



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----, -----) ISCR Case No. 08-04450
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Alison O’Connell, Esquire, Department Counsel
For Applicant: *Pro Se*

June 4, 2009

Decision

WHITE, David M., Administrative Judge:

Applicant repaid some of his delinquent debts using an income tax refund, but did not demonstrate his ability to repay more than \$21,000 in remaining delinquent debt. He provided insufficient evidence to mitigate resulting security concerns. Based upon a review of the case file, pleadings, and exhibits, eligibility for access to classified information is denied.

Applicant submitted his Electronic Questionnaires for Investigations Processing (e-QIP), on June 15, 2007. On February 11, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant, detailing security concerns under Guideline F.¹ 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.

¹Item 1.

Applicant answered the SOR in writing on March 4, 2009, and requested that his case be decided by an administrative judge on the written record without a hearing.² Department Counsel submitted the Government's written case on March 20, 2009. A complete copy of the file of relevant material (FORM)³ 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 March 31, 2009, and returned it to DOHA. He timely submitted additional material concerning repayments toward his debts, and made no objection to consideration of any evidence submitted by Department Counsel, in an undated letter mailed on April 27, 2009 and received by DOHA on April 29, 2009. The following day, Department Counsel indicated that she did not object to the admissibility into evidence of anything submitted by Applicant. I received the case assignment on May 11, 2009.

Findings of Fact

Applicant is a 38-year-old employee of a NASA contractor. He is married, with three children, ages 14, 12, and 5. He has been continuously employed in his present capacity since 1996. He has no military service, but has held a security clearance since 1997.⁴ In his response to the SOR, he denied the factual allegations in SOR ¶¶ 1.h and 1.i, and admitted the truth of SOR ¶¶ 1.a through 1.g, and 1.j.⁵ Applicant's admissions, including those contained in his response to interrogatories,⁶ are incorporated in the following findings.

The two SOR allegations that Applicant denied were true, in that the debts were collection accounts, totaling \$1,607, that had not been paid as of July 14, 2007. He provided proof that he settled these two accounts, for total payments of \$886 in March 2008, with his response to DOHA interrogatories.⁷ Accordingly, these debts are now resolved. The eight delinquent debts to which Applicant admitted in his SOR response totaled \$25,039. In his response to the FORM, he supplied proof that he fully paid five of these debts, totaling \$3,038, for \$3,441 including additional late fees and interest, during March 2009. These resolved debts were alleged in SOR ¶¶ 1.a, 1.b, 1.f, 1.g, and 1.j. He did not identify the source of the funds used to pay these debts, but had stated in his SOR response that he intended to use his income tax refund for debt payment.

²Item 4.

³The Government submitted eight items in support of the allegations.

⁴Item 5.

⁵Item 4.

⁶Item 6.

⁷*Id.*

In his response to the FORM, Applicant also provided proof that he initiated repayment plans with the creditors holding his three remaining delinquent debts. These totaled \$22,001, as alleged in SOR ¶¶ 1.c, 1.d, and 1.e. The first involves a student loan of \$6,033 toward which he made \$63 monthly payments in February, March, and April 2009, bringing its status to "In Repayment, current." The second involved a past-due loan toward which he paid \$500 in March 2009, bringing the balance due to \$650, and made the first agreed \$100 monthly payment in April 2009. He anticipates resolving this debt by August 2009. The final debt of \$15,203, involved a repossession after default on a car loan. Applicant said he has entered a repayment plan for this debt, and documented one payment of \$300 to the creditor on April 24, 2009.

Applicant's Personal Financial Statement indicated monthly income of \$2,275, with expenses of \$1,672, and a mortgage payment of \$550. This left a remainder of \$53 per month for other debt payments, including a \$60 monthly payment due on a credit union loan that was not delinquent. He indicated that he made up the monthly shortfall with help from income tax refunds, withdrawal from a 401k emergency fund, and assistance from his relatives. Applicant said his delinquencies arose because his wife had to stop working in 2005 to care for their children, and now has to provide assistance to his brother, who was diagnosed with leukemia in 2007.⁸ However, credit reports indicate a pattern of delinquencies arising regularly since at least 2001.⁹

Applicant offered no evidence of credit or financial counseling. He offered no other evidence concerning his character, trustworthiness or responsibility. 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 and mitigating conditions, which are to be used 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 over-arching adjudicative goal is a fair, impartial and common sense 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.

⁸ *Id.*

⁹ Items 7, 8.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that “Any 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, “The 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: “Any 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 concern relating to the guideline for financial considerations is 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.

The guideline notes several conditions that could raise security concerns. Under AG ¶ 19(a), “inability or unwillingness to satisfy debts,” and AG ¶ 19(c), “a history of not meeting financial obligations,” are potentially disqualifying. Department Counsel cited only the former condition in her argument, but both are supported on this record. Applicant resolved a number of his smaller delinquencies, and began payments toward his larger debts, using his recent income tax refund. However, his budget reflects only

\$53 available monthly to put toward debt repayment, including \$63 toward his student loan, \$100 toward the SOR ¶ 1.d loan, \$60 toward his credit union loan, and \$300 toward the repossessed auto loan. He did not demonstrate the ability to pay these debts going forward, and has a lengthy history of not meeting his financial obligations. The evidence supporting these disqualifying conditions requires a closer examination and balancing of resulting security concerns with any potentially mitigating matters, and shifts the burden to Applicant to rebut, explain, extenuate or mitigate those concerns.

The guideline includes several conditions that could mitigate security concerns arising from financial difficulties. Under AG ¶ 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 both long-standing and continues to date. He remains substantially in debt and his current financial situation precludes a finding that delinquent indebtedness is unlikely to recur. The evidence does not support application of this potentially mitigating condition.

Under AG ¶ 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 did not demonstrate that any of his delinquent debt arose from circumstances that were beyond his control. Although his wife decided to stop working and his brother became ill, he did not show that the debts were unavoidable or caused by anything other than spending more than he earned. Applicant has not established mitigation of any of his debts 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 AG ¶ 20(c). Similarly, AG ¶ 20(d) applies where the evidence shows “the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.” There is no evidence of financial counseling, but some mitigation under these provisions was established by his recent and commendable efforts to resolve his delinquencies. However, the record is devoid of evidence supporting his ability to follow through on repayment of more than \$20,000 in outstanding debts, and insufficient time or responsible performance has occurred to date to alleviate the substantial security concerns raised by the length and degree of financial irresponsibility that continues in part 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 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.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for 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 individual who is responsible for his choices and conduct. He presently has at least \$21,000 in debt, and did not meet his burden to prove an ongoing ability to repay it. None of his debt was shown to have arisen for reasons beyond his control. His actions in repaying some debts were commendable, but insufficient on balance to support a finding that such financial irresponsibility will not recur. His debts continue to create substantial potential for pressure, coercion, or duress. The record contains insufficient other evidence about his character 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 history of not meeting his financial obligations and inability to satisfy his current debts.

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:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	Against Applicant
Subparagraph 1.f:	For Applicant
Subparagraph 1.g:	For Applicant
Subparagraph 1.h:	For Applicant
Subparagraph 1.i:	For Applicant
Subparagraph 1.j:	For 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