



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 08-00818
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Paul M. DeLaney, Esquire, Department Counsel

For Applicant: *Pro se*

September 15, 2009

DECISION

ROSS, Wilford H., Administrative Judge:

Applicant submitted his Security Clearance Application (SF86), on July 1, 2005 (Item 4). On October 31, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline F concerning the Applicant. 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 President Bush on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant submitted an Answer to the SOR on January 5, 2009, and requested a decision without a hearing. Department Counsel submitted a File of Relevant Material (FORM) to the Applicant on March 20, 2009. The Applicant received the FORM on April 1, 2009, and was given 30 days to submit any additional information. He submitted additional information on May 1, 2009. The Department Counsel had no objection to this

material and it is admitted into evidence as Applicant's Exhibit A. The case was assigned to another Administrative Judge on May 7, 2009. It was reassigned to me on May 18, 2009. Based upon a review of the case file, pleadings, and exhibits, eligibility for access to classified information is denied.

Findings of Fact

The Applicant is 38 and single. He is employed by a defense contractor and seeks to obtain a security clearance in connection with his employment.

Guideline F, Financial Considerations

The Government alleges in this paragraph that the Applicant is ineligible for clearance because he is financially overextended and therefore at risk of having to engage in illegal acts to generate funds. The Applicant admitted all of the allegations under this paragraph. Those admissions are hereby deemed findings of fact.

1.a. The Applicant admits that he is indebted to a collection agency in the amount of \$929 for a department store account since 2001. This debt has not been paid.

1.b. The Applicant admits that he is indebted to a collection agency in the amount of \$503 for a telephone bill since 2002. This debt has not been paid.

1.c. The Applicant denies that he is indebted to a collection agency in the amount of \$312 for a credit card account. He states in his Answer that this debt was paid. The Applicant did not submit any documentary evidence to support this statement. The most recent credit report in the file, dated September 30, 2008, shows this debt as being due and owing. (Item 8 at 2.)

1.d. The Applicant admits that he is indebted to a medical provider in the amount of \$124 since 2002. This debt has not been paid.

1.e. The Applicant admits that he is indebted to another medical provider in the amount of \$425 since 2003. This debt has not been paid.

1.f. The Applicant admits that he is indebted to a third medical provider in the amount of \$200 since 2003. This debt has not been paid.

1.g. The Applicant admits that he is indebted to a collection agency in the amount of \$606 for a telephone bill since 2004. This debt has not been paid.

1.h. The Applicant admits that he is indebted to a collection agency in the amount of \$643 for a telephone bill since 2004. This debt has not been paid.

1.i. The Applicant admits that he is indebted to a fourth medical provider in the amount of \$237 since 2005. This debt has not been paid.

1.j. The Applicant admits that he is indebted to a collection agency in the amount of \$307 for a past due bill since 2005. This debt has not been paid.

1.k. The Applicant admits that he is indebted to a fifth medical provider in the amount of \$863 since 2006. This debt has not been paid.

1.l. The Applicant admits that he is indebted to a sixth medical provider in the amount of \$1,308 since 2007. This debt has not been paid.

1.m. The Applicant admits that he is indebted to the Department of Education in the approximate amount of \$9,873 for a defaulted student loan since 2007. This debt has not been paid. The Applicant states in Applicant's Exhibit A at 5 that he has been in contact with the Department of Education about this debt, and will "determine immediate plans of action to make my account current."

1.n. The Applicant admits that he is indebted to the Department of Education in the approximate amount of \$14,475 for a defaulted student loan since 2007. This debt has not been paid. The Applicant states in Applicant's Exhibit A at 5 that he has been in contact with the Department of Education about this debt, and will "determine immediate plans of action to make my account current."

Policies

Security clearance decisions are not made in a vacuum. 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 commonsense 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. In addition, the administrative judge may also rely on his own commonsense, as well as his knowledge of the law, human nature, and the ways of the world, in making a reasoned 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. Security clearance decisions include, by necessity, consideration of the possible risk that 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.

Finally, as emphasized by President Eisenhower in Section 7 of Executive Order 10865, “Any determination under this order . . . 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.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline F, Financial Considerations

The security concern relating to the guideline for Financial Considerations is set out in AG ¶18:

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 guideline notes several conditions that could raise security concerns. Under AG ¶19(a), an “inability or unwillingness to satisfy debts” is potentially disqualifying. Similarly under AG ¶19(c), “a history of not meeting financial obligations” may raise security concerns. The Applicant, by his own admission, has over \$ 30,000 in past due debts, all of which have been due and owing for several years. The evidence is

sufficient to raise these potentially disqualifying conditions, requiring a closer examination.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Under AG ¶ 20(a), the disqualifying condition may be mitigated 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 financial difficulties arose primarily after 2001. He states that he has paid one debt in the amount of \$312, but has done nothing to pay any of the other debts. The fact that the rest of the debts have been due and owing for so long is troubling. This mitigating condition is not applicable to this case.

AG ¶ 20(b) states that the disqualifying conditions may be mitigated where “the conditions that resulted in the financial problem were largely beyond the person’s control (e.g., loss of employment, a business downturn . . .), and the individual acted responsibly under the circumstances.” The Applicant argues that many of these debts came from financial hardship. However, he has been employed by his current employer since January 2005 and there is no evidence that he has acted responsibly with regards to his substantial debt during that time. He states that he will resolve these debts in a “timely manner.” (Applicant’s Exhibit A at 5.) A statement that he intends to resolve the indebtedness in the future is not sufficient evidence that he can or will resolve the debts. I cannot find under these particular facts that the Applicant has acted responsibly under the circumstances.

AG ¶ 20(c) states that it may be mitigating where, “there are clear indications that the problem is being resolved or is under control.” The Applicant’s credit reports show that, in the main, he is making sufficient payments on his current indebtedness. However, as stated above, a desire to resolve his substantial past due indebtedness is not enough. This mitigating condition is not applicable.

Based on all of the available evidence, I cannot find that the Applicant has mitigated the allegations under this Guideline. Paragraph 1 is found against the Applicant.

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. 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. The Administrative Judge should consider the nine adjudicative process factors listed at AG ¶ 2(a) in making such a decision:

- (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.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. The Applicant has a history of not paying his debts. As set forth above, I cannot find that there have been permanent behavioral changes under AG ¶ 2(a)(6). In addition, I find that there is the potential for pressure, coercion, exploitation, or duress (AG ¶2(a)(8)), and that there is a likelihood of recurrence (AG ¶2(a)(9)).

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 the Applicant has not mitigated the security concerns arising from his financial considerations.

On balance, it is concluded that the Applicant has not successfully overcome the Government's case opposing his request for a DoD security clearance. Accordingly, the evidence supports a finding against the Applicant as to the factual and conclusory allegations expressed in Paragraph 1 of the Government's Statement of Reasons.

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 THE APPLICANT
Subparagraphs 1.a. through 1.m.:	Against the 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.

WILFORD H. ROSS
Administrative Judge