



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 08-03512
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Melvin A. Howry, Department Counsel
For Applicant: *Pro Se*

February 9, 2009

Decision

TESTAN, Joseph, Administrative Judge:

On July 21, 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 26, 2008, and requested an Administrative Determination by an Administrative Judge (AJ). Department Counsel issued a File of Relevant Material (FORM) on September 10, 2008. Applicant did not file a response to the FORM. The case was assigned to me on November 14, 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 65 year old employee of a defense contractor.

SOR Allegation 1.a: Applicant is indebted to the State of California in the approximate amount of \$1,012.00 as evidenced by a State tax lien filed against him in 1996 (Exhibit 7). As of September 2008, this lien was still in place (Exhibit 8).

SOR Allegation 1.b: Applicant is indebted to the State of California in the approximate amount of \$8,164.00 as evidenced by a State tax lien filed against him in 1995 (Exhibit 7). As of September 2008, this lien was still in place (Exhibit 8).

SOR Allegation 1.c: Applicant was indebted to the IRS in the approximate amount of \$4,854.00. Because the only evidence of this debt was a tax lien filed against him in 1994, and Exhibit 7 indicates the lien was released in 2003, I find applicant is no longer indebted to the IRS.

SOR Allegation 1.d: Applicant admits he is indebted to Applied Credit Bank in the approximate amount of \$2,835.00. This credit card debt has been delinquent since at least 2002, and was placed for collection. In his response to the SOR, applicant stated he is "presently negotiating with them for a final settlement."

SOR Allegation 1.e: Applicant was indebted to Providian on an account that went delinquent and was placed for collection with Palisades Collection in the approximate amount of \$4,500.00. Applicant settled the debt for \$2,375.00 and made the \$2,375.00 payment in August 2008.

SOR Allegation 1.f: Applicant is indebted to Verizon Wireless on an account that went delinquent and was referred to Pinnacle Credit for collection in the approximate amount of \$1,364.00.

SOR Allegation 1.g: Applicant was indebted to AT&T on an account that went delinquent and was turned over to NCO Financial for collection in the approximate amount of \$455.00. In his response to the SOR, applicant stated "the AT&T bill has been paid in full, for the original amount, documentation included." He attached a copy of a receipt from AT&T, dated August 26, 2008, which shows a payment of \$385.62. Although this appears to be the original amount of the debt, there is no evidence that AT&T accepted this payment as payment in full.

In Exhibit 6, applicant provided a number of reasons for his financial delinquencies. He claims the tax liens were the result of incorrect tax forms being filed by others. He claims he does not owe the taxes, and will not pay them. (He didn't offer an explanation for the release of the IRS lien). He also stated that his financial problems were caused by a break up with his girlfriend, two major vehicle accidents, problems with the freight hauling business, and an illness, which caused him to lose "a lot of time in the office."

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 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 unlikely 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 provided numerous reasons for his financial problems. However, he failed to offer sufficient details to permit a finding that these reasons were the primary factors behind his numerous financial delinquencies, or that he acted responsibly under the circumstances. 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, as evidenced by applicant’s inability or unwillingness to address the State tax debts and the Verizon debt, and to reach an agreement with Applied Credit Bank on repaying this six year old debt. This mitigating condition is not applicable.

Paragraph 20.d. applies where the evidence shows “the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.” Applicant satisfied the Providian debt, and either satisfied or made a substantial payment on the AT&T debt. These are factors in his favor. However, given the facts that (1) these payments were made after he received the SOR, (2) he has not made any payment to or payment arrangements with Applied Credit Bank or Verizon Wireless, and (3) he has not provided credible evidence that he has recently tried to resolve his tax debts, he has not “initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.” This mitigating condition is not applicable.

Paragraph 20.e. applies when “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.” This mitigating condition does not apply because, although applicant may have a reasonable basis to dispute the legitimacy of his tax debts, he provided no documentation to substantiate his position.

“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 2.c, 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, and some of these debts are still outstanding. Applicant claims his tax debts are not legitimate and some of his other financial delinquencies were caused by factors beyond his control. Although possibly true, the evidence he offered to support these claims; namely, uncorroborated written statements, is insufficient to establish their validity. Had applicant requested a hearing instead of a decision based on the written record, he may have been able to offer additional evidence clarifying some matters (e.g., why the IRS lien was released; how exactly his break up, accidents, and illness impacted his income) which - together with his written statements - may have been sufficient to mitigate the Government’s case. But applicant did not request a hearing, and based on the limited evidence in the record, I have no choice but to conclude 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