



**DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS**



In the matter of:)
)
) ISCR Case No. 07-14691
)
)
Applicant for Security Clearance)

Appearances

For Government: Paul M. DeLaney, Esquire, Department Counsel
For Applicant: *Pro Se*

May 26, 2009

Decision

HEINY, Claude R., Administrative Judge:

Applicant has six delinquent accounts totaling more than \$21,000, which have been placed for collection. No payment has been made on these obligations nor has a repayment plan been established. Applicant has failed to rebut or mitigate the government's security concerns under financial considerations. Clearance is denied.

Statement of the Case

Applicant contests the Defense Department's intent to deny or revoke his eligibility for an industrial security clearance. Acting under the relevant Executive Order and DoD Directive,¹ the Defense Office of Hearings and Appeals (DOHA) issued a

¹ 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.

Statement of Reasons (SOR) on December 31, 2008, detailing security concerns under financial considerations.

On February 2, 2008, Applicant answered the SOR, and elected to have the matter decided without a hearing. Department Counsel submitted the government's case in a File of Relevant Material (FORM), dated March 10, 2009. The FORM contained 10 attachments. On March 17, 2009, Applicant received a copy of the FORM, along with notice of his opportunity to file objections and submit material to refute, extenuate, or mitigate the potentially disqualifying conditions.

Responses to the FORM are due 30 days after receipt of the FORM. Applicant's response was due on April 16, 2009. As of May 15, 2009, no response had been received. On May 15, 2009, I was assigned the case.

Findings of Fact

In his Answer to the SOR, Applicant admits the factual allegations of the SOR. Applicant's admissions to the SOR allegations are incorporated herein. After a thorough review of the record, pleadings, and exhibits, I make the following findings of fact:

Applicant is a 42-year-old security guard who has worked for a defense contractor since November 2005, and is seeking to obtain a security clearance.

In June 2001, Applicant was laid off by his employer of seven years where he had worked as a manufacturing technician, engineering technician, manufacturing supervisor, purchasing agent and systems administrator. (Item 5) From July 2001 until December 2001, Applicant was unemployed. His yearly income decreased from \$40,000 to \$20,000 when he obtained a job as a software technician during tax season. From April 2002 until August 2004, Applicant was again unemployed. (Item 5)

Applicant moved from his two bedroom apartment to a friend's couch. His Ford pick-up, which he had purchased just prior being laid off, was repossessed. His goods were placed in storage and later sold to pay past due rent on the storage unit. Applicant's depression, which was first diagnosed when Applicant was in his 20's, intensified during this period. Applicant returned to school which increased his financial obligations. (Item 6, 7) In August 2004, Applicant started working at a temporary employment agency until November 2005 when he started at his current job. (Item 5)

In Applicant's June 20, 2006 Electronic Questionnaires for Investigations Processing (e-QIP), Applicant lists an October 2003 vehicle repossession with a debt of \$8,550 remaining to be paid. As of August 2008, when Applicant completed the written interrogatories (Item 6), he stated his monthly disposable income (gross income less expenses) was \$350. Applicant pays approximately \$250 per month on his student loans. (Item 6)

Being a student and unemployed caused Applicant's debts to become delinquent. (Item 7) Applicant admits to owing the six past due obligations, which have been placed for collection, listed in SOR. (Item 4) None of the debts, which total approximately \$21,000, have been paid nor is there evidence of payments being made on these debts. The first debt of \$14525 (SOR ¶ 1.a) was the repossessed pick-up truck previously discussed. In April 2001, Applicant had obtained the approximately \$31,000 auto loan. (Item 9, page C-1) The \$340 debt (SOR ¶ 1.b) is a collection agency attempting to collect a past due telephone bill.

The \$2,954 debt (SOR ¶ 1.c) was a national credit card account opened in February 1995, which has been charged off. The \$330 debt (SOR ¶ 1.d) is a collection agency attempting to collect a different past due telephone bill. The last two accounts are the same collection agency attempting to collect for two different national department store accounts (SOR ¶ 1.e, \$2,044 and SOR ¶ 1.f, \$1,190).

In March 2008, when Applicant completed an affidavit (Item 7), he stated he would contact his creditors and start paying back his past due debts. He also stated he would set up a payment schedule for some of the debt. Applicant referenced six of the seven SOR debts in his affidavit. No evidence of payment has been received.

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. The administrative judge's over-arching 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 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

Revised Adjudicative (AG) ¶ 18 articulates the security concerns relating to financial problems:

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.

Additionally, an individual who is financially irresponsible may also be irresponsible, unconcerned, negligent, or careless in properly handling and safeguarding classified information. Behaving responsibly or irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life.

A person's relationship with his creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to repay debts under agreed upon terms. Absent evidence of strong extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a position of risk that is inconsistent with holding a security clearance. An applicant is not required to be debt free, but is required to manage his finances so as to meet his financial obligations.

Applicant's history of delinquent debt is documented in his credit reports, his interview with an Office of Personnel Management (OPM) investigator, his SOR response, and his response to interrogatories. Throughout this process, he had admitted responsibility for his delinquent debts, totaling about \$21,000. He has provided insufficient documentation to show significant progress towards resolving his debts. Disqualifying Conditions AG ¶ 19(a), "inability or unwillingness to satisfy debts," and AG ¶ 19(c), "a history of not meeting financial obligations," apply.

Five Financial Considerations Mitigating Conditions under AG ¶¶ 20(a) – (e) are potentially applicable:

(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 proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

Under AG ¶ 20(a), the debts were incurred a while ago, but because they remain unpaid, the debts are recent and numerous. He was laid off from an employer he had been with for seven years. It is difficult to say if being laid off is an event which occurred under such a circumstance that it is unlikely to recur. AG ¶ 20(a) has limited applicability.

Under AG ¶ 20(b), Applicant's financial problems were contributed to by his periods of unemployment. In June 2001, he was laid off from his job of seven years. From July 2001 until December 2001, Applicant was unemployed. His yearly income decreased from \$40,000 to \$20,000. From April 2002 until August 2004, Applicant was again unemployed. A couple of short-term jobs followed. In November 2005, he obtained his current job. AG ¶ 20(b) has some applicability since his financial problems were largely beyond his control. Applicant must act responsibly under the

circumstances and since being employed with his current job, there is no showing of payments being made.

AG ¶ 20(c) and ¶ 20(d) do not apply. There is no indication there has been financial counseling or the financial problems are under control. None of the SOR debts have been paid nor is there a repayment plan in place. Applicant has initiated a good-faith effort to repay his student loans, but his student loans are not debts of concern listed in the SOR.

AG ¶ 20(e) does not apply because there is no evidence Applicant disputes the legitimacy of the past-due debts or has provided documented proof to substantiate a dispute.

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 relevant 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) 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.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant's financial problems were contributed to by his unemployment and educational expenses. However, he has been gainfully employed for three and a half years and no payment on the debts has been shown. It is noted that two of the debts each total less than \$350 and even these debts have not been paid.

Because Applicant chose to have this matter handled administratively, I am unable to evaluate his demeanor, appearance, or form a positive determination as to his truthfulness. From the record, I am unable to find Applicant was sincere, open, and honest. Even if I found for him in these matters, there is no evidence of payment on the delinquent debts.

This decision should not be construed as a determination that Applicant cannot or will not attain the state of true reform and rehabilitation necessary to justify the award of a security clearance. The awarding of a security clearance is not a once in a life time occurrence, but is based on applying the factors, both disqualifying and mitigating, to the evidence presented. Under the Applicant's current circumstances a clearance is not recommended, but should the Applicant be afforded an opportunity to reapply for a security clearance in the future, having paid the delinquent obligations, established compliance with a repayment plan, or otherwise addressed the obligations, he may well demonstrate persuasive evidence of his security worthiness. However, a clearance at this time is not warranted.

Overall, the record evidence leaves me with questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant 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, Financial Consideration: AGAINST APPLICANT

Subparagraph 1.a through 1.f: Against Applicant

Conclusion

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

CLAUDE R. HEINY II
Administrative Judge