



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----, -----) ISCR Case No. 08-09529
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Eric H. Borgstrom, Esquire, Department Counsel
For Applicant: *Pro Se*

December 23, 2009

Decision

WHITE, David M., Administrative Judge:

Applicant accrued nine delinquent debts, totaling more than \$20,000, from 2002 to 2008. Four additional debts, totaling almost \$3,000, were reported as delinquent on a July 2009 credit report. He demonstrated no effort to resolve any of these debts, and provided no evidence to establish ongoing solvency or otherwise mitigate security concerns. Based upon a review of the case file, pleadings, and exhibits, eligibility for access to classified information is denied.

Applicant submitted a security clearance application on June 23, 2008.¹ On April 23, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant, detailing security concerns under Guideline F (Financial Considerations).² 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*

¹Item 3.

²Item 1.

Program (January 2, 1992), as amended (Directive); and the revised adjudicative guidelines 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 May 1, 2009, and requested that his case be decided by an administrative judge on the written record without a hearing.³ Department Counsel submitted the Government's written case on July 9, 2009. A complete copy of the file of relevant material (FORM)⁴ was provided to Applicant, and he was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of his receipt of the FORM.

Applicant signed the document acknowledging receipt of his copy of the FORM on July 20, 2009, and returned it to DOHA. He submitted no further evidence or correspondence in response to the FORM by the August 19, 2009, deadline and expressed no objection to my consideration of the evidence submitted by Department Counsel. I received the case assignment on October 9, 2009.

Findings of Fact

Applicant is a 33-year-old employee of a defense contractor, where he began working in March 2004. He has no military service, and has never held a security clearance. He is recently married with no children.⁵ In his response to the SOR, he formally admitted each allegation, except for two small claims court judgments of which he claimed ignorance.⁶ Applicant's admissions, including his statements in response to the SOR and to DOHA interrogatories, are incorporated in the following findings.

The two small claims court judgments that Applicant denied in his SOR response were entered against him on February 24, 2003, in the amount of \$2,306, and on December 5, 2006, in the amount of \$597.⁷ Other than stating that he was not aware of these judgments, he provided no evidence that either judgment was erroneously recorded or satisfied.⁸ The judgment and six other SOR-alleged debts to which he admitted became delinquent between 2002 and 2008, and total \$17,468.⁹ Accordingly,

³Item 2.

⁴The Government submitted ten Items in support of the SOR allegations.

⁵Item 2 at 3; Item 3 at 6, 11, 17-19, 25.

⁶Item 2. He denied SOR ¶¶ 1.b. and 1.c., and admitted SOR ¶¶ 1.a. and 1.d. through 1.i..

⁷Item 7; Item 8.

⁸Item 2 at 2; Item 4 at 4-5, 13, 14.

⁹Item 2; Item 4; Item 5; Item 6.

the evidence clearly establishes that Applicant owes these three judgments and six other delinquent debts totaling \$20,371.

Applicant offered no corroborating evidence of any payment toward, or other attempt to resolve, any of these debts. In his August 2008 statement to an interviewer from the Office of Personnel Management, he stated that the debts were incurred due to his financial irresponsibility, but that he had become more responsible and was going to take steps to fix his credit.¹⁰ In his December 2008 response to DOHA interrogatories, Applicant stated:

My credit sucks. I plan on trying to fix some of it but live paycheck to paycheck as is. I have way too many outstanding debts to fix all at once. My New Years Resolution is to start tracking what debts I know about, and get calls/mail about to fix.¹¹

His May 2009 SOR response, however, indicated neither any effort nor the financial ability to resolve any of his delinquent debts.¹² DOHA obtained another credit report on July 9, 2009, which showed another judgment against him in April 2009 for \$1,335. This report also listed three new debts that became delinquent between May and September 2008, totaling \$1,652, and did not show resolution or reduction of any SOR-alleged debt.¹³

Applicant submitted no evidence about his current income, living expenses, or ability to resolve his delinquent debts and avoid incurring additional ones. He provided no evidence concerning the quality of his recent professional performance, the level of responsibility his duties entail, or his track record with respect to handling sensitive information and observation of security procedures. He submitted no character references or other evidence tending to establish good judgment, trustworthiness, or reliability. I was unable to evaluate his credibility, demeanor, or character in person since he elected to have his case decided without a hearing.

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 (DCs) and mitigating conditions (MCs), which are to be used in evaluating an applicant's eligibility for access to classified information.

¹⁰Item 4 at 3, 5.

¹¹Item 4 at 16.

¹²Item 2.

¹³Item 10.

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 AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense 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 "[a]ny 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, "[t]he 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: "[a]ny 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

The security concerns relating to the guideline for financial considerations are 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.

Department Counsel argued that the evidence established security concerns under two Guideline F DCs, as set forth in AG ¶ 19: “(a) inability or unwillingness to satisfy debts;” and “(c) a history of not meeting financial obligations.”¹⁴ Applicant has been unwilling and unable to satisfy any of his delinquent debts, and failed to provide any evidence of his willingness or ability to do so in the future. DC 19(a) is clearly established. He has demonstrated a seven-year history of not meeting financial obligations, including a pattern of borrowing and spending beyond his means even after becoming aware of the security concerns raised by such conduct. Security concerns under DC 19(c) are also supported on this record. Applicant’s current financial state and history of irresponsibility indicate poor self-control, lack of judgment, and unwillingness to abide by rules and regulations.

The guideline includes several conditions that could mitigate security concerns arising from financial difficulties in AG ¶ 20. Under MC 20(a), disqualifying conditions 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 irresponsibility is recent, involves numerous creditors, and continues to date. He remains substantially in debt, and he provided no evidence concerning his current financial situation that would support a finding that delinquent indebtedness is unlikely to recur. The evidence does not support application of this potentially mitigating condition.

Under MC 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 has worked full-time for his present employer for almost six years, and made no effort to address any of his delinquencies. He attributes them to his own carelessness and irresponsibility, and offered no evidence that any debt was incurred due to causes beyond his control. He also did not demonstrate that he responsibly reduced non-essential spending in reaction to his mounting debts. He has not established mitigation of his presently delinquent debts, or of his financial history as a whole, under this provision.

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 MC 20(c). Similarly, MC 20(d) applies where the evidence shows “the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.” Applicant established no mitigation under these two provisions because he failed to address any delinquency. He further incurred four additional bad debts, totaling \$2,987, after those listed in the SOR. Moreover, the absence of evidence

¹⁴FORM at 5.

demonstrating his current solvency or ability to resolve his outstanding delinquencies precludes findings of “clear indications that the problem is being resolved or is under control,” or “a good-faith effort.” Insufficient evidence was presented to alleviate the substantial security concerns raised by the length and degree of financial irresponsibility that continues to date.

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 relevant 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 commonsense 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 relevant facts and circumstances surrounding this case. Applicant is a mature individual who is responsible for his voluntary choices and conduct that underlie the security concerns expressed in the SOR. He established a consistent pattern of financial irresponsibility dating back at least seven years, with no evidence of any efforts to resolve his outstanding obligations.

Applicant failed to demonstrate financial rehabilitation or evidence of solvency from the present time forward, so recurrence and worsening of his financial concerns cannot be said to be unlikely. He continues to bear financial obligations for significant past debt and ongoing living expenses. He accordingly remains subject to pressure, exploitation, or duress. The record contains insufficient other evidence about his character, trustworthiness, or responsibility to mitigate these concerns, or tending to make their continuation less likely.

Overall, the record evidence creates substantial doubt as to Applicant’s present 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.

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:	Against 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 1.g:	Against Applicant
Subparagraph 1.h:	Against Applicant
Subparagraph 1.i:	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