



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ISCR Case No. 08-00465
SSN:)
)
Applicant for Security Clearance)

Appearances

For Government: James F. Duffy, Esquire, Department Counsel
For Applicant: *Pro se*

January 23, 2009

Decision

MASON, Paul J., Administrative Judge:

Applicant submitted his Security Clearance Application (SCA) on December 20, 2006. On June 23, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing security concerns under financial considerations (Guideline F). The action was taken pursuant to 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 made effective within the Department of Defense for SORs issued on or after September 1, 2006.

Applicant submitted his undated answer to the SOR. There is no date stamp on his answer to reveal when the answer was received by DOHA. Then, he submitted the third page of the SOR with his signature and a notary stamp. However, the notary did not furnish the date when the document was notarized. Notwithstanding the lack of date on his answer, I am certain Applicant provided the two page answer containing his handwritten responses to each SOR allegation. His handwritten denials to SOR

allegations 1.b., 1.g., and 1.j. were substantiated by his testimony. Applicant established through his testimony that he was aware of and admitted most of the allegations, as evidenced by the documentation provided to address SOR 1.a. and his post hearing documentation. I accept his answer.

DOHA issued a notice of hearing on October 7, 2008, and the hearing was held on October 30, 2008. At the hearing, six exhibits (GE 1 through 6) were admitted in evidence without objection to support the government's case. Applicant testified and submitted one exhibit (AE A). In the time allowed for Applicant to furnish additional documentation, he submitted AE B through AE I. These exhibits contain updated payment information. DOHA received a copy of the transcript of the proceedings on November 6, 2008. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

Findings of Fact

The SOR alleges 13 debts (eleven delinquent debts and two judgments) totaling \$23,063.00. The debts converted to delinquent status between 2002 and 2006. Applicant denied subparagraphs 1.b., 1.g., and 1.j. He admitted the other nine debts. Subparagraphs 1.a. and 1.d. appear to be the same debt. However, the credit reports do not show SOR 1g. and 1.j. as the same debt because the account numbers differ.

Applicant is 41 years old and single. He has worked as a software developer for his present employer since June 2006. In that position, Applicant develops database applications for the military. He seeks a secret security clearance.

Applicant testified his financial problems occurred for three reasons: (1) a layoff between March and June 2006 (Tr. 30); (2) moving from state to state for employment and forgetting about accounts that he opened at his previous location (Tr. 40); and, (3) helping his family financially (Tr. 47). In March 2006, Applicant was laid off from a position in another state, and did not find employment in the local area until June 2006. During the first month of the layoff, Applicant was able to pay bills as he received at least one more pay check in March 2006.

Applicant's employment over the years has taken him to different parts of the United States (U.S.) When he departed one location, he forgot about some the accounts he had opened, and did not return to satisfy the account (Tr. 40; GE 1).

The third reason Applicant encountered financial troubles was in supporting the monetary needs of his family. During his layoff in March 2006, Applicant exhausted his retirement account of \$8,000.00 for family needs (Tr. 47).

SOR 1.a. (same debt as **SOR 1.d.**) A judgment was entered against Applicant in October 2007 for \$6,920.00, for failure to meet installment payments on a credit card account. AE A reflects a payment agreement was reached with Applicant paying \$250.00 a month on the judgment, beginning in October 2007. On November 4, 2008,

Applicant had paid \$3,500.00, leaving a balance of \$5,057.00 (AE D). His sustained involvement in a payment plan results in finding in Applicant's favor.

SOR 1.b. A judgment of \$913.00 was entered against Applicant in January 2004 for failing to pay rent. Because he did not leave the apartment until he June 2006, he opined that the rental company simply reported the failure to pay rent to the court and obtained a judgment of \$913.00. He claims that he paid the rent, however, the new rental agency could not reverse the action, although the reason Applicant provided is not clear. He claims the new rental agency advised him to come before a local judge and have the judgment removed (Tr. 34). I find against Applicant.

SOR 1.c. Applicant purchased \$95.00 in food from a supermarket in March 2004 with a worthless check. On November 3, 2008, Applicant paid this delinquent debt by check card (AE C). Applicant's belated action still results in a finding in his favor.

SOR 1.d. This account is the same as **SOR 1.a.** I find for Applicant.

SOR 1.e. This telecommunications account for \$234.00 was paid off by Applicant on November 3, 2008 by check card (AE I). This account is resolved in Applicant's favor.

SOR 1.f. This telecommunications account of \$138.00 was opened in February 2002, with the last activity on the account occurring in February 2004 (GE 6). Applicant paid the account on November 3, 2008 (AE H). Applicant receives a favorable finding for this account.

SOR 1.g. This credit card account is delinquent in the amount of \$2,061.00. The last activity on the account was 2002. Applicant received a letter from the creditor on October 31, 2008 indicating the account was paid in full. However, there is no indication of what amount Applicant paid and when he paid it. The check card payment documentation is not helpful because it does not identify which creditors received payments. I assume that Applicant settled the debt for less than the full amount. Nonetheless, this account is resolved in his favor.

SOR 1.h. The delinquent account is \$252.00, and according to GE 6, Applicant purchased some jewelry in August 2003 that he did not pay for. **SOR 1.h.** is found against Applicant.

SOR 1.i. The account (\$1,736.00) was opened in 1995, with the last activity on the account occurring in 2002. Applicant forgot about the account (Tr. 38). This account is resolved against Applicant.

SOR 1.j. This credit card account has a delinquent amount of \$2,253.00. The last activity for this credit card account is the same as the account in **SOR 1.g.** Applicant recalled he had only one account with this credit card company because the card is made available for customers who have bad credit (Tr. 38). I am unable to find sufficient

similarities between **SOR 1.g. and 1.j.** to state they are the same accounts. I find Applicant owes this account.

SOR 1.k. This professional services account of \$122.00 was reported for collection in February 2001. Applicant has taken no action on this account (Tr. 39). **SOR 1.k.** is found against Applicant.

SOR 1.l. The electronics account of \$1,994.00 was opened in 1996, and Applicant's last payment on the account was June 2002. Applicant's claim he has not made payments on this debt for years (Tr. 39) does not relieve him of responsibility for the account. Applicant remains responsible for this delinquent debt.

SOR 1.m. Applicant testified the \$303.00 represents a car payment he neglected to pay when he was working in the upper northwest part of the United States (U.S.). Applicant provided no documentation to support his claim he returned to the location and donated the car to charity (Tr. 24). Applicant still is responsible for the account.

Applicant's documentation shows he has paid or settled with the creditors in SOR 1.a. (same as 1.d.), 1.c., 1.e., 1.f., and 1.g. He still owes SOR creditors 1.b., 1.h., 1.i., 1.j., 1.k., 1.l., and 1.m. Applicant still owes \$10,993.00 to seven creditors.

Applicant has never had financial counseling. Except for **SOR 1.a. and 1.g.**, he did not try to pay the debts earlier because when he initially began his job in June 2006, he did not need a security clearance, so he was not thinking about his bad credit (Tr. 44). Applicant has been continuously employed since June 2006. He disclosed in personal financial statement in March 2008 that he had about \$3,458.00 in discretionary, monthly income remaining after payment of monthly expenses.

In addition to the listed debts, Applicant received a parking ticket in 2004 he did not become aware of until recently. Because he did not pay the ticket in the time provided to avoid interest and penalties being added to the ticket, he currently owes about \$900.00. He is paying about \$200.00 a month to extinguish the fine (Tr. 42). He still owes about \$500.00 (*Id.*)

Character Evidence

Applicant provided no evidence from other individuals, e.g., coworkers or friends, to provide insight into his job performance and/or lifestyle away from work.

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 flexible rules of law. Recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The Administrative Judge's ultimate adjudicative goal is a fair, impartial and common sense decision. According to the AG, the entire process is a careful, thorough evaluation 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. Reasonable 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 is not restricted to normal duty hours. Rather, the relationship is an-around-the-clock responsibility between an applicant and the federal government. 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

Financial Considerations (FC)

18. *The Concern.* "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. 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."

FC disqualifying condition (DC) 19.a. (*inability or unwillingness to satisfy debts*) is activated by Applicant's inability to satisfy his delinquent debts. When the SOR was published in June 2008, Applicant owed \$17,143.00 to 12 creditors. The number of creditors is reduced by one because **SOR 1.d.** appears to be the same account as **SOR 1.a.** However, I am unable to conclude that **SOR 1.g.** is the same as **SOR 1.j.** FC DC 19.c. (*a history not meeting financial obligations*) applies based on the fact that several of the debts have been designated delinquent for at least six years, exemplifying a history of not meeting financial obligations.

There are four mitigating conditions (MC) that have potential application to this case. FC mitigating condition (MC) 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 reliability, trustworthiness, and good judgment*) is not applicable even though several listed debts became delinquent over five years ago. Applicant's historic inattentiveness to his debts continues to raise doubts about his reliability, trustworthiness and good judgment.

FC MC 20.b. (*the conditions that resulted in the financial problem were largely beyond the person's control and individual acted responsibly under the circumstances*) applies as a result of Applicant's layoff in March 2006. But, Applicant was still being paid in the first month of the layoff. Moreover, Applicant has been continuously employed since June 2006. He disclosed in March 2008 that he had \$3,458.00 of discretionary, monthly income remaining after payment of his expenses. He could have used this money to pay several additional creditors. He did not. There were only two debts Applicant acted on in 2007. Applicant's efforts to repay the **SOR 1.a.** creditor were taken after the creditor obtained judgment against him in October 2007. Applicant's payoff of the **SOR 1.g.** creditor on November 30, 2007, occurred after the account had been assigned to a collection service. In sum, Applicant receives only limited mitigation under FC MC 20.b.

FC MC 20.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*) shall be discussed with FC MC 20.d. (*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*) to determine their availability. Applicant has never had financial counseling, and there is no indication he has his financial problems under control. His payment of one creditor under a payment plan is favorable evidence. But, Applicant did not enter the payment plan until after a judgment had been obtained against him. His payment of four of the other creditors is favorable evidence. However, he did pay three of these creditors until after he was advised by the government in March 2008 that he owed these debts. The fact that he has waited so long to resolve five of his debts, while seven remain unresolved, raises residual concerns his financial problems will continue. The FC guideline is found against Applicant.

Whole Person Concept (WPC)

The adjudicative process is an examination of a sufficient period of a person's life, and a careful consideration of nine variables that comprise whole person model:

(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 was 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 and recurrence. ¶ 2, p.18 of the Directive.

I have considered the disqualifying and mitigating conditions in light of all facts and circumstances surrounding this case, as well as the general factors of the whole person concept. Since October 2007 Applicant has paid five of 12 creditors approximately \$6150.00 or about 64% of his total delinquent debt. But, to truly demonstrate sound financial responsibility, an applicant should demonstrate more than simply paying delinquent debts. He should also show that he knows how manage his financial obligations, including how to prevent current debts from becoming delinquent. Not remembering to pay bills, or forgetting about accounts, or simply disregarding a judgment altogether, as in **SOR 1.b.**, continues to cast a pall over Applicant's judgment and reliability, and prompts the legitimate question of whether Applicant could adopt the same irresponsible attitude toward security rules and regulations. Having weighed the whole person factors in light of the evidence as a whole, Applicant has not presented sufficient evidence to conclude his security clearance application should be granted.

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 Considerations, Guideline F): AGAINST APPLICANT

Subparagraph 1.a.	For Applicant
Subparagraph 1.b.	Against Applicant
Subparagraph 1.c.	For Applicant.
Subparagraph 1.d.	For Applicant
Subparagraph 1.e.	For Applicant
Subparagraph 1.f.	For Applicant

Subparagraph 1.g.	For 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.	Against Applicant

Conclusion

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

Paul J. Mason
Administrative Judge