



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 08-03026
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: D. Michael Lyles, Department Counsel
For Applicant: *Pro Se*

January 27, 2009

Decision

TESTAN, Joseph, Administrative Judge:

On August 5, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to applicant detailing the 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 for SORs issued after September 1, 2006.

Applicant answered the SOR in writing on August 28, 2008, and requested an Administrative Determination by an Administrative Judge (AJ). Department Counsel issued a File of Relevant Material (FORM) on September 22, 2008. Applicant filed a response to the FORM on November 4, 2008. The case was assigned to me on November 18, 2008. Based upon a review of the case file, pleadings, and exhibits, eligibility for access to classified information is denied.

Findings of Fact

Applicant is a 46 year old employee of a defense contractor.

Applicant is indebted to RADIO/SAMDC in the approximate amount of \$2,244.00. This debt was charged off. In his response to the SOR, applicant stated he spoke with a customer service representative who told him to call them back when he could repay the entire debt. In his response to the FORM, he stated the debt has been transferred to IGT Collection and despite several attempts, he has not been able to speak with anyone at IGT.

Applicant was indebted to CingularPR on an account that had been charged off in the amount of \$50.00. He satisfied the debt in August 2008.

Applicant was indebted to PALISADES on a collection account that originated with Wells Fargo in the approximate amount of \$6,033.00. In his response to the SOR, applicant stated he reached an agreement with the creditor in August 2008 to make "a down payment of \$450.00 and to pay \$150.00 monthly until the bill is satisfied." He attached documents to his response to the FORM that indicate he made an initial \$400.00 payment in August 2008, and then made \$150.00 payments in September and October 2008.

Applicant was indebted to LVNV FUNDING on an account that had been turned over for collection in the approximate amount of \$378.00. He satisfied the debt in August 2008.

Applicant is indebted to BCO Bilbao in the approximate amount of \$9,310.00. In his response to the SOR, applicant stated he had "a vehicle from BCO Bilbao" and when he lost his job he notified them and voluntarily surrendered the car. He further stated to his knowledge, "the vehicle was supposed to be auctioned off to satisfy his debt." In his response to the FORM, he stated he spoke with the repossession department of the company that actually picked up his vehicle and was told the vehicle had been sold, the amount owed was no longer correct, and that the company could not give him any further information over the phone. He further stated that he has started the process of acquiring the information through the mail.

Applicant is indebted to M. Berrios in the approximate amount of \$999.00. This debt has been charged off. In his responses to the SOR and FORM, applicant stated he spoke to the creditor and was told they will only accept payment in full. He then added, "I am already making arrangements to comply with [the creditor's] payment policies."

Applicant was indebted to International Home Products in the approximate amount of \$1,025.00. The account was delinquent. Applicant satisfied the debt in August 2008.

Applicant is indebted to MOVISTAR on an account that has been turned over for collection in the approximate amount of \$481.00.

Applicant was indebted to AT&T on an account that had been turned over for collection to Palisades in the approximate amount of \$257.00. This debt was satisfied in October 2008.

Applicant was indebted to Sprint in the approximate amount of \$635.00. This debt had been turned over for collection. Applicant satisfied the debt in October 2008.

Applicant is indebted to Discover Financial in the approximate amount of \$3,886.00. In response to the SOR, he stated he called the creditor and was "notified that this account was deleted from their file system." He attached a note from either Discover or their collection agency to his response to the FORM confirming that applicant authorized \$50.00 to be taken out of his checking account on October 23, 2008 and applied to his Discover debt.

In his response to the SOR, applicant stated, among other things, that his financial problems started when he was injured on the job and began receiving workers compensation benefits in 2003. He added that he was also unemployed in 2004 and 2005, although he didn't make clear if his unemployment was related to his injury.¹

In April 2008, applicant provided DOHA with a March 2008 bank statement indicating he has a total of about \$25,000.00 in three separate accounts with one bank.

Policies

The President has "the authority to . . . control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to occupy a position that will give that person access to such information." (*Department of the Navy v. Egan*, 484 U.S. 518,527 (1988).) In Executive Order 10865, *Safeguarding Classified Information Within Industry* (February 20, 1960), the President set out guidelines and procedures for safeguarding classified information within the executive branch. The President authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." (Exec. Ord. 10865, Section 2.)

To be eligible for a security clearance, an applicant must meet the security guidelines contained in the Directive. Enclosure 2 of the Directive sets forth personnel security guidelines, as well as the disqualifying conditions and mitigating conditions under each guideline.

Initially, the Government must present evidence to establish controverted facts in the SOR that disqualify or may disqualify the applicant from being eligible for access to classified information. (Directive, Paragraph E3.1.14.) Thereafter, the applicant is

¹Although applicant attached to his SOR response what appears to be a social security statement showing no income in 2004 and 2005, this information conflicts with his employment history he reported on his security questionnaire in May 2007 (Exhibit 1). In Exhibit 1, he stated he was employed as a vice-president of an auto-related company from 1994 to approximately March 2005, and was self employed as the owner of a café from approximately March 2005 to 2007.

responsible for presenting evidence to rebut, explain, extenuate, or mitigate the facts. (Directive, Paragraph E3. 1.15.) An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.” (ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002).) “Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security.” (Directive, Paragraph E2.2.2.)

A person granted access to classified information enters into a special relationship with the government. The government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to classified information. The decision to deny an individual a security clearance is not a determination as to the loyalty of the applicant. (Exec. Ord. 10865, Section 7.) It is merely an indication that the applicant has not met the strict guidelines the President has established for issuing a clearance.

Analysis

Guideline F, Financial Considerations

The security concern relating to Financial Considerations is set forth in Paragraph 18 of the new AG, and is as follows:

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 AG note several conditions that could raise security concerns. Under Paragraph 19.a., an “inability or unwillingness to satisfy debts” is potentially disqualifying. Under Paragraph 19.c., “a history of not meeting financial obligations” may raise security concerns. The evidence shows applicant has a history of conduct indicating an inability or unwillingness to pay his debts. Accordingly, these disqualifying conditions are applicable.

The guidelines also set out mitigating conditions. Paragraph 20.a. may apply 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 are recent and ongoing. The evidence he offered is insufficient to establish he is not likely to experience further financial delinquencies. This mitigation condition is not applicable.

Under Paragraph 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.” Applicant states his financial problems were caused by a work-related injury and a subsequent

lengthy period of unemployment. The injury was beyond his control. However, even if he were considered unemployed in 2004 and 2005 notwithstanding the contrary evidence in his security questionnaire, because he provided no explanation for the unemployment, I cannot conclude his unemployment was beyond his control. And, given his failure to address his delinquent debts until August 2008, the evidence does not support a finding he acted responsibly. This mitigating condition is not applicable.

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” is potentially mitigating under Paragraph 20.c. The problem is not under control. This mitigating condition is not applicable.

Paragraph d. applies where the evidence shows “the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.” Applicant has satisfied some of his smaller debts, and appears to have begun to repay his large PALISADES debt. This is a factor in his favor. However, he did not take any action to address these delinquent debts until he received the SOR, and many of them remain unpaid even though, according to the bank statement he sent to DOHA, applicant appears to have the funds to satisfy them. This does not constitute a good faith effort to repay his debts. This mitigating condition is not applicable.

“Whole Person” Analysis

Under the whole person concept, the AJ must evaluate an applicant’s security eligibility by considering the totality of the applicant’s conduct and all the circumstances. An AJ should consider the nine adjudicative process factors listed at AG Paragraph 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) 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 Paragraph 2c, the ultimate determination of whether to grant 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 is a mature man who fell behind on numerous debts many years ago. Although some of his financial problems may have been caused by his work injury, he has had years since the injury to address these debts, but chose not to do so. Only after he received the SOR did he begin to address his delinquencies. Although he has made some debt payments, most of his indebtedness remains outstanding, even though he appears to have the funds to repay all of the debts for which he remains legally liable. Applicant failed to mitigate the security concerns arising from Guideline F.

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

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.

JOSEPH TESTAN
Administrative Judge