



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 08-04295
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: James F. Duffy, Department Counsel
For Applicant: *Pro Se*

December 30, 2008

Decision

TESTAN, Joseph, Administrative Judge:

On June 30, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to applicant detailing the security concerns under Guidelines E and 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 July 25, 2008, and requested an Administrative Determination by an Administrative Judge (AJ). Department Counsel issued a File of Relevant Material (FORM) on September 23, 2008. Applicant did not file a response to the FORM. The case was assigned to me on December 12, 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 44 year old employee of a defense contractor.

Applicant filed a Chapter 7 bankruptcy petition in September 1999. He received a discharge from the bankruptcy court in December 1999.

Foreclosure proceedings have been initiated by the holder of the first mortgage on applicant's home.

Applicant is indebted to NCB for a second mortgage on his home in the approximate amount of \$47,000.00. This debt has been charged off.

Applicant is indebted to HFC in the approximate amount of \$6,755.00. This debt has been charged off.

Applicant is indebted to Arrow Ser on an account that was placed for collection by Washington Mutual/Providian in the approximate amount of \$2,403.00. In his response to the SOR, applicant stated this debt was "recently paid off," but offered no proof.

Applicant is indebted to Equidata on an account that was placed for collection by Cox Cable in the approximate amount of \$89.00. In his response to the SOR, applicant stated he "paid [this debt] via State of Virginia."

Applicant is indebted to NCO Financial on an account that was placed for collection by Dominion Virginia Power in the approximate amount of \$249.00. In his response to the SOR, applicant stated he "paid this debt," but offered no proof.

Applicant is indebted to Progressive Insurance on an account that was placed for collection in the approximate amount of \$141.00.

Applicant completed an Electronic Questionnaire for Investigations Processing (e-QIP) in August 2007. In response to Question 28(b), applicant denied that he was then over 90 days delinquent on any debts. In fact, he was more than 90 days delinquent on both the first and second mortgages on his home. In his response to the SOR, applicant admitted he deliberately failed to disclose these delinquencies. He provided no explanation for his dishonest conduct.

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 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 failure to honor his financial obligations is ongoing, and it casts doubt on his current reliability and judgment. Accordingly, 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.” In his response to the SOR, applicant stated that his debts arose after a “motorcycle accident that had [him] out of work for 3 months.” Although this would constitute a factor beyond his control, he provided no other details, such as the year of accident. Without more details, there is no way to determine if he acted responsibly under the circumstances. Accordingly, 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. There is no evidence of counseling. And, the problem is not being resolved and it is clearly not under control. Accordingly, this mitigation condition does not apply.

Paragraph 20.d. applies where the evidence shows “the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.” In his response to the SOR, applicant stated that he is “getting caught up on [his] finances and working on hardship letter to save [his] house.” However, he provided no proof that he has actually accomplished anything. This mitigating condition does not apply.

Guideline E, Personal Conduct

The security concern relating to the guideline for Personal Conduct is set forth in Paragraph 15 of the AG, and is as follows:

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. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

Paragraph 16 describes conditions that could raise a security concern and may be disqualifying. Under Paragraph 16.a., the “deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities,” may be disqualifying. Applicant admitted that he deliberately concealed his mortgage delinquencies from the

Government when he completed the e-QIP. This disqualifying condition is therefore applicable.

I considered the potentially mitigating conditions under this Guideline and conclude none apply.

“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 has a history of not meeting his financial obligations and not being truthful with the Government about his financial delinquencies. He failed to offer any credible evidence that he is taking any meaningful action to repay his delinquent debts. Under the circumstances, I have no choice but to conclude applicant failed to mitigate the security concerns arising from Guidelines E and 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:

Guideline E: AGAINST APPLICANT
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