



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 07-14179
SSN: -----)
)
Applicant for Security Clearance)

Appearances

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

September 10, 2008

Decision

MATCHINSKI, Elizabeth M., Administrative Judge:

Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) on January 31, 2007. On February 11, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing the security concerns under Guideline F that provided the basis for its action to deny him a security clearance and refer the matter to an administrative judge. 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 as of September 1, 2006.

Applicant acknowledged receipt of the SOR on February 14, 2008. He answered the SOR allegations in writing on March 4, 2008. On April 16, 2008, he requested a decision without a hearing. On June 16, 2008, the government submitted a File of Relevant Material (FORM) consisting of seven exhibits (Items 1-7). DOHA forwarded a

copy of the FORM to Applicant and instructed him to respond within 30 days of receipt. No response was received by the July 24, 2008, due date. On August 15, 2008, the case was assigned to me to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for him. Based upon a review of the government's FORM, including Applicant's Answer to the SOR allegations (Item 2), eligibility for access to classified information is denied.

Findings of Fact

DOHA alleged under Guideline F, financial considerations, that Applicant owes delinquent federal student loan debt totaling credit card debt totaling \$27,620 (SOR ¶¶ 1.a through 1.f). Applicant admitted the debts (Item 2). After considering the evidence of record, I make the following findings of fact.

Applicant is a 32-year-old associate designer who has worked for a defense contractor since September 2006. The available record does not show that he has ever held a security clearance (Item 4).

Applicant attended college from August 1994 to July 2001. While in school, he worked as a lot attendant for a home improvement retailer. In about January 2001, he was fired for refusing to perform a task. He then worked as a forklift operator, staying on the job for almost two years after he earned his bachelor of science degree. In about May 2003, he began working as a driver, initially for a company contracted to deliver packages for a major shipping company. He was involuntarily terminated for time clock issues in November 2003 but found work as a driver for another company. In September 2003, he entered the defense sector as a trainee designer for his present employer (Item 4).

Needing a security clearance for his duties, Applicant executed an e-QIP on January 31, 2007. He disclosed under section 22 concerning his employment record that he had been fired from previous jobs in January 2001 and in May 2003. In response to section 27 concerning his financial record, Applicant indicated a judgment had been awarded against him in August 2003, and a wage garnishment action had been initiated in May 2005, to recover about \$35,000 in delinquent federal student loans. Applicant also listed the delinquent student loan debt in response to questions 28 a. "In the last 7 years, have you been over 180 days delinquent on any debt(s)?" and 28 b. "Are you currently over 90 days delinquent on any debt(s)?" (Item 4).

A check of Applicant's credit on February 28, 2007, revealed that he had defaulted on six federal student loans taken out between November 1995 and November 1998 totaling \$20,000. In April 2004, an aggregate debt balance of \$25,694 was referred for collection. As of January 2007, he owed about \$26,613 in student loan debt. He was making timely payments of \$264 per month on an auto loan taken out in June 2004 for \$11,619, and had no outstanding credit card debt. A delinquent credit card debt of \$439 had been referred for collection in July 2006, but he paid it in October 2006 (Item 5).

During an interview with a government investigator on or about May 23, 2007,¹ Applicant expressed his willingness to resolve his indebtedness. Asked by DOHA to document repayment of his six delinquent student loans, Applicant indicated on November 20, 2007, that his loan debt had been consolidated. The assignee collecting the student loan debt had garnished his pay with his previous employer. To avoid another garnishment, he promised to pay the collection agency at least \$150 per month. While he had been given an option to rehabilitate his loans out of default status on payment of \$360 per month for nine months, Applicant averred he could not afford it. He expressed his intent to enroll in the rehabilitation payment option by May 2008:

After my interview, I immediately contacted [the collection agency] to discuss my account as presented above. I started by making a May and June payment of \$150 each. I paid by money order and have enclosed a copy of my May receipt. Unfortunately, I mailed the June receipt with the money order. I did not make any more since then because I never got any confirmation of my payments. Therefore, I continued to communicate with [the collection agency] to verify my two payments. The payments did not show up in their system until October. They did receive my May payment, but did not receive my June payment. It was probably a mistake on my part because I do not remember putting my social security number on the money order as instructed before. As of now, I plan to make a November payment and will continue to do so until May 2008. Then I plan to proceed in enrolling in the credit rehabilitation program.

Applicant provided DOHA with a copy of one money order receipt showing a \$150 payment on May 28, 2007 (Item 6).

A subsequent check of Applicant's credit on January 28, 2008, showed Applicant had paid off his old car loan in April 2007. He had taken out a new vehicle loan of \$16,743 in March 2007. The loan, which was being repaid on time at \$309 per month, had an outstanding balance of \$15,385 as of December 2007. His student loans were still in collection with a total balance of \$27,640 (Item 7).

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

¹The file available for review does not include any statement from Applicant or any report from the investigator about the interview. In its interrogatories to Applicant of November 2007, DOHA referenced an interview of May 23, 2007, during which Applicant had apparently indicated a willingness to resolve his indebtedness, and asked him to furnish documentation of efforts made to resolve his debts (see Item 6). When he responded to the interrogatories, Applicant did not deny that he had been interviewed in May 2007 or that he had expressed at that time a willingness to resolve his debts.

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 overarching adjudicative goal is a fair, impartial and common sense decision. According to AG ¶ 2(c), 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 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 that 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 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.

Applicant owes about \$27,640 in delinquent federal student loan debt that has been in default since at least April 2004.² Significant security concerns are raised by "inability or unwillingness to satisfy debts" (AG ¶ 19(a)) and by "a history of not meeting financial obligations" (AG ¶ 19(c)).

AG ¶ 20(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") clearly does not apply given he has not even managed to rehabilitate the loans. While it appears that he held a series of blue collar jobs as a forklift operator and then as a driver even after he earned his B.S. degree, he did not provide sufficient evidence to implicate 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"). He failed to provide any income or living expenses figures that might have excused his inaction on his student loans.

What little is known about his financial situation is that his monthly car payments increased by \$45 after he took out a new car loan of \$16,743 in March 2007. This car loan raises questions of self-interest in the absence of any evidence showing need for a new vehicle. He made no payments on his delinquent student loans until after his interview with a government investigator in May 2007, and he failed to follow through on promises made to the agency collecting the student loan debt. Offered an option to rehabilitate his student loans by making nine consecutive monthly payments of \$366, Applicant countered that he would pay \$150 monthly as he could not afford the full \$366. By November 2007, he had made two payments at most, which were in May and June 2007.³ Even if I accept that he was justified in not making any additional payments until the creditor verified receipt in October 2007, Applicant told DOHA in November 2007 that he would resume the \$150 monthly payment until May 2008 when he would then start the process of rehabilitating his loans. There is no evidence that Applicant made any payments in November 2007 or thereafter, despite the fact that he was notified of the government's concerns in the February 2008 SOR and again in the June 2008 FORM. Under the circumstances, I am unable to apply either AG ¶ 20(c) ("the

²Applicant's credit report of January 28, 2008 (Item 7) shows the debt in SOR ¶ 1.f to be \$1,726 rather than the \$1,706 alleged. This would explain the \$20 discrepancy between the amount of total student loan debt listed on the credit report and that alleged in the SOR.

³As Department Counsel correctly noted, Applicant presented proof of only the May 2007 payment.

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”) or AG ¶ 20(d) (“the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts”).

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 in light of 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) the 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 commonsense judgment based upon careful consideration of the guidelines and the whole person concept.

The government must be assured that those persons with classified access can be counted on to exercise good judgment at all times. Although Applicant has been candid about his defaulted student loan debt, he remains under a significant debt burden that is not likely to resolve in the foreseeable future. As of May 2007, he could not afford the \$366 monthly payment necessary to rehabilitate his loans. Based on the record before me, I am unable to conclude that it is clearly consistent with the national interest to grant him access to classified information.

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

Conclusion

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

ELIZABETH M. MATCHINSKI
Administrative Judge