



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 08-09581
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Fahryn E. Hoffman, Esquire, Department Counsel
For Applicant: *Pro se*

August 28, 2009

Decision

CURRY, Marc E., Administrative Judge:

Applicant failed to mitigate the government’s security concerns. Clearance is denied.

On March 16, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines F, financial considerations, and E, personal conduct. 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 on April 3, 2009, admitting all of the allegations except 2.i and 2.u, and requested a hearing. The case was assigned to me on May 15, 2009. On June 4, 2009, a notice of hearing was issued scheduling the case for June

23, 2009. It was held as scheduled. At the hearing, I received six government exhibits, three Applicant exhibits, and the testimony of two Applicant witnesses. The transcript was received on July 1, 2009.

Procedural Ruling

SOR subparagraph 2.u, which Applicant denies, alleges that he was arrested for Driving While Intoxicated (DWI) “sometime between 1998 and 2000,” and arrested on unrelated charges “sometime between 2000 and 2002.” Although an SOR does not have to satisfy the strict requirements of a criminal indictment, it must still place an applicant on adequate notice of the allegations so that he may have a reasonable opportunity to respond and prepare a defense.¹ Subparagraph 2.u. does not meet this threshold, therefore, I conclude that it is not justiciable.

Findings of Fact

Applicant is a 33-year-old single man with four children, ages ten, seven, four, and five months (Tr. 44). His live-in girlfriend is the mother of the youngest three children. His ex-wife, whom he divorced in 1999, is the mother of the oldest child. The oldest child does not live with Applicant.

Applicant has a high school education. He served in the U.S. Marines from 1994 to 1998 (Exhibit 1 at 28). He received an honorable discharge.

Since March 2008, Applicant has worked as an electronics technician (Tr. 44). He installs closed-circuit televisions, access control systems, and security card readers in secured facilities (Tr. 37). His supervisor, who oversees an eight-person staff, characterizes Applicant as one of his “top guys” (Tr. 22).

Between 2000 and 2007, Applicant accrued approximately \$30,000 of delinquent debt, including \$13,000 in medical bills (SOR subparagraphs 1.a - 1.c, 1.f, 1.h - 1.j), \$400 in delinquent utilities (SOR subparagraphs 1.d, 1.g), \$7,000 in default judgments for delinquent rent (SOR subparagraphs 1.k, 1.m, 1.o), \$9,300 in bank debts (1.e, 1.i), and a debt owed to a municipality for \$88 (SOR subparagraph 1.n).

Approximately \$12,000 of Applicant’s medical bills, as listed in SOR subparagraphs 1.a through 1.c, accrued after a serious car accident in 2002 rendered him unable to work for a year (Answer at 1; Exhibit 3 at 4). Before the accident, he had been unemployed for seven months between December 2000 and July 2001.

In March 2009, Applicant satisfied a debt in the amount of \$40 owed to the creditor listed in 1.f (see copy of second cashier’s check included on Exhibit B). That month, he also made a \$40 payment to the creditor listed in subparagraph 1.d, and satisfied the judgment listed in subparagraph 1.n (see copy of the other cashier’s check

¹ISCR Case No. 03-07826 (App. Board June 17, 2005 at 3).

included in Exhibit B). Approximately \$115 of the debt listed in SOR subparagraph 1.d remains outstanding.

Applicant's girlfriend, the lease cosigner, is paying the most significant rental property delinquency, a \$6,300 delinquent judgment, as listed in subparagraph 1.o, through a garnishment (Exhibit C). Since February 2009, approximately \$500 has been garnished from her wages (*Id.*). Applicant has taken no steps to resolve the other two rental property default judgments since they were entered in 2003 (Tr. 69).

In May 2008, Applicant applied for a consolidation loan through his credit union (Tr. 75). He was rejected because his debt-to-income ratio was too high (*Id.*). In March 2009, he met with a debt management counselor who advised him to reapply. The credit union again rejected his application (Tr. 76). His debt management counselor then advised him to get a part-time job to generate additional income to begin satisfying his debts (*Id.*). Applicant has not yet done so.

Applicant and his girlfriend earn approximately \$1,800 in net monthly income (Tr. 94). They currently are not paying any of the SOR delinquencies other than the judgment listed in SOR subparagraph 1.o, and their monthly expenses exceed their net income by nearly \$670 (Tr. 101).

On April 29, 1997, Applicant received nonjudicial punishment (NJP) for damaging private property after "taking out [his] aggression" toward a fellow Marine by vandalizing his car (Answer at 3). He was awarded forfeiture of \$300 pay per month for two months and ordered to base restriction for 30 days.

On August 21, 1997, Applicant received an NJP for being absent without leave (AWOL). He was awarded forfeiture of \$500 pay per month for five months, a 45 day base restriction, and 45 days of extra duty.

In April 1999, Applicant was arrested and charged with assault and battery of a family member after an altercation with his then-wife. He was ordered to pay a fine, attend marriage counseling, and attend Alcoholic's Anonymous meetings.

During the past ten years, Applicant has received 17 traffic and automobile-related civil citations for violations including, but not limited to, speeding, driving with a suspended license, driving with expired inspection stickers, violating high occupancy vehicle lane restrictions, disregarding red lights, using license tags improperly, and failing to secure children in car seats (*see generally*, Answer at 3 through 5). Collectively, he has paid more than \$4,500 in fines and court costs for these offenses.

Applicant's job requires that he drive. He has not received any traffic infractions while engaged in company business. Since working at this job, however, he has received three traffic infractions while driving off-duty.

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 overarching adjudicative goal is a fair, impartial, and commonsense 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."

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.

Analysis

Guideline F, Financial Considerations

Under this guideline, "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" (AG ¶ 18). Applicant satisfied SOR ¶ 1(n). I conclude it no longer represents a security concern. The remaining delinquencies, however, trigger the application of AG ¶¶ 19(a), "inability or unwillingness to satisfy debts," and 19(c), "a history of not meeting financial obligations."

Applicant's financial difficulties were exacerbated by a lengthy period of unemployment in 2001, and a serious car accident in 2002 that generated multiple medical expenses and rendered him unable to work for a year. However, his efforts to address his financial delinquencies over the years have been scattershot. Also, given his limited income, I conclude the fines he had to pay for the multiple civil violations

affected his ability to satisfy his financial delinquencies. AG ¶ 20(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,” does not apply.

Applicant made some payments toward the satisfaction of two debts. He applied for a debt consolidation loan, and he met with a credit counselor. However, his debt payments were minimal. Also, the bank rejected his consolidation loan application, and he just met with the credit counselor within the past six months. He has yet to establish a plan, and he spends nearly \$700 more than he earns each month. Neither AG ¶ 20(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,” nor AG ¶ 20(d), “the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve delinquent debts,” apply.

Guideline E, Personal Conduct

Under this guideline, “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” (AG ¶ 15). Typically, isolated automobile-related, civil infractions do not trigger security concerns. Applicant, however, has been cited for such infractions nearly twice per year for the past ten years. The frequent and repetitive nature of these infractions indicates a disregard for state law governing the safe operation and maintenance of motor vehicles. AG ¶ 16(d), “credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations [including] . . . a pattern of dishonesty or rule violations,” applies.

Applicant’s most recent civil infraction occurred less than a year ago. Consequently, it is too soon to conclude his propensity to violate traffic laws no longer represents a security concern. None of the mitigating conditions apply.

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.

Any positive inference regarding Applicant's security clearance-worthiness generated by his excellent work performance is outweighed by the negative inferences generated by his outstanding financial delinquencies and his multiple civil infractions. Upon considering the disqualifying and mitigating conditions together with the whole person concept, I conclude Applicant has not mitigated the security concerns.

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.m:	Against Applicant
Subparagraph 1.n:	For Applicant
Subparagraphs 1.o:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraphs 2.a - 2.t:	Against Applicant
Subparagraph 2.u:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

MARC E. CURRY
Administrative Judge