



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 08-04498
SSN:)
)
Applicant for Security Clearance)

Appearances

For Government: Gina L. Marine, Esquire, Department Counsel
For Applicant: *Pro Se*

December 19, 2008

Decision

LYNCH, Noreen A., Administrative Judge:

Applicant submitted his Security Clearance Application (SF 86), on October 29, 2007. On June 30, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guidelines F and E for Applicant. 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 acknowledged receipt of the SOR on July 25, 2008, and elected to have his case decided on the record in lieu of a hearing. Department Counsel submitted the Government’s written case on September 29, 2008.¹ Applicant received a complete file of relevant material (FORM) on October 3, 2008, and was provided the opportunity

¹The Government submitted 8 items in support of its contention.

to file objections and submit material to refute, extenuate, or mitigate the Government's case. Applicant did not submit additional information. The case was assigned to me on December 12, 2008. Based upon a review of the case file, eligibility for access to classified information is denied.

Findings of Fact

In his Answer to the SOR, dated July 25, 2008, Applicant admitted the factual allegations in ¶ 1.c, 1.e, and 1.f through 1.l of the SOR. He admitted the factual allegations in ¶¶ 2.a-2.c of the SOR with explanations but denied any intentional falsification. Applicant denied the other allegations because the debts were disputed or he had no knowledge of them. He did not provide additional information to support his request for eligibility for a security clearance.

Applicant is a 27-year-old employee of a defense contractor. He graduated from high school, and received an Associate Degree in May 2007. He is not married and has no children. He has worked for his current employer since October 2007 (GE 4).

From 2000 until 2003, Applicant worked for one company (GE 4). He was unemployed for four months from May to August 2003 (GE 4). He worked as a Correctional Officer from August 2003 until May 2005. From May 2005 until his present position, he was not employed because he was attending college.

The SOR alleges nine delinquent debts, and a Chapter 7 bankruptcy filing in June 2004 in the amount of \$25,000. The total amount of other debt that Applicant owes is approximately \$15,922 (GE, 6, 7, 8).

Applicant admitted that the account in allegations ¶ 1.e through 1.l were delinquent accounts and gave the reason as he was not working and was attending school (GE 3).

For the following allegations: ¶¶ 1.a, and 1.b, Applicant claimed that these accounts were included in his bankruptcy. He provided no documentation for this assertion and the schedule of creditors from the filing does not list any such accounts. In addition, 1.a, 1.c, 1.d, and 1.e are still listed on the November 2007 credit bureau report (GE 7).

The current status of Applicant's delinquent debts is as follows: the collection debts and charged off accounts from 2003 until the present are delinquent and not paid. Applicant did not report receiving financial counseling.

Applicant's answer and submissions to the FORM explain his attempts to remove the delinquent debts from his credit reports because he either disputed them or claimed that the debt was paid. He did not provide sufficient documentation to support his position concerning the debts alleged.

Applicant's current net monthly income is \$1,928. He reported monthly expenses of \$1,720 a month. He listed payments for a medical account, a credit card account and an education service. His net remainder is listed as \$33 (GE 5).

Applicant completed his October 19, 2007 security application. In that application he answered "no" to question 23. Your Police Record - and "no" to question 28 concerning financial matters (GE 4).

In 2008, in his answer to the SOR, Applicant explained that he misread the information when first filing the questionnaire but addressed the issues when he was investigated. He agrees with the facts in allegations 2a through 2c but denies that he deliberately omitted the information. He apologized for the misunderstanding and stated that he believed his bills were "being slowly satisfied by his parents while attending school." He elaborated in his answer to the SOR that he must not have read the question properly and he was not trying to hide anything (GE 3). He added that in regard to the arrest information (2.c) he thought the time frame was five years and not seven years.

When Applicant completed his October 2007 security clearance application, he answered "no" to section 23: Your Police Record (which asks about prior arrests). He did not report an arrest and charge for Battery and Disorderly Conduct on March 17, 2001. He pled guilty to the Disorderly Conduct charge on May 29, 2001. He also answered "no" to section 28 (a) and (b): Your Financial Delinquencies. He listed his bankruptcy.

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 over-arching adjudicative goal is a fair, impartial and common sense decision. According to AG ¶ 2, 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." 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 applicant or proven by Department Counsel. . . .” The Applicant has the ultimate burden of persuasion as to obtaining a favorable security decision.

A person who seeks access to classified information enters 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.

Section 7 of Executive Order 10865 provides that decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive 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), an inability or unwillingness to satisfy debts^o is potentially disqualifying. Similarly under AG & 19©, Aa history of not meeting financial obligations^o may raise security concerns. Applicant accumulated delinquent debts on numerous accounts and filed for bankruptcy in 2004. He did not meet his financial obligations from 2001 until the present time. His credit reports confirm that he has recent debts as well. The evidence

is sufficient to raise these potentially disqualifying conditions, requiring a closer examination.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Under AG ¶ 20(a), the disqualifying condition 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 worries arose in approximately 2003. He accumulated some delinquent debt due to an inability to pay his expenses while attending school and not employed. While those circumstances may have precipitated the debt, the inquiry does not end at that point. He has not acted responsibly. His conduct over the last six months with his creditors does not remove security concerns or doubts about his current reliability, trustworthiness, and good judgment. He has approximately \$15,000 in delinquent debt. This potentially mitigating condition does not apply.

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. As noted above, Applicant reported a period of unemployment in his answer to the FORM and in his interview with the investigators due to attendance in college. Although Applicant's situation may have started due to no employment and attendance in college and may have initially started a downturn for him, he did not provide any explanation as to how this impacted his ability to pay other debts. He also related that he thought his parents were paying some of them. After he became re-employed, he did not act responsibly in identifying and resolving these debts. In addition, he filed for bankruptcy in 2004 and continued to amass delinquent debt after that time. I find this potentially mitigating condition does not apply.

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. Applicant has not received counseling. He promised to get his life back in order and is in the process of clearing up unsettled debt. His promises to pay in the future do not constitute evidence of financial reform or resolution of debts. His reliance on his efforts to have items removed from his credit reports is not resolution of the financial issue. His efforts are not sufficient to carry his burden in this case. I conclude these potentially mitigating conditions do not apply.

AG ¶ 20(e) applies where the evidence shows "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." In this case, Applicant originally stated that he disputed some debts. He did not elaborate and his responses and efforts focus on hiring a law firm to remove the delinquent accounts from his credit reports rather than paying

them or providing documentation that they are not his bills. I conclude this potentially mitigating condition does not apply.

Guideline E, Personal Conduct

The security concern relating to the guideline for Personal Conduct is set out in AG ¶ 15:

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 cooperate with the security clearance process.

The guideline notes several conditions that could raise security concerns. Under AG ¶ 16(a), "deliberate omission, concealment, or falsification of relevant facts from any personnel 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" is potentially disqualifying.

In this case, when Applicant completed his 2007 security application, he did not list any delinquent debts, or his 2001 arrest for Battery and Disorderly Conduct. He stated in his answer to the FORM in 2008, that he made an error in not listing the relevant information concerning debts or his police record. His explanations are not credible and not consistent. He provided deliberately false information. Thus, 16(a) applies.

AG ¶ 17 provides seven conditions that could mitigate personal conduct security concerns in this case. After considering them, none of the mitigating conditions in AG ¶ 17 apply. Applicant's falsification of his SF 86 in October 2007 is not minor. He did not promptly inform the government of his falsification. No one advised him to falsify his SF 86. The falsification of his SF 86 is substantiated. The falsification of his 2007 SF 86 casts doubt on his current reliability, trustworthiness, and good judgment. Thus, none of the mitigating conditions apply under this guideline.

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) 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©, 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 and conclude they are insufficient to overcome the government’s case. Applicant completed his degree and chose not to work during that time. He had employment for a number of years after high school but in 2004, he filed for bankruptcy. That is an acceptable means of debt resolution. However, Applicant has a long history of financial difficulties and has not resolved many debts that occurred after the bankruptcy. The record contains scant information concerning Applicant. He chose to have his case decided on the written record. His answer to the SOR and submissions to the FORM are not sufficient for him to meet the burden in this case.

Overall, the record evidence leaves me with questions and doubts as to Applicant’s 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 and personal conduct.

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
Subparagraph 1.j:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant
Subparagraph 2.b:	Against Applicant
Subparagraph 2.c:	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.

NOREEN A. LYNCH
Administrative Judge