



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ISCR Case No. 08-02899
)
)
Applicant for Security Clearance)

Appearances

For Government: Ray T. Blank, Jr., Esq., Department Counsel
For Applicant: *Pro Se*

June 23, 2008

Decision

LOUGHRAN, Edward W., Administrative Judge:

Applicant failed to mitigate the security concerns raised by his financial history. Eligibility for access to classified information is denied.

On March 18, 2008,¹ the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant, detailing the security concerns under Guideline F, Financial Considerations. 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 answered the SOR in writing on April 7, 2008, and requested a hearing before an Administrative Judge. The case was assigned to me on April 22, 2008. DOHA

¹ The SOR was undated. The date was added without objection.

issued a notice of hearing on May 8, 2008. I convened the hearing as scheduled on June 2, 2008. The Government offered Exhibits (GE) 1 through 3, which were received without objection. Applicant testified on his own behalf, but did not submit documentary evidence. DOHA received the transcript of the hearing (Tr.) on June 12, 2008.

Procedural and Evidentiary Rulings

Motion to Amend SOR

Department Counsel made an oral motion to amend SOR ¶ 1.j by changing the date in the allegation from “1007” to “2007.” Applicant did not object to the motion and it was granted.

Findings of Fact

In his Answer to the SOR, Applicant admitted all the factual allegations in the SOR, but noted that the debts alleged in ¶¶ 1.a and 1.d were duplicates, and the debts in ¶¶ 1.b and 1.f were also duplicates.

Applicant is a 33-year-old engineer for a defense contractor. He married in 1997 and was earning a good salary. He separated from his wife and moved to another city in about 2001. He worked a series of lower paying jobs. He had a car voluntarily repossessed in about 2002. He and his wife divorced in late 2002 or early 2003. He has no children. Applicant decided he needed a change in his life. He was accepted into a premier engineering university and started in the fall of 2003. He graduated Summa Cum Laude with a 3.98 grade point average and received a Bachelor of Science degree in engineering in 2007.²

When Applicant went to college, he made a conscious decision to not pay the debts he had accrued. He could not afford to go to college and pay his past debts. He worked part-time during school. He paid his living expenses but did not earn enough to address his delinquent debts. It was his intention to pay his debts after he graduated and started earning a salary. He additionally has almost \$70,000 in student loans.³

Applicant was hired by his current employer in July 2007. He bought a car through financing after he graduated, but 3,000 miles later the engine blew out. A co-worker was moving and sold Applicant his car for \$15,000. Applicant is making payments of \$505 to him every two weeks for the car. The loan is down to about \$6,000. He believes the loan will be paid in full by about November 2008. He has not started paying his delinquent debts because of the auto loan. His company paid him for relocation expenses and he used that money to replace the engine on the original car. He stated that car was paid off and he has put it up for sale. He plans on using the money he receives from the sale of the car to negotiate settlements on his delinquent

² Tr. at 19-20, 34-35; GE 1.

³ Tr. at 19-23.

debts. He plans on addressing any remaining delinquent debts after his car is paid off in November 2008.⁴

Applicant admitted at the hearing that the debts alleged in ¶¶ 1.a and 1.d are not duplicates. I find that the debts in ¶¶ 1.b and 1.f are duplicates. He has made no payments on the remaining nine debts alleged in the SOR, totaling more than \$34,000. He has not received financial counseling.⁵

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 to be used 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, Administrative Judges apply the guidelines 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(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.

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 the 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

⁴ Tr. at 20-30; GE 1.

⁵ Tr. at 18-19, 24; Applicant's Answer to SOR.

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 adverse 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. Two are potentially applicable in this case:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant accumulated a number of delinquent debts and was unable to pay his obligations for a period of time. The evidence is sufficient to raise both of these potentially disqualifying conditions.

Five Financial Considerations Mitigating Conditions under AG ¶¶ 20(a)-(e) are potentially applicable:

- (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 proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

Applicant made a conscious decision to disregard his debts in order to pursue his education. That is not a condition that was largely beyond his control. His stated intent was to pay his debts after he graduated and started earning a decent salary. He graduated in 2007, and obtained a good job as an engineer in July 2007. His plans were again placed on hold when the engine of his car blew out. He is paying more than \$1,000 per month on another car and expects to pay it off in November 2008. He fixed the engine on the first car and has it for sale. He plans on using the proceeds to negotiate settlements for his debts. While Applicant has stated his intentions to pay his debts, he has not started addressing any of them. I find that none of the mitigating conditions are fully applicable.

SOR ¶¶ 1.b and 1.f are duplicates. SOR ¶ 1.f is concluded for Applicant. SOR ¶1.k alleges that Applicant had an automobile voluntarily repossessed in 2002. It is unclear if this resulted in a deficiency. It is also unclear if any of the debts alleged in the SOR reflect that deficiency. SOR ¶ 1.k is concluded for 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. 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. It is difficult to fault Applicant's decision to pursue his engineering degree. He made a conscious choice to put off paying his delinquent debts until after he graduated. He was tremendously successful in college, graduating Summa Cum Laude, and he obtained a good job as an engineer. He has an accelerated payment schedule of \$505 every two weeks on his car loan. He again decided not to address his delinquent debts until after he pays off his car. I am left with Applicant's bare assertions that he will begin paying his delinquent debts. Without some good-faith effort to address his debts, I am unable to find on his behalf.

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 issues.

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
Subparagraphs 1.a-1.e:	Against Applicant
Subparagraph 1.f:	For Applicant
Subparagraphs 1.g-1.j:	Against Applicant
Subparagraph 1.k:	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.

Edward W. Loughran
Administrative Judge