



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 07-15528
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Robert E. Coacher, Department Counsel
For Applicant: *Pro Se*

October 28, 2008

Decision

TESTAN, Joseph, Administrative Judge:

On April 29, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to applicant detailing the 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.

Applicant answered the SOR in writing on May 19, 2008, and requested an Administrative Determination by an Administrative Judge (AJ). Department Counsel issued a File of Relevant Material (FORM) on June 10, 2008. Applicant filed a response to the FORM on July 14, 2008. The case was assigned to me on July 31, 2008. Based upon a review of the case file, pleadings, and exhibits, eligibility for access to classified information is denied.

Findings of Fact

Applicant is a 30 year old employee of a defense contractor.

Applicant is indebted to Full Sail Nelnet in the approximate amount of \$62,353.00. This student loan debt was placed for collection.

Applicant is indebted to MBNA in the approximate amount of \$2,264.00. This debt was placed for collection.

Applicant has three separate medical-related debts in the amounts of \$100.00, \$414.00, and \$279.00. All three debts were placed for collection in 2006.

Applicant is indebted to Adelphia Cable in the approximate amount of \$1,556.00. This debt was placed for collection.

Applicant is indebted to Providian Financial in the approximate amount of \$1,346.00. This debt was charged off as a bad debt.

Applicant is indebted to Asset Acceptance in the approximate amount of \$100.00. This debt was placed for collection.

Applicant is indebted to a hospital in the approximate amount of \$334.00 as a result of a judgment entered against him in 2000.

Applicant is indebted to Southern Management in the approximate amount of \$1,742.00. This debt has been placed for collection.

Applicant submitted letters from a number of his supervisors and coworkers. These letters establish that applicant is considered to be an honest, hardworking employee who performs very well at his job.

In his responses to the SOR and FORM, applicant made numerous statements about how he intended to make payments on certain debts, and how he had made payment arrangements with various creditors. In the end, however, he offered little proof of any payments on the debts listed in the SOR.

Policies

The President has “the authority to . . . control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to occupy a position that will give that person access to such information.” (*Department of the Navy v. Egan*, 484 U.S. 518,527 (1988).) In Executive Order 10865, *Safeguarding Classified Information Within Industry* (February 20, 1960), the President set out guidelines and procedures for safeguarding classified information within the executive branch. The President authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.” (Exec. Ord. 10865, Section 2.)

To be eligible for a security clearance, an applicant must meet the security guidelines contained in the Directive. Enclosure 2 of the Directive sets forth personnel security guidelines, as well as the disqualifying conditions and mitigating conditions under each guideline.

Initially, the Government must present evidence to establish controverted facts in the SOR that disqualify or may disqualify the applicant from being eligible for access to classified information. (Directive, Paragraph E3.1.14.) Thereafter, the applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate the facts. (Directive, Paragraph E3. 1.15.) An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.” (ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002).) “Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security.” (Directive, Paragraph E2.2.2.)

A person granted access to classified information enters into a special relationship with the government. The government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to classified information. The decision to deny an individual a security clearance is not a determination as to the loyalty of the applicant. (Exec. Ord. 10865, Section 7.) It is merely an indication that the applicant has not met the strict guidelines the President has established for issuing a clearance.

Analysis

Guideline F, Financial Considerations

The security concern relating to Financial Considerations is set forth in Paragraph 18 of the new AG, and is as follows:

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 AG note several conditions that could raise security concerns. Under Paragraph 19.a., an “inability or unwillingness to satisfy debts” is potentially disqualifying. Under Paragraph 19.c., “a history of not meeting financial obligations” may raise security concerns. The evidence shows applicant has a long history of an inability or unwillingness to pay his debts. Accordingly, these disqualifying conditions are applicable.

The guidelines also set out mitigating conditions. Paragraph 20.a. may apply 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 numerous debts are still outstanding. His current inability or unwillingness to address them in any meaningful way casts doubt on his current judgment, reliability and trustworthiness. Accordingly, this mitigation condition is not applicable.

Under Paragraph 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’s financial problems were not caused by conditions largely beyond his control. Accordingly, this mitigating condition is not applicable.

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 Paragraph c. In his SOR response, applicant claims that because his defaulted student loans were accepted by the Florida Department of Education for “loan rehabilitation,” this mitigating condition should apply because the loan rehabilitation program “is designed to counsel and help individuals whose loans are in default and get them in good standing.” This mitigating condition applies only with respect to applicant’s student loan debts.

Paragraph d. applies where the evidence shows “the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.” Applicant has expressed his intention to repay his debts. However, to date, he has not initiated any meaningful action to repay them. This mitigating condition does not apply.

“Whole Person” Analysis

Under the whole person concept, the AJ must evaluate an applicant’s security eligibility by considering the totality of the applicant’s conduct and all the circumstances. An AJ should consider the nine adjudicative process factors listed at AG Paragraph 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 Paragraph 2c, the ultimate determination of whether to grant 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 man who has a history of not meeting his financial obligations. Although he has expressed an intent to repay his past-due debts, he has in fact done very little to address them. Based on the foregoing, I conclude applicant failed to mitigate the security concerns arising from Guideline F.

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

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.

JOSEPH TESTAN
Administrative Judge