



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 08-04569
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Braden M. Murphy, Esquire, Department Counsel
For Applicant: *Pro se*

September 17, 2009

Decision

CURRY, Marc E., Administrative Judge:

Applicant mitigated the government’s financial considerations security concern. Clearance is granted.

On March 11, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, financial considerations. 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 13, 2009, admitting all of the allegations. He requested a hearing, and the case was assigned to me on May 27, 2009. On June 12, 2009, a notice of hearing was issued scheduling the case for July 7, 2009. The hearing was conducted as scheduled. I received five government exhibits, seven

Applicant exhibits, and Applicant's testimony. The transcript was received on July 15, 2009.

Preliminary Rulings

I. SOR subparagraphs 1.i through 1.k, 1.u, and 1.v allege Applicant owes debts to unidentified medical providers. These allegations are overbroad because they do not identify specific creditors. 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 or she may have a reasonable opportunity to respond and prepare a defense.¹ The aforementioned SOR allegations do not meet this threshold; therefore, I conclude that they are not justiciable.

II. The parties stipulated that Applicant satisfied the debts listed in SOR subparagraphs 1.f and 1.o (Tr. 10). Accordingly, I resolve these subparagraphs in his favor.

Findings of Fact

Applicant is a 26-year-old single man. He graduated from high school in 2002 and earned an associate's degree in homeland security and criminal justice in 2006 (Tr. 22; Exhibit 1 at 5). He has worked as a security guard for the past three and a half years (Tr. 23). Applicant's supervisor characterizes him as "a conscientious and valued employee" (Exhibit C).

Shortly after graduating from high school in 2002, Applicant was in a serious car accident (Tr. 23-24). His mother's health insurance policy, which had covered him during childhood, did not provide coverage to dependents upon graduating from high school, and Applicant's employment did not provide health insurance benefits (Tr. 23). Consequently, Applicant was unable to pay his medical bills, and soon began struggling to stay current on all of his bills.

By early 2009, Applicant had accrued approximately \$15,000 of delinquent debt, including, among other things, a \$1,224 credit card balance (SOR subparagraph 1.a), a \$5,698 deficiency remaining from a repossessed car (SOR subparagraph 1.b), and \$3,500 in medical expenses stemming from the car accident (SOR subparagraphs 1.f, 1.g, 1.h, 1.n, and 1.p - 1.r). In April 2009, Applicant consulted a credit counselor who help him organize a payment plan (Exhibit G; Tr. 36). Under the plan, Applicant pays \$216 monthly, deducted automatically from his pay, to the credit counseling agency (*Id.*; Tr. 24). The credit counseling agency then distributes portions of Applicant's monthly payment to the individual creditors.

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

Currently, the plan includes \$7,061 of delinquent debt. All of the delinquencies except SOR subparagraphs 1.a, 1.b, 1.l, and 1.w are included in the plan. The debt listed in SOR subparagraph 1.w, in the amount of \$668, constitutes education-related expenses (Answer, Attachment 3). Applicant contacted this creditor in March 2009, one month before he consulted the credit counselor, and organized a payment plan (*Id.*). Since then he has been making \$97 monthly payments (*Id.*).

SOR subparagraph 1.l is an alleged debt owed to a bank for delinquent overdraft protection fees (Exhibit B at 10). Applicant disputed it with the help of his credit counselor (Exhibit B at 9). The credit reporting agency then conducted an investigation, and concluded this debt was not Applicant's responsibility (*Id.*). The creditor then closed the account (*Id.* at 10).

Applicant did not address why the debt repayment plan does not include the debts listed in SOR subparagraphs 1.a and 1.b, which collectively total approximately \$7,000. He did note, however, that the credit counselor will add more debts to the plan (Tr. 36). He anticipates the debts listed in the plan will be satisfied by the end of 2011.

Applicant's debt management counselor also helped him develop a budget (Exhibit G at 3). After paying his expenses and setting aside money for savings, Applicant has approximately \$1,500 of remaining monthly income (Exhibit G at 2-3; Tr. 38). He maintains a checking account balance of approximately \$200 and a savings account balance of approximately \$100 (Tr. 43).

Applicant has an \$8,000 balance remaining on his student loans (Tr. 27). He has made these payments timely since finishing school.

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. 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 and regulations, all of which can raise questions about 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 an individual’s reliability, trustworthiness and ability to protect classified information” (AG ¶ 18). Applicant’s history of financial problems triggers 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 problems began shortly after graduating from high school when a serious car accident triggered medical bills that he could not afford to pay. Since then, Applicant has consulted a credit counselor, developed a budget, and begun satisfying his delinquencies. Payments to the credit counseling agency are deducted automatically from Applicant’s pay. I was concerned that the payment plan does not include two of the largest debts listed in the SOR. However, he has ample after-expense monthly income to begin satisfying these debts once the credit counseling agency adds them to the plan. 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,” 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,” and 20(d), “the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts,” apply.

Applicant successfully disputed the debt listed in SOR subparagraph 1.i, and provided a letter from the creditor that indicates the account has been closed. AG ¶ 20(e), “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,” applies.

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.

Applicant's financial delinquencies did not accrue because of extravagant spending. Instead, they accrued because of his difficulty in paying medical expenses he incurred after experiencing a serious car accident shortly after graduating from high school. Since then, Applicant contacted a credit counselor, organized his bills, and began satisfying them through a payment plan. The discipline he demonstrated in taking these steps was particularly impressive given his youth.

Because the plan currently does not include two bills totalling approximately \$7,000, Applicant's expectation that he will satisfy the delinquencies by 2011 is overly optimistic. He has ample after-expense, monthly income to handle the eventual inclusion of these bills into his debt management plan. Consequently, although he may not completely satisfy these delinquencies by the end of 2011, he clearly has demonstrated that his finances are under control. I conclude the likelihood of continuation or recurrence is minimal.

Applicant has worked for a defense contractor for the past two years, earning the respect of his supervisor and coworkers. Upon considering the relevant disqualifying and mitigating conditions in the context of the whole person concept, I conclude Applicant has mitigated the security concern.

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:	FOR APPLICANT
Subparagraphs 1.a - 1.w:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

MARC E. CURRY
Administrative Judge