



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 07-12178

Appearances

For Government: Melvin A. Howry, Esquire, Department Counsel
For Applicant: Angela Correa, Personal Representative

July 11, 2008

Decision

WHITE, David M., Administrative Judge:

Applicant has substantial delinquent debt that he cannot afford to repay. He did not deliberately falsify information about his debts on his security clearance application because he cannot read and did not understand the questions. Based upon a thorough review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

Applicant submitted his Electronic Questionnaires for Investigations Processing (e-QIP), on September 1, 2006. On January 15, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines F and E. 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 (DoD) for SORs issued after September 1, 2006.

Applicant acknowledged receipt of the SOR on January 23, 2008. He answered the SOR in writing (Answer) on January 28 and 31, 2008, and requested a decision be made without a hearing before an administrative judge. These answers, and some character reference letters, were forwarded to DOHA by his personal representative on February 5, 2008, in her capacity as his employer's Assistant Facility Security Officer. When Department Counsel learned that Applicant cannot read, he requested a hearing pursuant to Directive ¶ E3.1.7, in order to ensure a fair process, conducted orally, in which all parties could be assured that Applicant understood and participated in developing a comprehensive record. Department Counsel was prepared to proceed on March 24, 2008, and DOHA assigned the case to me on March 25, 2008.

DOHA issued a notice of hearing on April 2, 2008. Although Applicant did not sign and return his written receipt for the notice of hearing until April 11, 2008, both Applicant and his personal representative acknowledged on the record that they actually received it at least 15 days prior to the hearing, when I forwarded them a copy via email on April 2, 2008. (Tr. at 14.) I convened the hearing as scheduled on April 22, 2008. Department Counsel offered Government Exhibits (GE) 1 through 6, which were admitted without objection. Applicant testified on his own behalf, called two other witnesses, and submitted Applicant's Exhibit (AE) A, which was admitted without objection. I granted Applicant's request to leave the record open until May 6, 2008, in order for him to submit additional documentation. On April 28, 2008, Applicant's personal representative submitted copies of his W-2 forms for the past two years to Department Counsel. Department Counsel forwarded Applicant's submission without objection to its consideration on May 1, 2008. These documents were marked AE B, and Applicant did not submit any further evidence. DOHA received the transcript of the hearing (Tr.) on May 7, 2008.

Findings of Fact

Applicant is a 44-year-old employee of a defense contractor, for whom he has worked, with a security clearance, for more than 10 years. This contractor receives set-aside contracts and hires a majority of employees with handicaps and barriers to employment. Applicant is illiterate. He and his wife of nine years are now living in separate households, to avoid fighting with each other. His wife receives about \$600 per month in Social Security payments. Their daughter, age 9, and his step-daughter, age 14, live with their mother. (GE 1 at §§ 2, 11, 13, 14, 26; Tr. at 8-9, 66, 83-85, 89; Answer, dated Jan. 31, 2008.)

In his Answer, Applicant admitted each of the 15 debts alleged in SOR ¶ 1, totaling \$27,464, that first became delinquent between April 2000 and July 2006. (GE 2; GE 4.) He denied that he deliberately falsified answers on his e-QIP, explaining that he either did not know about debts or misunderstood questions due to his illiteracy. No evidence was introduced that would support a finding of deliberate falsification, as opposed to ignorance or mistake, concerning the four incorrect "No" answers pertaining to repossessions, judgments, and delinquencies alleged in SOR ¶ 2.

During the hearing, Applicant testified concerning his present understanding of the status of each SOR-alleged delinquent debt. (Tr. at 48-61.) He stated that the charged-off debts alleged in SOR ¶¶ 1.d and 1.l resulted from the repossession of Applicant's and his wife's former automobiles. He did not remember the details of the debt alleged in SOR ¶ 1.m, which his October 9, 2006 credit bureau report (CBR) reflected as another auto loan repossession charge-off. He did not dispute owing these three debts, which total \$14,550, and he has no funds available to repay them. He was unclear about the details of the delinquent debts alleged in SOR ¶¶ 1.c, 1.e, 1.f, 1.j, 1.k, and 1.o, but neither disputed owing them nor offered any evidence that he had made any effort to resolve them. These six debts total \$4,434. He remembered that he still owes the two debts alleged in SOR ¶¶ 1.g and 1.n, totaling \$748. He remembered having paid the \$1,361 delinquent credit card debt alleged in SOR ¶ 1.h in order to obtain his Countrywide mortgage in September 2005. Although this debt still appeared as unpaid on his October 2006 CBR (GE 2 at 7), it did not appear on subsequent CBRs. On balance, I find that this debt was repaid before the SOR was issued.

Applicant said the \$181 cable service debt alleged in SOR ¶ 1.a arose because the company claimed he had not returned the cable box and he thinks he did. He testified that he had not done anything to formally dispute the debt. (Tr. at 48-49.) He further testified that the \$664 attorney's fee debt in SOR ¶ 1.b related to his wife's legal effort to regain custody of her daughter from her own mother. He did acknowledge that he now understands it is also his joint debt. (Tr. at 50.) Finally, he acknowledged that his September 2005 Countrywide mortgage was 180 days in arrears in September 2006, as alleged in SOR ¶ 1.i. However, he testified, and subsequent CBRs confirm, that he has since brought his mortgage payments current. His three auto repossession loans became delinquent in June 2005, October 2005, and July 2006.

Applicant provided AE A to document his entrance, on April 19, 2008, into a financial counseling program rather than filing for bankruptcy. (Tr. at 108-112.) This service's initial budget assessment showed a net monthly budget deficit of \$3,439. Among their initial recommendations was that he seek a second job to increase his income, and lower monthly living expenses to pay down credit card debt. Applicant had not implemented either of these recommendations by the time of the hearing. (Tr. at 42-47, 78.) He testified and offered AE B to show that his income fluctuates from year to year based on duties assigned. His supervisors testified that they have implemented a new payment plan to ensure his pay does not fall below \$15 per hour to assist him with his financial difficulties. (Tr. at 67-76, 89-90, 99.)

Applicant submitted three character-reference letters from present and former supervisors attesting to his reliability, dependability, trustworthiness, and good work performance with his Answer. He also offered testimony from his direct and upper level supervisors describing these same characteristics, as well as his history of compliance with all security regulations. He primarily does manual indoor and outdoor maintenance work, depending on the needs of the government facility and the season, and also works some hazardous material/waste projects. His work does not involve use of classified information, but access to many of his work areas requires a clearance.

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 used to evaluate 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 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 that "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

AG ¶ 18 expresses the security concern pertaining 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 over-extended is at risk of having to engage in illegal acts to generate funds. Compulsive gambling is a concern as it may lead to financial crimes including espionage. Affluence that cannot be explained by known sources of income is also a security concern. It may indicate proceeds from financially profitable criminal acts.

AG ¶ 19 describes conditions that could raise a security concern and may be disqualifying. Of these nine different disqualifying conditions, the Government asserted that two were raised by Applicant's financial circumstances (Tr. at 82.): "(a) inability or unwillingness to satisfy debts;" and "(c) a history of not meeting financial obligations."

The evidence shows that Applicant, as recently as October 2006, incurred at least 14 SOR-listed delinquent debts totaling in excess of \$27,000. His monthly net income falls several thousand dollars short of being sufficient to pay his reported regular living expenses and other debts, which did not include any delinquent debt repayments. These debts all became delinquent during his current period of regular employment, as he assumed more debt than he could afford to repay. Although he has brought his mortgage payments current, and repaid one credit card debt to obtain that mortgage, the evidence establishes the continuing existence of 13 SOR-listed delinquent debts, totaling more than \$20,000, that Applicant incurred over the past eight years. Substantial security concerns are raised under both AG ¶¶ 19(a) and 19(c).

AG ¶ 20 provides conditions that could mitigate security concerns. The five potentially pertinent conditions are:

(a) 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;

(b) 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;

(c) 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;

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and

(e) 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 roof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

Applicant's delinquent debts arose over the last eight years, and a substantial number and amount remain delinquent at present. His family budget is such that he does not have the means to repay them, and is likely to incur additional delinquent debt. Applicant incurred all of this debt while working in his present job. His company has arranged to pay him no less than \$15 per hour during periods he is performing lower paying jobs, but there is no way to calculate to what extent that will change his available income. He and his wife, who receives only \$600 per month in social security payments, are voluntarily maintaining two separate households, while supporting two children, because they fight when living together. None of his delinquent debt involves medical bills. These are not circumstances that can be considered beyond his control. Applicant offered no evidence that he followed the minimal financial counseling he recently sought, or that he has any comprehensive plan to address his debt. He has not contacted any of his creditors to arrange repayments. He said that he disputes the amount claimed for the cable box, but showed no evidence that he followed through with the creditor about that liability. There is no indication in this record that his financial issues are either under control or likely to improve in the foreseeable future.

This evidence establishes minimal mitigation under AG ¶¶ 20(a) through (e). Applicant remains financially over-extended to a significant extent. He is well regarded at work, but that is insufficient to overcome other record evidence concerning his trustworthiness, reliability and good judgment.

Guideline E, Personal Conduct

AG ¶ 15 expresses the security concern pertaining to personal conduct:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. The disqualifying condition alleged in the SOR and raised by the evidence in this case is:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities.

Given his level of financial and legal sophistication, and his inability to read, Applicant testified credibly that he did not understand that he was incorrectly answering the four finance-related questions listed in SOR ¶ 2. Based on the evidence, including his demeanor and testimony, I conclude that he did not deliberately omit the correct information in an attempt to conceal it and deceive the Government about its existence. Accordingly, I find no substantial evidence that he deliberately falsified or omitted information on his e-QIP security clearance application.

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 conduct of potential concern includes substantial delinquent debts that he cannot afford to repay. Applicant is a mature, experienced adult who is accountable for his decisions and conduct even though he is illiterate. His debts arose over a lengthy period, and persist to date. There is ongoing potential for pressure, coercion, exploitation or duress since he remains financially overextended.

Applicant's good reputation and performance at work is commendable, but insufficient in itself to mitigate security concerns arising from his financial irresponsibility and excessive debt load. His indebtedness is quite likely to continue in the foreseeable future. His recent efforts to bring his mortgage payments current, seek financial counseling and embark on a debt resolution program are steps in the right direction, but he needs additional time to establish a pattern of responsibility in light of his lengthy indebtedness and apparently continuing financial over-extension.

On balance, Applicant presented insufficient evidence to mitigate reliability and trustworthiness security concerns arising from his inability to satisfy debts, and history of not meeting financial obligations. Overall, the record evidence leaves substantial doubts as to Applicant's present eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated any personal conduct security concerns, but did not mitigate 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
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	Against Applicant
Subparagraph 1.f:	Against Applicant
Subparagraph 1.g:	Against Applicant
Subparagraph 1.h:	For Applicant
Subparagraph 1.i:	For Applicant
Subparagraph 1.j:	Against Applicant
Subparagraph 1.k:	Against Applicant
Subparagraph 1.l:	Against Applicant
Subparagraph 1.m:	Against Applicant
Subparagraph 1.n:	Against Applicant
Subparagraph 1.o:	Against Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraph 2.a:	For Applicant
Subparagraph 2.b:	For Applicant
Subparagraph 2.c:	For Applicant
Subparagraph 2.d:	For Applicant

Conclusion

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

DAVID M. WHITE
Administrative Judge