



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 08-00979
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Gregg Cervi, Esquire, Department Counsel
For Applicant: *Pro Se*

July 22, 2009

Decision

LYNCH, Noreen A., Administrative Judge:

Applicant answered and signed his Security Clearance Application (SF 86), on September 19, 2007. On February 2, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline F for Applicant. On March 18, 2009, DOHA issued an amended SOR detailing security concerns under Guideline E for 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 the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant acknowledged receipt of the SOR and elected to have his case decided on the record in lieu of a hearing. The Government requested a hearing and the case was assigned to me on June 5, 2009. Applicant and Department Counsel agreed to a July 8, 2009, hearing date. On June 11, 2009, a Notice of Hearing was issued

scheduling the hearing for July 8, 2009. The hearing was convened as scheduled. Department Counsel submitted six exhibits (GE) 1-6, without objection. Applicant introduced two exhibits (AE) A-B, without objection. He testified on his own behalf. The transcript (Tr) was received on July 15, 2009. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

Findings of Fact

In his Answer to the SOR Applicant admitted the factual allegations in ¶¶ 1.a through 1.h of the SOR. He also admitted the factual allegations in ¶¶ 2.a through 2.c of the amended SOR.

Applicant is a 56-year-old employee of a defense contractor. He graduated from high school in 1970, and attended a technical school from June 1999 until March 2000. He received a Microsoft certificate in 2000. He is married with one grown son. He has worked for his current employer since April 2007 (GE) 1.

Applicant has worked in the network systems field for many years. He acknowledged having a “national agency clearance” (NAC) in the past but does not have a security clearance at this time. He was unemployed from September 2001 until October 2003 due to an inability to deal with stress on the job. He was unemployed from March 2006 until April 2007 because he could not find another contract.

Applicant attributed his indebtedness to the tragic death of his son in 1999. He stated that he did not care about anything. He also believed that the event triggered his medical problems. At the hearing, Applicant testified that his medical problems were the result of stress from his job and thus he could not work for the period from 2001 until 2003 as a result of the stress (Tr. 29). He received unemployment for the period but no disability income.

The SOR alleges delinquent debts totaling approximately \$33,673, including student loans and two 1999 repossessions. The current status of Applicant’s delinquent debts is as follows: Applicant claims he has made two payments of \$325 on the \$14,023 account alleged in SOR ¶ 1.a. He provided one receipt for \$325, dated April 2008 (GE) 4. His credit report confirms the account. This account is for a student loan that Applicant obtained in 1999. He presented different reasons for not paying the account. He claimed to have forgotten about the student loan (GE) 2 .

At the hearing, Applicant stated that he has approximately \$1,000 to pay on some of his delinquent debt. He will not pay the debts unless he is assured that he will keep his job. He explained that he has not done anything to resolve these debts (Tr. 26). He claims he has not been able to set up payment plans because the companies or collection agencies will not work with him (Tr. 26). He then stated that he could settle but “it would cost him in taxes” (Tr. 27). In one of his written responses, Applicant stated

that accounts have been 'charge-offs' and he can no longer do anything with them". In sum, he has not paid any other accounts listed on the SOR.

Applicant's son and daughter-in-law and four grandchildren live with him. They contribute to the household income. Applicant's wife does not work because she has some medical problems (Tr. 34). Applicant's annual salary is approximately \$66,000. He has money in his retirement account. His net monthly remainder is approximately \$1,945 (Tr. 59). Applicant bought a late model vehicle in 2007 and a laptop computer for work. He is paying his car note in a timely manner. He does not use credit cards. He has not obtained financial counseling.

Applicant completed his September 19, 2007, security clearance application. In that application he answered "no" to question 27b concerning repossessions. He also answered "no" to question 28a and 28b concerning financial delinquencies in the last seven years of over 90 or 180 days.

Applicant claimed to have answered the questions to the best of his ability. In an answer to an interrogatory he stated he was not aware of the student loan. At the hearing, Applicant explained that he "was rushed through the financial section." He further explained: "I just ran through it to get it done. I didn't stop for the financial stuff." He stated that he tried to retrieve the application to list everything concerning his finances (Tr. 40). He blamed his supervisor for rushing him through the process (Tr. 41). He then testified that if he had filled out the application properly, he would not be working. He admitted at the hearing that he knew that he did not answer the questions correctly (Tr. 43). He also acknowledged that he had completed a security clearance application prior to the 2007 one (Tr. 61).

Applicant was not credible at the hearing. He admitted that he did not answer the questions concerning his financial situation correctly. I find that he intentionally omitted the relevant information from his security clearance application. He also was cavalier in his attitude about the delinquent debts and was not credible that he tried at one point to establish a payment plan for the debts.

At the hearing, Applicant appeared annoyed that he had to respond to questions concerning the delinquent debts. He did not present any organized information concerning his credit report, although he introduced it as an exhibit.

Applicant's manager describes him as a diligent and hard worker. He is reliable and trustworthy. As a computer system administrator, he is well respected. He comes in on time and stays busy (AE) A.

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 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, 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.

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. 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.

Section 7 of Executive Order 10865 provides that decisions shall be "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^o is potentially disqualifying. Similarly under AG & 19(c), a history of not meeting financial obligations^o may raise security concerns. Applicant accumulated delinquent debts in a number of accounts. His current credit reports confirm the debts. The evidence is sufficient to raise these 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.^o Applicant's explanation that he did not know his student loan was on his credit report is not credible. He has not resolved his debts nor does he plan to do so unless he is guaranteed a security clearance for his job. Mitigating condition AG ¶ 20(a) does not apply in this case.

Under AG & 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.^o While the periods of unemployment and Applicant's illness may have contributed to his delinquent debts, he has not acted responsibly under the circumstances. When he began employment in 2007, he did not address his debts. Mitigating condition AG ¶ 20(b) does not apply.

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^o is potentially mitigating under AG & 20(c). Similarly, AG & 20(d) applies where the evidence shows the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.^o Applicant has made one or two payments on one large debt. He has not obtained counseling. He has no plan at this time to address his delinquent

debts. His efforts are insufficient to carry his burden in this case. I conclude these mitigating conditions do not apply.

AG ¶ 20(e) applies where the evidence shows “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.” This is not a factor for consideration in this case.

Guideline E, Personal Conduct

The security concern relating to the guideline for Personal Conduct is set out in AG ¶ 15:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual’s reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to cooperate with the security clearance process.

The guideline notes several conditions that could raise security concerns. Under AG ¶ 16(a), “deliberate omission, concealment, or falsification of relevant facts from any personnel questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities” is potentially disqualifying.

In this case, when Applicant completed his 2007 security clearance application, he answered “no” to questions 27 and 28. He admitted to the allegations in the SOR that he deliberately failed to disclose material information. He was not credible in his explanation at the hearing that he knew he did not answer the questions properly but that he tried to retrieve the application. I find that he intentionally omitted information from his security clearance application.

After considering the mitigating conditions under AG ¶ 17, I find that none of them apply in this case.

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) 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.” 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 has worked for a number of years. He did experience unemployment and illness. However, he has not made good-faith efforts to address his delinquent debts. He was not credible in his testimony at the hearing. He deliberately failed to disclose material information on his 2007 security clearance application.

Overall, the record evidence leaves me with questions and doubts as to Applicant’s 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 personal conduct.

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 1g:	Against Applicant
Subparagraph 1 h:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant
Subparagraph 2.b:	Against Applicant
Subparagraph 2.c:	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.

NOREEN A. LYNCH
Administrative Judge