



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
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-----, -----) ISCR Case No. 08-02203
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Melvin A. Howry, Esquire, Department Counsel
For Applicant: Laura J. Anderson, Esquire

November 10, 2008

Decision

WHITE, David M., Administrative Judge:

Applicant has substantial delinquent debt incurred seven years ago that he has made no effort to repay despite more than six years of steady, well-paying employment. Based upon a thorough review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

Applicant submitted his Questionnaire for Sensitive Positions (SF-86), on October 10, 2007. On June 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 June 30, 2008. He answered the SOR in writing on July 14, 2008, and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on August 20, 2008, and DOHA assigned the case to me on August 21, 2008.

DOHA issued a notice of hearing on September 3, 2008, and Applicant's counsel acknowledged receiving it at least 15 days before the hearing. (Tr. at 20.) I convened the hearing as scheduled on September 26, 2008. Applicant was not present at the hearing, but his counsel was present. She represented that Applicant was not present because he wished to "withdraw his appeal of the DOHA action" and prevent any final decision being made concerning his security clearance. She had advised him that she would seek this outcome and he did not need to be present. She was informed that Applicant did not have the option to unilaterally withdraw from this process, and that the case must continue to resolution unless and until his employer reported through JPAS that he no longer required a security clearance.

Department Counsel and Applicant's Counsel were given time to contact the employer's facility security office and DOHA's JPAS coordinator to determine whether his employer had reported that his security clearance application was withdrawn. All sources consulted indicated that he remained an employee and the security clearance application remained active. Applicant's counsel was granted a 70-minute continuance to contact the Applicant and determine when he could be present. At the conclusion of the continuance, she had been unable to contact him in any manner. I determined that Applicant was absent with good cause, since he had relied on his counsel's good faith but incorrect advice that he did not need to be present. Accordingly, case processing was not terminated since the criteria of DOHA OI 28 and Directive ¶ 4.4 were not met. (See ISCR Case No. 07-05632 (App. Bd. May 13, 2008.)) Applicant's counsel expressed her desire, subject to possible change after further consultation with Applicant, to respond to the Government's case in writing. She was given until October 10, 2008 to do so, and to request an additional session of the hearing if she or Applicant desired another opportunity to appear in person before the administrative judge. (Tr. at 6-18.)

Applicant and his counsel submitted a written brief and affidavit, via Department Counsel, on October 10, 2008. Applicant signed the affidavit attesting to the truth of the facts asserted in the brief, and neither he nor his counsel requested further hearing proceedings to permit his personal appearance. Under the criteria of ISCR Case No. 06-13610 (App. Bd. Oct. 31, 2008), I find that Applicant and his counsel thereby knowingly and intelligently waived his right to present his case by means of a hearing in which he appears in person under Directive ¶ E3.1.8. Accordingly, the case will be decided based on the written record pursuant to Directive ¶ E.3.1.7.

Before the hearing was continued for two weeks to permit Applicant's Counsel to confer with him, determine whether his employer desired to withdraw his application, and present any evidence they desired, Department Counsel offered Government Exhibits (GE) 1 through 9, which were admitted without objection. Applicant's brief,

affidavit, and forwarding cover letters were marked Applicant's Exhibit (AE) A, which was also admitted without objection. DOHA received the transcript of the hearing (Tr.) on October 7, 2008. The transcript is also incorporated into the written record for use in deciding this case.

Findings of Fact

Applicant is a 51-year-old employee of a federal contractor, where he has worked for one year as an employee and three preceding years as a subcontractor employee. He is an engineer who has worked in the aerospace industry since the 1980s. He has never married and has no children. In his answer to the SOR, he admitted the allegations in SOR ¶¶ 1.b and 1.d, and denied the allegations in SOR ¶¶ 1.a, 1.c, and 1.e. The two admitted allegations involve delinquent debts totaling \$15,716, both of which became delinquent in late 2001. Those admissions are incorporated in the following findings.

In 1995, using profits from some favorable stock investments, Applicant purchased a private airplane. Applicant went through a period of unemployment or underemployment from February 2000 to July 2002. On his September 2003 SF-86, he listed periods of unemployment from February to August 2000, and again from September 2000 to July 2002 after one month of employment from August to September 2000. (GE 1 at 3-4.) However, his October 2007 SF 86, presently pending adjudication, states that he was employed from October 2000 to July 2002 as a contract engineer for a company working on various aviation projects. (GE 4 at 3.)

Applicant took out several loans and incurred credit card balances during this time that he could not repay. He got a well-paying job again in July 2002, and was able to bring his mortgage payments current in time to stop the foreclosure proceedings against his home that were begun by his creditor. His payments on his airplane loan had also fallen behind, and that lender repossessed and resold the airplane. Applicant was required to repay the deficit remaining on that loan, as well as substantial attorney fees for the associated litigation. (GE 3 at 2-3; AE A at 3-4.)

During his November 2003 interview with a special agent of the Defense Security Service, Applicant admitted owing the delinquent debts alleged in SOR ¶¶ 1.a, 1.b, and 1.d. He said he intended to repay those debts by the end of 2004, and produced a financial statement showing assets of \$135,285 and a monthly remainder of income over expenses of \$2,016. (GE 3 at 1-4.) In his April 2008 response to interrogatories, he denied owing the \$181 debt alleged in SOR ¶ 1.c, but said, "I have not addressed this debt yet," concerning the delinquent debts alleged in SOR ¶¶ 1.a, 1.b, 1.d, and 1.e. He further stated that he would pay those bills when other priorities were settled. (GE 7 at 8-11.) His written submission added no information concerning repayment of any of these debts, but sought instead to attribute them to periods of unemployment beginning in 1990 and 2002. (AE A.) No other evidence was submitted concerning his trustworthiness, responsibility, or judgment. He did not explain why he denied SOR ¶¶

1.a and 1.e in his formal response to the SOR, nor provide proof the debts were resolved.

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 24.)

Applicant has at least a seven-year history of failing to satisfy legitimate financial obligations. He admitted he has made no effort to resolve at least two of them totaling more than \$15,700 that have been delinquent since 2001. He provided no evidence that he either resolved or formally disputed any of the SOR-listed debts, although he has consistently denied owing the \$181 debt alleged in SOR ¶ 1.c, and it no longer appears on his most recent credit report (GE 8). All of these debts became delinquent during 2001, but Applicant has not resolved them despite being continuously employed in well-paying jobs since July 2002. 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 roof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

Applicant's delinquent debts arose seven years ago, and a substantial number and amount remain delinquent at present. Despite being continuously employed since July 2002, he demonstrated no effort to resolve or formally dispute any of the SOR-listed debts. As recently as April 2008, he admitted not having addressed the largest four of them. Applicant offered no evidence that he either sought or followed financial counseling, or that he has any comprehensive plan to address his debts. He has not contacted these creditors to arrange repayments despite his 2003 statements of intent and ability to do so by the end of 2004. He said that he disputes the alleged \$181 telephone debt, but has not followed through with the creditor 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 demonstrated neither a plan to resolve his financial problems nor any significant action toward such resolution despite more than six years of steady and well-paying employment. Accordingly, he has not established substantial mitigation under AG ¶¶ 20(a) through (e).

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's conduct of potential concern involves substantial delinquent debts that he has not yet started to repay. Applicant is a mature, experienced adult who is accountable for his decisions and conduct. He voluntarily incurred these debts during a period that he was spending more money than he was earning, including buying a house and private airplane.

Applicant's debts arose seven years ago, and persist to date. There is ongoing potential for pressure, coercion, exploitation or duress since he remains financially overextended. Applicant offered no evidence of rehabilitation, behavioral changes, or that continuation of his financial irresponsibility is unlikely. Despite his knowledge of security concerns raised by these delinquent debts, he chooses to use his financial resources on other priorities.

On balance, Applicant presented insufficient evidence to mitigate reliability and trustworthiness security concerns arising from his failure 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, Applicant has not mitigated 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:	For Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	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