



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 07-12183
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Nichole Noel, Esquire, Department Counsel
For Applicant: *Pro Se*

April 17, 2008

Decision

CURRY, Marc E., Administrative Judge:

On November 26, 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing 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.

DOHA received Applicant's answer to the SOR, requesting a hearing, on December 28, 2007. The case was assigned to me on January 15, 2008. DOHA issued a notice of hearing on January 20, 2008 scheduling it for March 4, 2008. The case was then rescheduled for March 6, 2008. During the hearing, I received three government exhibits, 30 Applicant exhibits, and the testimony of three Applicant witnesses. DOHA received the transcript on March 20, 2008. Based upon a review of the case file,

pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

Preliminary Ruling

SOR subparagraph 1.b, “You are indebted to various medical providers on approximately 25 accounts in the approximate total amount of \$6,208 for debts placed in collection,” is vague and overbroad. Although SORs are not criminal indictments, and do not need to be drafted with a high level of specificity, they must, at a minimum, be drafted with enough specificity to enable applicants to prepare a response. SOR subparagraph 1.b fails to meet this minimum threshold, therefore, I have resolved it in Applicant’s favor.

Findings of Fact

Applicant admitted all of the SOR allegations. He is a 49-year-old married man with three children ages 19, 17, and 11. He has a high school diploma and has taken some college courses. He is a systems administrator who is responsible for, among other things, managing the access list to secured and controlled areas at his jobsite. Through the 11 years he has held this position, his employers have changed, but his responsibilities have remained the same.

According to Applicant’s supervisor, he is an outstanding employee who “has contributed significantly to the quality and scope” of the services the company provides on the contract (Exhibit Q). He is active in the community, often coordinating church-related programs (Exhibit S).

Applicant has been struggling to make ends meet since the birth of his first child, who was born asthmatic in 1988. Later, a life-threatening bout of whooping cough, prompted Applicant’s wife to quit her job to care for him (Tr. 25). Shortly after Applicant’s wife quit her job, he was laid off from his job. Although he quickly found another job, it paid half the salary of the previous job (Tr. 26).

Applicant’s second child was born prematurely with “a high-line membrane disorder which made his lungs weak.” Because of the severity of this condition, illnesses that were typically routine for healthy children required hospitalization for Applicant’s son throughout his infancy (Tr. 48). In addition to the frequent hospitalizations, he went to the doctor approximately twice per month through pre-adolescence (Tr. 49).

Applicant’s third child was also born with asthma requiring frequent doctor visits. As the children grew, their health gradually improved. Applicant and his wife then began having serious health problems. Between 1999 and 2003, Applicant underwent ankle surgery and emergency hernia surgery (Tr. 54), while his wife underwent a hysterectomy (Tr. 53), and surgery to remove a suspicious lump from her breast (Answer).

Although Applicant has had health insurance for most of his career, his providers changed as his employers changed, and the scope of coverage varied drastically, with costs ranging from eighty to four hundred dollars monthly. Applicant gradually lost track of his healthcare expenses and they began to grow delinquent.

By June 2007, Applicant had accrued approximately \$7,000 of delinquent debt. The non-medical debt included a judgment (SOR subparagraph 1.a), a video store delinquency (SOR subparagraph 1.f), and the deficiency remaining from the 2004 voluntary repossession of an automobile (SOR subparagraph 1.g).

The judgment occurred after a former landlord sued him in 2004 for approximately \$5,000, alleging damages to the rental property. The landlord was awarded \$1,354 (Tr. 43). The landlord moved shortly after obtaining the judgement, and Applicant has been unable to locate him. Approximately five months ago, he went to the court that entered the judgment in order to locate him, but was unsuccessful. The judgment remains outstanding.

The video store delinquency totaled \$139. Applicant satisfied it (Exhibit E, Tr. 59). There is no record evidence of the date he satisfied it.

Applicant chose to return the automobile listed in SOR subparagraph 1.g to the dealer because he could not afford maintenance payments. The deficiency remaining from the voluntary repossession was \$4,689. He satisfied it in September 2007 (Exhibit 2 at 8, Exhibits F-G).

SOR subparagraph 1.c alleges approximately six delinquent medical accounts. In October 2007, Applicant contacted the collection agency, and discovered he actually owed debts on 15 accounts. He then developed a payment plan, and provided the collection agent a copy. Applicant owes approximately \$2,300. Since November 2007, he has been making approximately two payments per month consistent with the plan.

SOR subparagraph 1.d, a \$109 medical bill, is a duplicate of SOR subparagraphs 1.j and 1.l (Exhibit BB). Applicant satisfied it (Exhibit DD).

Applicant owes the collection agency listed in SOR subparagraph 1.e approximately \$349 on four accounts. He contacted the collection agency in October 2007, and organized a payment plan whereupon he will pay approximately \$30 each month until the delinquency is satisfied (Exhibit C). He has been making payments since November 2007. The collection agent will provide a receipt in September 2008 when the delinquency is completely satisfied (Tr. 59).

Applicant contacted the collection agent listed in SOR subparagraph 1.h in October 25, 2007, and confirmed there were 11 delinquent accounts, instead of four as alleged. He then arranged a payment plan. By the date of the hearing, he had satisfied three of the accounts (Exhibit BB).

Applicant satisfied the delinquency listed in SOR subparagraph 1.i (Exhibit J). He contacted the collection agency listed in SOR subparagraph 1.k, and discovered he owed money on 10 accounts rather than two, as alleged. There is no record evidence of the amount of the revised delinquent total. (Exhibit L). He has completely satisfied four accounts, and made payments on two others (Exhibit BB).

Applicant contacted the collection agency listed in SOR subparagraph 1.m, and discovered he owed on 13 accounts rather than nine as alleged. He arranged a payment plan, and has been making approximately bi-monthly payments since November 2007 (Exhibit N).

Shortly after writing each creditor, Applicant met with a credit counselor who helped him complete “a comprehensive Financial Needs Analysis,” and helped him develop the above-referenced payment plans (Exhibit T, Tr. 28). He meets with him periodically to ensure that he stays on track.

Applicant budgets his finances (Exhibit 2 at 12). In November 2007, he received a raise. His monthly income is now \$1,500 per month higher than it was when he first began developing payment plans in October 2007 (Tr. 68). His wife recently obtained a new job with insurance benefits. Now, Applicant only includes himself and his children on his policy. This will save him \$200 each month (Tr. 70). The delinquencies will be completely satisfied by December 2010 (Exhibit N at 2).

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. According to AG ¶ 2(c), the entire process is a scrutiny of a number of variables known as the “whole person concept.”

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. 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 for obtaining a favorable security decision.

Analysis

Guideline F, Financial Considerations

Under this guideline, “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” (AG ¶ 18). Moreover, “an individual who is financially overextended is at risk of having to engage in illegal acts to generate funds” (*Id.*). Applicant’s history of financial problems triggers the application of AG ¶¶ 19(a) “inability or unwillingness to satisfy debts,” 19(c), “a history of not meeting financial obligations,” and 19(e), “consistent spending beyond one’s means, which may be indicated by excessive indebtedness, significant negative cash flow, high debt-to-income ratio, and/or other financial analysis.”

His delinquencies were not caused by extravagant or irresponsible spending. Instead, they were caused by difficulties managing excessive medical expenses incurred by his family over a 15-year period. Since September 2007, he has been satisfying them in a methodical, organized manner. He meets periodically with his credit counselor, and his income has increased by \$1,500 per month since he began executing a payment plan, while his monthly expenses have decreased by \$200 per month. AG ¶¶ 20(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,” 20(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,” and 20(d) “the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts,” apply.

Although Applicant provided comprehensive evidence documenting his contacts with creditors and outlining his payment plans, he did not provide receipts documenting all of his payments. He did, however, provide such evidence supporting his satisfaction of the largest delinquency, the car deficiency. Also, his testimony was credible. Having evaluated the cause of his delinquencies, his efforts at eliminating them, and his current financial stability, I conclude Applicant has mitigated the financial considerations security concern.

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.”

I addressed the whole person factors in my evaluation of mitigating and disqualifying conditions in the Financial Considerations section of the Decision. I conclude Applicant has mitigated the Financial Considerations security concern.

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: FOR APPLICANT

Subparagraphs 1.a - 1.m: For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

MARC E. CURRY
Administrative Judge