



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 08-05003
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Gregg A. Cervi, Esq., Department Counsel

For Applicant: *Pro se*

November 30, 2009

DECISION

ROSS, Wilford H., Administrative Judge:

Applicant submitted his Electronic Questionnaire for Investigations Processing (e-QIP) on September 25, 2007 (Item 5). On April 9, 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). 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 submitted Answers to the SOR on April 24, 2009, and before June 19, 2009, and requested that a decision be made without a hearing. Department Counsel submitted a File of Relevant Material (FORM) to the Applicant on August 13, 2009. The Applicant received the FORM on August 18, 2009, and was given 30 days to submit any additional information. The Applicant did not submit any additional information. The case

was assigned to another administrative judge on October 15, 2009. It was reassigned to me on November 10, 2009. Based upon a review of the written record, eligibility for access to classified information is denied.

Findings of Fact

The Applicant is 48 and single. He retired in 2000 after a 20 year career with the Army. He is employed by a defense contractor and seeks to obtain a security clearance in connection with his employment.

Guideline F, Financial Considerations

The Government alleges that the Applicant is ineligible for clearance because he is financially overextended and therefore at risk of having to engage in illegal acts to generate funds. The Applicant admits subparagraphs 1.a., 1.d., 1.g., 1.k., and 1.m. of the SOR. Those admissions are hereby deemed findings of fact. He denied subparagraphs 1.b., 1.c., 1.e., 1.f., 1.h., 1.i., 1.j., and 1.l. He states in his Answer, "The ones that I denied on the questionnaire [SOR], I did simply because I am unsure of who the creditor is or how to get in contact with them." (Item 4 at 4.)

The Applicant submits that he was overwhelmed with his debts and did not have the knowledge to recover from that situation, but stresses he is not a threat to national security. He states that he has attempted to contact credit bureaus, but declined to sign up for their fee-based services. (Item 4 at 4.) It is noted that Item 8, which was supplied to the Applicant with the FORM, is a full-data credit report, which contains contact information for the creditors alleged in the SOR, with noted exceptions. The Applicant's responses to the thirteen allegations in the SOR follow.

1.a. The Applicant admits that he is indebted to a creditor for a delinquent telephone bill in the amount of \$221 since January 2003. The Applicant has made no recent payments on this debt, and there is no evidence that he is going to make payments on this debt.

1.b. The Applicant denies that he is indebted to a creditor for a delinquent cable bill in the amount of \$386 since June 2004. The Applicant has known about this debt since February 2008, when he was questioned about it. (Item 6 at 18.) He stated on September 19, 2008, "I am in process of paying this debt." (Item 6 at 4.) Contact information for this creditor is found in Item 8 at page 5. I find that this is the Applicant's debt, that he has made no recent payments on this debt, and there is no evidence that he is going to make payments on this debt.

1.c. The Applicant denies that he is indebted to a creditor for a delinquent government debt in the amount of \$213 since November 2004. The Applicant has known about this debt since February 2008, when he was questioned about it. (Item 6 at 18.) He stated on September 19, 2008, "I have attempted to get in contact with this company to set up a payment plan. Unable to reach company." (Item 6 at 8.) Contact

information for this creditor is found in Item 8 at page 10. I find that this is the Applicant's debt, that he has made no recent payments on this debt, and there is no evidence that he is going to make payments on this debt.

1.d. The Applicant admits that he is indebted to a finance agency in the amount of \$7,621 for a repossessed automobile. The Applicant has made no recent payments on this debt, and there is no evidence that he is going to make payments on this debt.

1.e. The Applicant denies that he is indebted to a creditor for a delinquent debt in the amount of \$1,289 since April 2005. The Applicant has known about this debt since February 2008, when he was questioned about it. (Item 6 at 18-19.) He stated on September 19, 2008, "I am trying to contact company. Do not know who this bill goes to, but I am attempting to reach them to set up a payment plan." (Item 6 at 6.) Contact information for this creditor is found in Item 8 at page 12. I find that this is the Applicant's debt, that he has made no recent payments on this debt, and there is no evidence that he is going to make payments on this debt.

1.f. The Applicant denies that he is indebted to a bank for a delinquent debt in the amount of \$1,854 since April 2005. The Applicant has known about this debt since February 2008, when he was questioned about it. (Item 6 at 18.) He stated on September 19, 2008, "I am in the process of paying them but have not been able to get in touch with them yet. No contact with . . . Bank yet." (Item 6 at 3-4.) Contact information for this creditor is found in Item 8 at page 4. I find that this is the Applicant's debt, that he has made no recent payments on this debt, and there is no evidence that he is going to make payments on this debt.

1.g. The Applicant admits that he is indebted to a second finance agency in the amount of \$6,756 for a second repossessed automobile. The Applicant has made no recent payments on this debt, and there is no evidence that he is going to make payments on this debt.

1.h. The Applicant denies that he is indebted to a creditor for a delinquent debt in the amount of \$381 since February 2006. This debt is found in the credit report dated September 23, 2008. (Item 7 at 2.) However, no contact information is given for this creditor, and there is no evidence that the Applicant was ever asked about this debt. I find that this debt is not proven and this subparagraph is found for the Applicant.

1.i. The Applicant denies that he is indebted to a collection agency for a delinquent medical debt in the amount of \$309 since April 2006. (Item 7 at 1.) The Applicant has known about this debt since February 2008, when he was questioned about it. (Item 6 at 18.) He stated on September 19, 2008, "I am in the process of setting up a payment plan. Have not gotten anything from this company." (Item 6 at 5-6.) Contact information for a predecessor creditor is found in Item 8 at page 7. Based on the totality of the evidence, I find that this is the Applicant's debt, that he has made no recent payments on this debt, and there is no evidence that he is going to make payments on this debt.

1.j. The Applicant denies that he is indebted to a collection agency for a second delinquent medical debt in the amount of \$309 since April 2006. (Item 7 at 1.) The Applicant has known about this debt since February 2008, when he was questioned about it. (Item 6 at 18.) He stated on September 19, 2008, "I am in the process of setting up a payment plan. Have not gotten anything from this company." (Item 6 at 5-6.) Contact information for a predecessor creditor is found in Item 8 at page 7. Based on the totality of the evidence, I find that there is insufficient evidence to prove that this debt is not a repeat of 1.i. This allegation is unproven, and is found for the Applicant.

1.k. The Applicant admits that he is indebted to a creditor for a delinquent telephone bill in the amount of \$142 since September 2007. The Applicant has made no recent payments on this debt, and there is no evidence that he is going to make payments on this debt.

1.l. The Applicant denies that he is indebted to a creditor for a delinquent debt owed to a utility company in the amount of \$342 since February 2008. This debt is found in the credit report dated September 23, 2008. (Item 7 at 2.) However, no contact information is given for this creditor, and there is no evidence that the Applicant was ever asked about this debt. I find that this debt is not proven and this subparagraph is found for the Applicant.

1.m. The Applicant admits that he is indebted to a creditor for a delinquent debt in the amount of \$2,599 since May 2008. The Applicant has made no recent payments on this debt, and there is no evidence that he is going to make payments on this debt.

Policies

Security clearance decisions are not made in a vacuum. 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 as appropriate 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 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. In addition, the administrative judge may also rely on his own common sense, as well as his knowledge of the law, human nature, and the ways of the world, in making a reasoned 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. Security clearance decisions include, by necessity, consideration of the possible risk that 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.

Finally, as emphasized in Section 7 of Executive Order 10865, “Any determination under this order . . . 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.” 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. The Applicant, by his own admission, or found by me, has over \$21,000 in past due debts, all of which have been due and owing for several years. The evidence is sufficient to raise these potentially disqualifying conditions.

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 difficulties arose recently, primarily between about 2003 and 2008. In addition, the Applicant failed to establish how much he has paid to any of his creditors. It is the Applicant’s burden to submit evidence showing that his financial situation has improved. He has not done so. This mitigating condition is not applicable to this case.

AG ¶ 20(b) states that the disqualifying conditions may be mitigated 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.” The Applicant submitted no evidence showing that this mitigating condition applies.

The Applicant has not initiated a good-faith effort to pay off his creditors. There is no track record of his making payments for a consistent period of time. Accordingly, AG ¶ 20(d) is not applicable. Finally, given the fact that he is \$21,000 in debt, I cannot find that “there are clear indications that the problem is being resolved or is under control,” as required by AG ¶ 20(c).

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 relevant circumstances. 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. 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.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. The Applicant is under financial strain, and has been so for several years. His debt situation is not yet under control. Under AG ¶ 2(a)(3), the Applicant's conduct is recent. Based on the state of the record, I cannot find that there have been permanent behavioral changes under AG ¶ 2(a)(6). Accordingly, at the present time, I find that there is the potential for pressure, coercion, exploitation, or duress (AG ¶ 2(a)8); and that there is a high likelihood of recurrence (AG ¶ 2(a)9).

Overall, the record evidence leaves me with questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude the Applicant has not mitigated the security concerns arising from his financial situation at this time.

On balance, I conclude that the Applicant has not successfully overcome the Government's case opposing his request for a DoD security clearance. Accordingly, the evidence supports a denial of his request for a security clearance.

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 THE APPLICANT
Subparagraphs 1.a:	Against the Applicant
Subparagraphs 1.b:	Against the Applicant
Subparagraphs 1.c:	Against the Applicant
Subparagraphs 1.d:	Against the Applicant
Subparagraphs 1.e:	Against the Applicant
Subparagraphs 1.f:	Against the Applicant
Subparagraphs 1.g:	Against the Applicant
Subparagraphs 1.h:	For the Applicant
Subparagraphs 1.i:	Against the Applicant
Subparagraphs 1.j:	For the Applicant
Subparagraphs 1.k:	Against the Applicant
Subparagraphs 1.l:	For the Applicant
Subparagraphs 1.m:	Against the 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.

WILFORD H. ROSS
Administrative Judge