



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----, -----) ISCR Case No. 07-11864
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Daniel F. Crowley, Esquire, Department Counsel
For Applicant: *Pro Se*

September 5, 2008

Decision

WHITE, David M., Administrative Judge:

Applicant filed a Chapter 13 bankruptcy in July 2007 with over \$49,000 in debt. He made only the first two required payments. Based upon a review of the case file, pleadings, and exhibits, eligibility for access to classified information is denied.

Applicant submitted his electronic Questionnaire for National Security Positions (SF 86), on June 12, 2006. On March 24, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant, detailing the security concerns under Guidelines F.¹ 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.

¹Item 1.

Applicant answered the SOR in writing on April 24, 2008, and requested that his case be decided by an Administrative Judge on the written record without a hearing.² Department Counsel submitted the Government's written case on June 5, 2008. A complete copy of the file of relevant material (FORM)³ was provided to Applicant, and he was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant signed the document acknowledging receipt of his copy of the FORM on June 13, 2008, and returned it to DOHA. He provided no further response to the FORM within the 30-day period he was given to do so, did not request additional time to respond, and made no objection to consideration of any evidence submitted by Department Counsel. I received the case assignment on August 15, 2008.

Findings of Fact

Applicant is a 37-year-old employee of a defense contractor. He served for two years in the National Guard, but has never held a security clearance. He is married, and has three stepchildren, ages 17, 18 and 19. He has been regularly employed as an electrician since May 1995, except for a 33 month job as a truck driver ending in 1999, and a 2 month period of unemployment in 2002. His present job started in August 2003.⁴

In his answer to the SOR, dated April 24, 2008, Applicant admitted the truth of the factual allegation in SOR ¶ 1.a, that he petitioned for Chapter 13 bankruptcy on July 7, 2007. He also stated, "Since the bankruptcy was finalized, I have been paying my creditors by terms of the 3 year schedule. This debt will be paid off by early 2011."⁵ The bankruptcy filing listed about \$40,500 in assets, including \$12,825 for a 2000 Ford Focus and \$15,000 in child support owed by the father of Applicant's stepchildren. It also listed \$9,777 in secured debt (the car loan for the Ford), \$8,249 in priority claims, including \$7,896 in child support owed by Applicant and \$353 in delinquent federal and state income taxes for 2005 and 2006. Finally, it listed 31 unsecured creditors, and many associated collection agencies, with claims totaling \$31,447.⁶ Applicant's credit bureau reports dated August 8, 2006, and March 20, 2008, confirm his substantial delinquent indebtedness, with accounts going into default as long ago as August 2000, and as recently as June 2007.⁷

²Item 2.

³The government submitted eight items in support of the allegations.

⁴Item 4.

⁵Item 2 at 1.

⁶Item 6 at 10, and Schedules B, D, E, and F.

⁷Items 5 and 8.

In his November 19, 2007 response to a written DOHA interrogatory, Applicant provided bankruptcy documents including payment schedules. These schedules show that Applicant made his first two scheduled bankruptcy payments in August and September 2007. In October 2007, he paid less than half the required amount, and in November 2007 he made no payment at all.⁸ Department Counsel highlighted this issue in the FORM, strongly suggesting that Applicant provide an explanation for these non-payments and evidence supporting his claim to be current on required bankruptcy payments. As noted above, Applicant failed to respond to the FORM with any additional information. Accordingly, the record evidence compels the conclusion that Applicant has failed to comply with the terms of his bankruptcy since September 2007. He provided no other evidence of resolution or attempted resolution of any delinquent debt. He claimed in his answer to the SOR that he and his wife received financial counseling. However, the only counseling documented in the record is the session required by bankruptcy law. Applicant provided no indication of ongoing counseling, budgeting, or change in his financial behavior, and provided no other evidence of good character, trustworthiness or judgment for consideration in mitigation. Since he elected a determination on the written record, no in-person evaluation of his character or credibility was possible.

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 to be 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 over-arching adjudicative goal is a fair, impartial and common sense decision. According to AG ¶¶ 2(a) and 2(c), the entire process is a conscientious scrutiny of applicable guidelines in the context 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 "Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the 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

⁸Item 6 at 62, 63.

responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision.” Section 7 of Executive Order 10865 provides: “Any determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.”

A person applying for access to classified information seeks to enter 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.

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 a significant number and amount of delinquent debts over at least the past eight years. He was either unable or unwilling to repay these debts, and provided no information that repayment of any of them is probable in the foreseeable future. Applicant’s only demonstrated effort to resolve his more than \$49,000 of debt was his July 2007 Chapter 13 bankruptcy proceeding. He also defaulted on payments required under that program after only two months. The evidence is sufficient to raise both of these potentially disqualifying conditions, requiring a closer examination and balancing of resulting security concerns with any potentially mitigating matters.

Department Counsel also asserted that the disqualifying conditions set forth in AG ¶¶ 19(b) and 19(e) are supported by this record. Except to the extent that those

disqualifying conditions overlap with AG ¶¶ 19(a) and 19(c), there is no record evidence supporting their independent application with their focus on the reasons underlying an applicant's financial problems.

The guideline includes several conditions that could mitigate security concerns arising from financial difficulties. Under AG ¶ 20(a), disqualifying conditions 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 issues have been a continuing problem since at least 2000. His disregard of these financial obligations is ongoing, and continues to raise concerns about his current reliability, trustworthiness, or good judgment. The evidence does not support this potentially mitigating condition.

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." Applicant has been regularly employed, except for a two-month period in 2002, and provided no evidence indicating that his debts arose due to matters beyond his control.

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). This mitigating condition is potentially raised by Applicant's initial steps toward bankruptcy, but is not supported as a factor for significant consideration in this case due to his lack of follow through. 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 initiated bankruptcy proceedings that could resolve his debts, but failed to make court-ordered payments after only two months. I conclude this potentially mitigating condition has not been established.

Even if Applicant did comply with the terms of his Chapter 13 bankruptcy, his significant indebtedness would not be resolved for several more years. His apparent failure to even make the bankruptcy payments supports the inference that he remains financially overextended and, therefore, at risk of having to engage in illegal acts to generate funds. His history and pattern of financial irresponsibility further indicate a lack of judgment and unwillingness to abide by rules and regulations, thereby raising substantial questions about his reliability, trustworthiness, and ability to safeguard classified information.

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 is a mature individual who is responsible for his choices and conduct. He did not show that any of his debts arose from unusual medical circumstances, rather than normal care, or that the other debts arose due to circumstances largely beyond his control. Applicant has been employed for all but two months of the period during which these debts became delinquent, but has resolved none of them.

Applicant submitted no evidence of rehabilitation or permanent behavioral change, or demonstrating that risk of coercion or duress is not significant. His ongoing disregard of lawful obligations, especially after receiving notice of the security concerns raised thereby, creates continuing doubt about his trustworthiness and reliability. He offered no other evidence about his character or responsibility to mitigate these concerns, or tending to make their continuation less likely.

Overall, the record evidence creates substantial doubt as to Applicant's present eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated the security concerns arising from his 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

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.

DAVID M. WHITE
Administrative Judge