



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
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-----,-----) ISCR Case No. 07-18010
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Jeff A. Nagel, Esquire, Department Counsel
For Applicant: *Pro Se*

July 25, 2008

Decision

WHITE, David M., Administrative Judge:

Applicant has substantial delinquent debt that he cannot afford to repay. He claimed he would file bankruptcy, but did not provide promised proof that he has done so. 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 August 31, 2006. On February 12, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant 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 (DoD) for SORs issued after September 1, 2006.

Applicant acknowledged receipt of the SOR on March 12, 2008. He responded to the SOR in writing (Answer) on March 28, 2008, and requested a hearing before an administrative judge. DOHA received the request on April 1, 2008. Department Counsel was prepared to proceed on April 18, 2008, and DOHA assigned the case to me on April 24, 2008.

DOHA issued a notice of hearing on April 24, 2008. Although Applicant did not sign and return his written receipt for the copy of the notice of hearing that was forwarded via his employer until May 1, 2008, he acknowledged on the record that he actually received the copy that was mailed directly to him at least 15 days prior to the hearing. (Tr. at 11.) I convened the hearing as scheduled on May 13, 2008. Department Counsel offered Government Exhibits (GE) 1 through 8, which were admitted without objection. Applicant testified on his own behalf, called two other witnesses, and submitted Applicant's Exhibits (AE) A through C, which were admitted without objection. I granted Applicant's request to leave the record open until June 13, 2008, in order for him to submit additional documentation. DOHA received the transcript of the hearing (Tr.) on May 22, 2008. On June 12, 2008, Applicant submitted a letter from his bankruptcy attorney to Department Counsel, who forwarded it without objection to its consideration. These documents were marked AE D, and Applicant did not submit any further evidence.

Findings of Fact

Applicant is a 51-year-old employee of a defense contractor, applying for a security clearance for the first time. In the Answer, Applicant admitted owing each of the eight delinquent debts set forth in SOR ¶ 1, totaling \$299,046, that first became delinquent between May 2003 and April 2006. (GE 2 through GE 8.) Applicant's admissions are, with one exception, incorporated herein. The exception is that the \$18,195 debt listed in SOR ¶ 1.h is the same debt alleged in SOR ¶ 1.e, as \$25,562 owing to the collection agency to whom the original credit card issuer transferred the debt. Accordingly, including both debts improperly inflates the number and total amount of debt, which should be seven debts totaling \$280,851.

Applicant has worked as a truck driver, and in associated jobs, for many years. In 1987, he and his wife also opened a printing business that was fairly successful. In July 2000, they sold that business to her sister on a loan contract that was meant to provide them with a retirement income stream. She ran the business into the ground and, by 2003, had sold all the equipment and obtained a Chapter 7 bankruptcy discharge. Some of the balances on some of the delinquent credit card debt resulted from Applicant and his wife letting her sister charge expenses to their accounts before the business failed, but they do not know how much or which cards were involved. (Answer, Tr. at 35, 39-41, 92-94.)

Applicant inherited his grandparents' farm in a rural area of the Midwest. In 2001, an acquaintance who worked in real estate convinced him and a neighbor that they should dam the creek between their properties to form a small lake, and subdivide their

adjacent properties into ready-to-build lots for sale. He encountered significant regulatory problems and other unanticipated expenses, combined with disappointing sales performance of the lots. Finally, in 2004, he turned all of his ownership interests and associated debt over to another real estate manager, who he had hired to assist him, in return for one dollar. (Answer; Tr. at 38-39, 60-61, 65-72.)

In January 2003, Applicant and his wife traded in a fifth-wheel trailer rig in which they had been living for a motor home they purchased for about \$200,000. They intended to retire and travel while living in the motor home, and wanting ultimately to move to another state. In August, 2004, after the failures of both the printing business and land development scheme, they drove the motor home to the other state and sought work. He finally obtained his present employment in April 2006. They found living in the motor home to be extremely expensive and often inconvenient, particularly in the winter months. They missed a monthly payment on the motor home loan in April 2006, and the lender refused to enter into a modified payment plan. Instead, they were threatened with eviction and repossession. In early 2007, they emptied the motor home, put it in a rented storage facility, and moved into an apartment. Since then, they have been able to meet their present debt obligations, but unable to save any money or address their delinquent debt. Although Applicant now earns about \$60,000 per year and his wife has worked as much as she could, they have barely been able to keep up with living costs. Applicant's father-in-law became ill and ultimately passed away in early 2008, necessitating several expensive trips back to the Midwest. Applicant also suffered a two-month period of reduced employment during early 2008 due to a medical problem, most of the cost of which was covered by his medical insurance. (Answer; GE 2 at 15; Tr. at 54-58, 75-76, 83-91, 103-105.)

Although not listed in the SOR, Applicant now has a recently charged-off additional credit card delinquency on a Discover card in the amount of \$16,512. This account was reported 30 days past due on his August 16, 2007 credit report, and had previously been 30 days past due in November 2006. (GE 3 at 10; GE 4 at 9.) The account was reported as closed by credit grantor in January and April 2008, and as a charged-off debt in May 2008. (GE 5 at 2; GE 6 at 2; GE 8 at 2.)

Applicant and his wife obtained the required bankruptcy credit counseling in late March 2008, and met with a bankruptcy attorney on April 1, 2008. The attorney testified during the hearing that she had advised them concerning their options, and that they would probably qualify only for Chapter 13 relief, requiring a five-year partial repayment program. She did not know when she would be ready to file the action, as they had yet to provide her with complete information. Applicant's wife testified that the reason they had not yet filed for bankruptcy was that they could not afford the attorney fees required to be paid before the action could be filed. After some discussion, Applicant and his wife decided to seek additional time before the record closed so they could move forward with the bankruptcy and provide proof thereof. They were granted a month to do so. At the end of that period, they submitted AE D, a letter from the attorney saying she would be filing some type of bankruptcy petition on their behalf within ten days, and would provide a copy of the court generated transaction report verifying that she had done so.

Neither she, nor Applicant, provided any further proof of progress in connection with bankruptcy proceedings. (Answer; Tr. at 74-82, 86-87, 109-111; AE D.)

Applicant submitted two character-reference letters from former supervisors attesting to his reliability, dependability, trustworthiness, and good work performance. (AE A at 4, 5.) He also offered numerous certificates and publications documenting his successful performance in several demanding and responsible positions. (AE A, first section; AE B; AE C.) He testified credibly that he would resolve his delinquent debts if he had the resources to do so, but saw no way to do so given his present financial situation. (Tr. at 41-42.)

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 three were raised by Applicant's financial circumstances (Tr. at 97.):

- (a) inability or unwillingness to satisfy debts;
- (b) indebtedness caused by frivolous or irresponsible spending and the absence of any evidence of willingness or intent to pay the debt or establish a realistic plan to pay the debt; and
- (c) a history of not meeting financial obligations.

The evidence shows that Applicant, during the three years preceding his security clearance application, incurred at least seven SOR-listed delinquent debts totaling in excess of \$280,000. His monthly net income is barely sufficient to pay his reported regular living expenses and other debts, which did not include any delinquent debt repayments. Substantial security concerns are raised under both AG ¶¶ 19(a) and 19(c). There is no evidence that these debts were incurred for frivolous or irresponsible purchases, so no security concerns under AG ¶ 19(b) are supported by this record.

AG ¶ 20 provides conditions that could mitigate security concerns arising from financial considerations. The four potentially pertinent mitigating 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; and
- (d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant's delinquent debts arose over the last five years, and more than \$280,000 in SOR-listed debts remain delinquent at present. His family budget is such that he does not have the means to repay them, and is likely to incur additional delinquent debt, as has already been demonstrated by another credit card delinquency exceeding \$16,000 on which he defaulted more than a year after obtaining his present employment.

None of Applicant's delinquent debt could be directly tied to his failed land development project or the failure of his former printing business, although both issues resulted in drastically reduced income for the family from what they had hoped to earn. Each of these ventures was voluntarily undertaken by Applicant and his wife, and none of his delinquent debt involves medical bills. These are not circumstances that can be considered beyond his control.

Applicant offered no evidence that he followed the minimal financial counseling he recently sought. Nor, despite being granted another month in which to do so, did he show that he has followed through on using bankruptcy relief to address his debts. He has not contacted any of his creditors to arrange repayments. There is no indication in this record that his financial issues are either under control or likely to improve in the foreseeable future.

This evidence establishes minimal mitigation under AG ¶¶ 20(a) through (d). Applicant remains financially over-extended to a significant extent. He is well regarded at work, but that is insufficient to overcome other record evidence concerning his financial history and present circumstances, as they bear on his trustworthiness, reliability and good judgment.

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 includes substantial delinquent debts that he cannot afford to repay. Applicant is a mature, experienced adult who is accountable for his decisions and conduct even though he was apparently taken advantage of in several failed business ventures. His debts arose over the past five years, and persist to date. There is ongoing potential for pressure, coercion, exploitation or duress since he remains financially overextended.

Applicant's good reputation and performance at work is commendable, but insufficient in itself to mitigate security concerns arising from his financial irresponsibility and excessive debt load. His indebtedness is quite likely to continue in the foreseeable future. His recent efforts to seek resolution of these debts through bankruptcy are steps in the right direction, but he has not followed through on that program. He needs additional time to establish a pattern of responsibility, in light of his substantial indebtedness and apparently continuing financial over-extension.

On balance, Applicant presented insufficient evidence to mitigate reliability and trustworthiness security concerns arising from his inability to satisfy debts, and history of not meeting financial obligations. 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 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, 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
Subparagraph 1.g:	Against Applicant
Subparagraph 1.h:	For 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