



**DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS**



In the matter of:)
)
) ISCR Case No. 08-04850
)
)
Applicant for Security Clearance)

Appearances

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

May 17, 2010

Decision

ANTHONY, Joan Caton, Administrative Judge:

After a thorough review of the case file, pleadings, and exhibits, I conclude that Applicant failed to mitigate the Government’s security concerns under Guideline F, Financial Considerations, and a “whole-person” analysis. His eligibility for a security clearance is denied.

Applicant completed a questionnaire for sensitive positions (SF-86) on July 26, 2007. On January 16, 2009, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing the security concerns under Guideline F, Financial Considerations. DOHA acted 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 adjudicative guidelines (AG) effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant’s undated and notarized answer to the SOR was received by DOHA on March 16, 2009. Applicant requested a hearing. However, at the time he requested his

hearing, Applicant was assigned to work overseas and did not expect to return to the United States until November 2009. The administrative judge assigned to the case contacted Applicant and explained that he could not hold Applicant's case open until November 2009. He offered Applicant three options: he could timely return to the United States for his hearing; he could request that his hearing be conducted by video teleconference; or he could waive his right to a hearing and request a decision on the written record. After considering these options, Applicant requested a decision on the record in lieu of a hearing.¹

The Government compiled its File of Relevant Material (FORM) on June 8, 2009. The FORM contained documents identified as Items 1 through 9. By letter dated January 10, 2010, DOHA forwarded a copy of the FORM to Applicant, with instructions to submit any additional information and objections within 30 days of receipt. Applicant received the file on February 8, 2010. His response was due on March 10, 2010. He did not file any information or objections within the required time period. On May 6, 2010, the case was assigned to me for a decision.

Findings of Fact

The SOR contains 14 allegations of financial delinquency under AG ¶ 18, Financial Considerations. (SOR ¶¶ 1.a. through 1.n.) In his Answer to the SOR, Applicant denied 13 of the Guideline F allegations of financial delinquency (SOR ¶¶ 1.a. through 1.j. and SOR ¶¶ 1.l. through 1.m.). He admitted the allegation at SOR ¶ 1.k. Applicant's admission is entered as a finding of fact. (Item 1; Item 4.)

The following facts are established by the record provided by the Government in this case. The items include Applicant's 2007 SF-86, his personal subject interview of August 30, 2007, his responses to DOHA interrogatories,² and his 2007 and 2008 credit reports. (See Items 5 through 9.)

Applicant is 48 years old and employed overseas by a government contractor. He has been separated from his wife since 2004, and he communicates with her through his lawyer. They are in the process of divorcing. (Item 5 at 6.)

During their marriage, Applicant's wife was responsible for the family finances. In 2004, Applicant's wife was unable or unwilling to pay the couple's bills. She did not tell Applicant why she failed to pay their financial obligations. When they separated, Applicant believed he was responsible for his debts and his wife was responsible for her debts. (Item 6 at 3.)

¹ I obtained the communications between Applicant and the judge originally assigned to adjudicate his case. On my own motion, I have admitted those communications to the FORM as Item 4 A.

² Applicant was interviewed by an authorized investigator from the U.S. Office of Personnel Management (OPM) on August 30, 2007. On September 29, 2008, in response to DOHA interrogatories, Applicant signed a notarized statement affirming that he had read the summary of the interview and found it to be true and correct. He made no changes, corrections, or revisions to the investigator's summary. (Item 6.)

Applicant was employed in aircraft maintenance by a company from July 1994 to October 2003. On his SF-86, he reported that he lost his job with the company and “there was a span of time where the bills fell behind.” His SF-86 notes that he began a new job, also in aircraft maintenance, in November 2003. He has been steadily employed since January 2005. (Item 5 at 3-5, 9.)

The SOR alleges that Applicant owes approximately \$20,543 in delinquent debt to 14 creditors. Seven of the delinquent debts date to 2003; three date to 2004; three date to 2005; and one dates to 2006. (Item 1.)

In his Answer to the SOR, Applicant denied 13 of the alleged debts. He admitted one debt, a \$245 account placed for collection in June 2005. In his Answer, he stated that he was making payments to the creditor and expected to make a final payment on the debt in January 2009. He failed to provide documentation to corroborate his claim of payment. (Item 4.)

When he was interviewed by an OPM investigator in August 2007, Applicant denied knowledge of 14 debts in collection status, one debt that was late 120 days, and a mortgage foreclosure of \$45,500. He stated that he was current on all of his monthly financial obligations. (Item 6 at 3-4.)

Applicant also told the investigator that he had retained an attorney to advise him on his financial responsibilities. He told the investigator that he and the attorney planned to obtain and review his credit report. He stated that he would then contact creditors for those accounts that showed he owed delinquencies. If he determined that the debts were his, he would pay them. He stated that he wanted to have a good credit rating in the future. (Item 6 at 4.)

One year later, in August 2008, Applicant responded to interrogatories from DOHA about his delinquent debts and actions he had taken to resolve them. Applicant again denied 14 debts that DOHA identified as his. He further stated: “These debt[s] have been a shock to me. I have forward[ed] [these] items to my attorney. She is aware of this and is trying to resolve the matter.” (Item 7.)

The thirteen debts that Applicant denied in his Answer to the SOR are listed on his 2007 and 2008 credit reports. The Government’s evidence, which includes the credit reports, Applicant’s interview with an authorized OPM investigator, and his responses to DOHA interrogatories, establishes the Government’s *prima facie* case. Applicant failed to provide documentation to corroborate his claims that the debts were not his or to explain why he had not paid them. (Item 8; Item 9.)

The record does not reflect that Applicant has received financial counseling. Applicant provided no information about his income and current expenses.

Burden of Proof

The Government has the initial burden of proving controverted facts alleged in the SOR. To meet its burden, the Government must establish by substantial evidence a *prima facie* case that it is not clearly consistent with the national interest for an applicant to have access to classified information. The responsibility then shifts to the applicant to refute, extenuate or mitigate the Government's case. Because no one has a right to a security clearance, the applicant carries a heavy burden of persuasion. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an applicant's suitability for access to classified information in favor of protecting national security.

Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security, and it has emphasized that "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information." *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant an applicant's eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.

When evaluating an applicant's suitability for a security clearance, an 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 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, the administrative judge applies these guidelines in conjunction with the factors listed in the adjudicative process. The administrative judge's over-arching adjudicative goal is a fair, impartial, and commonsense decision. 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." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record.

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 in seeking to obtain 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 that the Applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about 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” is potentially disqualifying. Similarly under AG ¶ 19(c), “a history of not meeting financial obligations” may raise security concerns. Beginning in about 2003 and 2004, Applicant accumulated substantial delinquent debt and did not pay his creditors. This evidence is sufficient to raise these disqualifying conditions.

Several mitigating conditions could apply to Applicant’s case. If the financially delinquent 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," then AG ¶ 20(a) might apply. If "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," then AG ¶ 20(b) might apply. If "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," then AG ¶ 20(c) might apply. If "the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts," then AG ¶ 20(d) might apply. Finally, if "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," then AG ¶ 20(e) might apply.

Applicant and his wife separated in 2004. While Applicant claims that 13 of the 14 delinquent debts alleged on the SOR and listed on his 2007 and 2008 credit reports are not his, he has failed to provide documentation to support his claim. The debts, which date from 2003 to 2006, have not been paid. Additionally, Applicant claimed he was paying the delinquent debt alleged at SOR ¶ 1.k., but he failed to provide documentation to corroborate payment.

The record does not establish that Applicant has participated in financial counseling, nor does it establish that Applicant's financial situation has stabilized or is under control. Applicant accused his estranged wife of failing to pay their marital debts. He did not acknowledge that he too might be responsible for paying the debts.

Applicant has been steadily employed since 2005. The record does not support a conclusion that his failure to satisfy his creditors is the result of circumstances beyond his control. After a careful review of the record and the few facts provided, I conclude that none of the financial considerations mitigating conditions apply to the facts of Applicant's case.

Whole-Person Concept

Under the whole-person concept, an administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of an applicant's conduct and all relevant 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 commonsense 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 adult. Unfortunately, he failed to provide documentation to corroborate his assertions that 13 of the 14 debts alleged on the SOR were not his. His 2007 and 2008 credit reports established that the debts belonged to him. Moreover, he failed to provide documentation to establish payment of the debt alleged at SOR ¶ 1.k. He has not established a reliable track record of timely and consistent payment of his debts over time. Because he has not received financial counseling and appears to lack a clear plan for resolving his delinquent debts, it is likely that his financially delinquent behavior will recur.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. For these reasons, I conclude Applicant failed to mitigate the security concerns arising from his financial delinquencies.

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 |
| Subparagraphs 1.a. - 1.n.: | Against Applicant |

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Joan Caton Anthony
Administrative Judge