay on a systematic basis. His spouse returned to work and Applicant chose to pay college tuition instead of his delinquent debt. I find this potentially mitigating condition does not fully apply in this case.

Evidence that “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” is potentially mitigating under AG ¶ 20(c). Similarly, AG ¶ 20(d) applies where the evidence shows “the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.” Applicant has not received counseling and has not resolved the delinquent debts, either by payment or settlement. He presented no evidence or documentation to support payment on any of his debts. He is now financially sound and prepared for future contingencies. He allowed his numerous debts to remain unpaid for a period of several years despite his increasing income. In 2007, he promised to pay off “all adverse credit” but he has not done so. I conclude these potentially mitigating conditions do not apply.

AG ¶ 20(e) applies where the evidence shows “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.” In this case, Applicant disputed the first debt of \$100 (medical account). He did not produce any documentation to support this claim. His statements are inconsistent. As to the debt in 1.e, he disputes it because the interest charges are high. I conclude this potentially mitigating condition does not 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 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 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's career and employment situation was apparently fine until his business venture in 2000. His financial difficulty began when the business declined and his revenue did not match his business bills. Due to the downturn and eventual demise of his business venture in August 2002, he accumulated debt due to circumstances largely beyond his control. However, he did find employment in 2002 and his wife started to work part time. She is now working full time. Applicant has been with his current employer since December 2003. His income has increased and he now has a positive monthly net remainder. Despite this substantial improvement in finances, Applicant has not acted responsibly under the circumstances because once he had stable employment he did not start paying his delinquent debt. He still has the delinquent debt. He provided no documentation to support his claim that he is paying on some of the debts. He did however, elect to pay the college tuition for his two children. Even if Applicant could not pay the entire debt, he could have made some effort to set up a payment plan. However, he has not taken affirmative action to pay or resolve most of the delinquent debts, raising concerns about his good judgment. Of course, 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. Applicant has not shown sufficient effort to resolve his delinquent debts. He has not met his burden of proof in this case to overcome the government's case.

Overall, the record evidence leaves me with questions and doubts 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 financial considerations.

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
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	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.

NOREEN A. LYNCH
Administrative Judge