



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 07-11808
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Caroline H. Jeffreys, Department Counsel
For Applicant: *Pro Se*

May 13, 2008

Decision

TESTAN, Joseph, Administrative Judge:

On November 15, 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 December 4, 2007, and requested an Administrative Determination by an Administrative Judge (AJ). Department Counsel issued a File of Relevant Material (FORM) on December 31, 2007. Applicant did not respond to the FORM. The case was assigned to me on March 27, 2008. 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 36 year old employee of a defense contractor.

Applicant is indebted to AAC on an account that was charged off by MBNA and referred for collection in the approximate amount of \$35,743.00.

Applicant is indebted to American Express for a charged off account in the approximate amount of \$12,919.00.

Applicant denies he is indebted to AAC in the approximate amount of \$263.00 on an account referred for collection by Target. However, this debt is listed on his most recent credit report (Exhibit 7).

Applicant is indebted to Hilco Receivables in the approximate amount of \$5,102.00 on an account that was charged off by MBNA.

Applicant is indebted to Discover Card in the approximate amount of \$8,581.00. This debt has been referred for collection.

Applicant denies he is indebted to West Asset Management in the approximate amount of \$1,237.00 on an account referred for collection by a medical center. This debt is listed as a medical debt on applicant's most recent credit report, which also notes he disputed it.

Applicant denies he is indebted to Certegy on a charged off account in the approximate amount of \$211.00. This debt is listed on his most recent credit report.

Applicant is indebted to Unifund on two debts referred to it for collection. The first, in the amount of \$30,927.00, was referred by First USA bank. The second, in the amount of \$18,804.00, was referred by Chase.

Applicant denies he is indebted to Bank of America in the approximate amount of \$16,493.00. This debt is listed on his February 2006 credit report (Exhibit 9).

Applicant denies he is indebted to First Revenue in the approximate amount of \$565.00 on an account referred to it for collection by XCEL Energy. This debt is listed on his most recent credit report.

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

Guideline F, Financial Considerations

The security concern relating to Financial Considerations is set forth in Paragraph 18 of the new AG, and is as follows:

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 a., an “inability or unwillingness to satisfy debts” is potentially disqualifying. Under Paragraph c., “a history of not meeting financial obligations” may raise security concerns. The evidence establishes that applicant has a long history of being unable or unwilling to pay his debts. Accordingly, these disqualifying conditions are applicable.

The guidelines also set out mitigating conditions. Paragraph 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.” This mitigation condition is not applicable.

Under Paragraph 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.” Applicant presented no evidence that would justify application of this mitigating condition.

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 Paragraph c. This mitigation condition does not apply.

Paragraph d. applies where the evidence shows “the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.” This mitigating condition does not apply.

“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 has a history of not meeting his financial obligations. Even if he were given the benefit of the doubt with respect to the debts he denies owing, the evidence establishes that he still owes over \$100,000.00 to five creditors for six debts, all of which were either charged off or referred for collection. Under these circumstances, I 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:

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