



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. 07-15663

Appearances

For Government: Melvin A. Howry, Esquire, Department Counsel
For Applicant: *Pro Se*

September 17, 2008

Decision

WHITE, David M., Administrative Judge:

Applicant has substantial delinquent debt that he only recently began to repay. He had alcohol-related convictions in 1994, 2000, and 2004, and continues to consume alcohol. 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 February 28, 2007. On April 9, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines F and G. 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 April 21, 2008. He answered the SOR in writing on May 5, 2008, and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on June 20, 2008, and DOHA assigned the case to me on June 26, 2008.

DOHA issued a notice of hearing on July 8, 2008, and Applicant acknowledged receiving it at least 15 days before the hearing. (Tr. at 11-12.) Although DOHA has not yet received his signed receipt for the notice of hearing that was to be delivered through his company's facility security officer, he received a copy of the notice via electronic mail on July 8, 2008. I convened the hearing as scheduled on July 31, 2008. Department Counsel offered Government Exhibits (GE) 1 through 10, which were admitted without objection. Applicant testified on his own behalf, and submitted Applicant's Exhibits (AE) A and B, which were admitted without objection. I granted Applicant's request to leave the record open until August 14, 2008, in order for him to submit additional evidence. DOHA received the transcript of the hearing (Tr.) on August 12, 2008. On that same date, Applicant submitted additional documents to Department Counsel. He did not submit any further evidence, and Department Counsel forwarded Applicant's submission without objection to its consideration on August 15, 2008. These documents were marked AE C, and the record was closed.

Findings of Fact

Applicant is a 33-year-old employee of a federal contractor, where he has worked for two and a half years. In his answer to the SOR, he admitted the allegations in SOR ¶¶ 1.a through 1.m, and 2.a through 2.d. Those admissions are incorporated in the following findings.

Although he has been continuously employed since at least February 2000, he admittedly incurred 11 delinquent medical debts, totaling \$15,327, and two other delinquent debts totaling \$3,056, during that period. (Answer to SOR ¶¶ 1.a through 1.m; Tr. at 44-56, 74-75.) On June 5, 2008, he paid the \$825 medical debt that became delinquent in March 2007, as alleged in SOR ¶ 1.a,. (AE A at 3; Tr. at 44-46.) He disputed owing the \$8,728 credit card debt alleged in SOR ¶ 1.n. He claimed, without corroborating documentation, that it represented an official business credit card from a former employer that he had used for expenses that should have been reimbursed by that employer. He has not contacted either the creditor or the former employer to attempt resolution of this matter, however. (Answer to SOR at 3; Tr. at 56.) On June 25, 2007, he paid the \$419 deficiency, alleged in SOR ¶ 1.o, that gave rise to the tax lien filed against him in June 2005. On August 8, 2008, he settled the \$556 delinquent telephone debt, alleged in SOR ¶ 1.m, for \$400. (Answer to SOR at 4; AE A at 4, 5; AE C at 3, 4; Tr. at 57.)

On July 30, 2008, Applicant entered into an agreement with a debt collection agency that covered ten delinquent medical debts, totaling \$11,790. This agreement covers the debts alleged in SOR ¶¶ 1.b through 1.j, and an \$84 debt that was not listed in the SOR. The agreement called for him to make a \$100 payment on July 30, for

which he provided a receipt, and another \$100 payment on August 8, 2008, followed by \$200 payments every two weeks. This plan includes a total of 59 payments, the final of which will be due on October 29, 2010. This plan does not cover the \$2,799 medical debt, alleged in SOR ¶ 1.k, which remains unresolved. (AE A at 1-2, 7-9; Tr. at 46-54, 71-73.)

Applicant provided a personal financial statement in January 2008 showing monthly income of \$5,287 and monthly expenses of \$4,385 (he erroneously counted his mortgage payment twice on the form). At the hearing, he provided another financial statement for July 2008, showing \$3,259 in net income and \$2,662 in expenses. The reduced income resulted because his fiancée quit her job at an insurance company and started selling insurance on her own. The reduced expenses reflected lower utility costs in the summer, lower daycare costs since his fiancée works from their home, and final payment on one of his vehicle loans. Neither statement reflected the \$400 monthly payments called for in the debt repayment plan, but both reflected a sufficient surplus to cover them. The delinquent debts that remain unresolved all arose between 2001 and 2005, with most of them from 2002. He is not presently incurring additional debt, and the family has some savings. Applicant's home is worth about \$78,000, with a \$54,000 balance due on the mortgage. (GE 6 at I-6; AE A at 1; Tr. at 79-84.)

Applicant also admitted the truth of all the alcohol consumption allegations in SOR ¶¶ 2.a through 2.d. He has consumed alcohol, at times to excess and to the point of intoxication, since 1994 and continues to do so. He was arrested for driving under the influence of alcohol (DUI) in November 2000 and February 2004, and convicted of both offenses. He was also arrested and convicted in 1994 for illegal possession of alcohol when he was 18 years old. After his second DUI conviction, he completed a one-year outpatient alcohol treatment program. (GE 4; AE B; Tr. at 57-66, 70-71, 76-78.) Applicant submitted letters from his fiancée, current and former managers, and a friend, all of whom attested to his good character and work performance. (AE C at 5, 6, 10, 11.)

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: “(a) inability or

unwillingness to satisfy debts;" and "(c) a history of not meeting financial obligations." (Tr. at 86.)

Applicant has at least an eight-year history of failing to satisfy legitimate financial obligations, both large and small. He made one \$100 payment, under a 27-month plan he just entered into to pay off \$11,790 in delinquent medical debts, and showed no progress toward resolving three other bad debts totaling \$14,027. He did resolve three of the SOR-listed debts totaling \$1,800. All of these debts became delinquent during a period when Applicant was continuously employed, and his present financial circumstances do not indicate an ability to resolve them in the near term. 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 proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

Applicant's delinquent debts arose during 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 he will have less money available to repay those debts when winter utility bills increase. A large portion of his more than \$25,700 in delinquent debts are medical bills, but he provided no evidence that these arose from unexpected medical emergencies. Applicant offered no evidence that he either sought or followed financial counseling, or that he has any comprehensive plan to address more than half of his debt. He has not contacted some of his creditors to arrange repayments despite statements of intent to do so. He said that he disputes the amount

claimed on his \$8,728 credit card debt, but has not followed through with the creditor or his former employer about that liability. There is insufficient indication in this record that his financial issues are either under control or likely to improve in the foreseeable future.

The Appeal Board explained the analysis applicable to determining whether an applicant has mitigated financial concerns arising from delinquent debt as follows:

In evaluating Guideline F cases, the Board has previously noted that the concept of “‘meaningful track record’ necessarily includes evidence of actual debt reduction through payment of debts.” See, e.g., ISCR Case No. 05-01920 at 5 (App. Bd. Mar. 1, 2007). However, an applicant is not required, as a matter of law, to establish that he has paid off each and every debt listed in the SOR. See, e.g., ISCR Case No. 02-25499 at 2 (App. Bd. Jun. 5, 2006). All that is required is that an applicant demonstrate that he has “. . . established a plan to resolve his financial problems and taken significant actions to implement that plan.” See, e.g., ISCR Case No. 04-09684 at 2 (App. Bd. Jul. 6, 2006). The Judge can reasonably consider the entirety of an applicant’s financial situation and his actions in evaluating the extent to which that applicant’s plan for the reduction of his outstanding indebtedness is credible and realistic. See Directive ¶ E2.2(a) (“Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination.”) There is no requirement that a plan provide for payments on all outstanding debts simultaneously. Rather, a reasonable plan (and concomitant conduct) may provide for the payment of such debts one at a time. See, e.g., ISCR Case No. 06-25584 at 4 (App. Bd. Apr. 4, 2008). Likewise, there is no requirement that the first debts actually paid in furtherance of a reasonable debt plan be the ones listed in the SOR.

ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008). Applicant repaid three debts worth \$1,800, but has paid only \$100 toward \$11,790 in medical debts and has done nothing about three other debts totaling over \$14,000. He demonstrated some progress and the beginning of a program to reduce his debts over the next several years. This is a good start, but it is too early in the process to find substantial mitigation under AG ¶¶ 20(a) through (e).

Guideline G, Alcohol Consumption

AG ¶ 21 expresses the security concern pertaining to alcohol consumption: “Excessive alcohol consumption often leads to the exercise of questionable judgment or the failure to control impulses, and can raise questions about an individual’s reliability and trustworthiness.” AG ¶ 22 describes conditions that could raise a security concern and may be disqualifying. The disqualifying conditions asserted by the Government in this case are: “(a) alcohol-related incidents away from work, such as driving while under the influence, fighting, child or spouse abuse, disturbing the peace, or other incidents of

concern, regardless of whether the individual is diagnosed as an alcohol abuser or alcohol dependent,” and, although not specifically mentioned by Department Counsel during the hearing, “(c) habitual or binge consumption of alcohol to the point of impaired judgment, regardless of whether the individual is diagnosed as an alcohol abuser or alcohol dependent.”

Applicant admitted to consuming alcohol, at times to excess and to the point of intoxication from approximately 1994 until at least August 2006, in his answer to the SOR, and he continues to consume alcohol. He committed DUI offenses in 2000 and 2004, and illegal possession of alcohol when he was 18 years old. The Government has established security concerns under this guideline, shifting the burden of proof to Applicant to mitigate those concerns.

AG ¶ 23 provides conditions that could mitigate security concerns:

(a) so much time has passed, or the behavior was so infrequent, or it happened under such unusual circumstances that it is unlikely to recur or does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;

(b) the individual acknowledges his or her alcoholism or issues of alcohol abuse, provides evidence of actions taken to overcome this problem, and has established a pattern of abstinence (if alcohol dependent) or responsible use (if an alcohol abuser);

(c) the individual is a current employee who is participating in a counseling or treatment program, has no history of previous treatment and relapse, and is making satisfactory progress; and

(d) the individual has successfully completed inpatient or outpatient counseling or rehabilitation along with any required aftercare, has demonstrated a clear and established pattern of modified consumption or abstinence in accordance with treatment recommendations, such as participation in meetings of Alcoholics Anonymous or a similar organization and has received a favorable prognosis by a duly qualified medical professional or a licensed clinical social worker who is a staff member of a recognized alcohol treatment program.

Applicant did not establish mitigation under ¶ 23(a). His three alcohol-related offenses occurred over a span of ten years, with the most recent only four years ago. He did not show that such conduct is unlikely to recur, or that it no longer casts doubt on his reliability and judgment. He successfully completed a treatment program after his 2004 DUI, without further documented alcohol-related incidents. There is no evidence of anything but moderate alcohol use since he completed that program. These matters generate some mitigation of alcohol consumption security concerns under ¶¶ 23(b) and 23(d), although no favorable prognosis by a duly qualified person was provided.

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 involves substantial delinquent debts that he has only recently started to repay, and a lengthy history of both financial irresponsibility and alcohol-related incidents of various types and degrees of seriousness. Applicant is a mature, experienced adult who is accountable for his decisions and conduct. All incidents of security concern, except the 1994 illegal possession of alcohol, arose after he was 25 years old.

Applicant's 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. He completed a one-year alcohol treatment program several years ago, in connection with his 2004 DUI offense, and has no alcohol-related incidents since then. Both his recent debt repayment efforts and moderation of alcohol use are substantial steps in the right direction toward rehabilitation, but insufficient time has passed to support a present conclusion that legitimate security concerns are fully mitigated. It is premature to determine that his rehabilitation and behavioral changes are permanent, or that recurrence of financial or alcohol-related irresponsibility is unlikely.

On balance, Applicant presented insufficient evidence to mitigate reliability and trustworthiness security concerns arising from his failure to satisfy debts, history of not meeting financial obligations, and pattern of alcohol-related incidents. 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 has not mitigated the security concerns arising from his financial considerations and alcohol consumption.

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:	For 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:	Against Applicant
Subparagraph 1.i:	Against Applicant
Subparagraph 1.j:	Against Applicant
Subparagraph 1.k:	Against Applicant
Subparagraph 1.l:	Against Applicant
Subparagraph 1.m:	For Applicant
Subparagraph 1.n:	Against Applicant
Subparagraph 1.o:	For Applicant

Paragraph 2, Guideline G:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant
Subparagraph 2.b:	Against Applicant
Subparagraph 2.c:	Against Applicant
Subparagraph 2.d:	Against 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