



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 08-05531

Appearances

For Government: Melvin A. Howry, Esquire, Department Counsel
For Applicant: *Pro Se*

October 27, 2009

Decision

WHITE, David M., Administrative Judge:

Applicant owed more than \$49,000 for twelve delinquent debts that accrued during a 14-month period of unemployment after he was fired for cause. He resolved two of the smaller debts shortly before and after his hearing, but has not yet established a track record of financial responsibility or solvency. Based upon a thorough review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

Applicant submitted his security clearance application on November 28, 2007. On April 24, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F. 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 (DoD) for SORs issued after September 1, 2006. Applicant

acknowledged receipt of the SOR on May 10, 2009. He answered the SOR in writing (AR) on June 1, 2009, and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on June 19, 2009, and DOHA assigned the case to me on June 23, 2009.

DOHA issued a Notice of Hearing on June 23, 2009, and I convened the hearing as scheduled on July 7, 2009. Department Counsel offered Government Exhibits (GE) 1 through 7, which were admitted without objection. Applicant testified on his own behalf, and offered Applicant Exhibits (AE) A through I, which were also admitted without objection. I granted Applicant's request to leave the record open until July 21, 2009, for submission of additional evidence. On that date, he requested additional time until July 24, 2009, which I granted without objection. On that date, Department Counsel forwarded 8 additional documents that were submitted by Applicant with no objection to their admissibility. This evidence was marked AE J through Q, and admitted. Applicant also submitted AE R on August 7, 2009, which was admitted, without objection by Department Counsel, despite its untimeliness. DOHA received the transcript of the hearing (Tr.) on July 17, 2009.

Findings of Fact

Applicant is a 51-year-old employee of a federal contractor, where he has worked for two years as a logistics specialist. In his answer to the SOR, he admitted the truth of the allegations in SOR ¶¶ 1.a through 1.i, and denied the allegation in SOR ¶ 1.m. Applicant's admissions are incorporated into the following findings of fact.

Applicant is divorced with one son for whom he provides \$556 in monthly child support. He held a security clearance for most of his 21-year enlisted career in the Army that ended in 1997. He retired as a master sergeant (E-8), and earned three Meritorious Service Medals, six Army Commendation Medals, three Army Achievement Medals, and six Army Good Conduct Medals during his career. (GE 1 at 16-17, 26, 35-36; AR at 6; AE J; Tr. at 6-7, 43, 47.)

After leaving Army service, Applicant worked in several retail management jobs, the most recent of which paid him more than \$100,000 per year. He was fired from that job in August 2006 for going out to lunch in violation of the company policy that required at least one manager to be present in the store while it was open for business. He did not obtain new employment until October 2007, when he was hired into his present job paying \$47,500. Between jobs he drew unemployment compensation and his retired pay, but this combination was insufficient to prevent depletion of his savings and he began incurring delinquent debts. (GE 1 at 11-12; GE 4 at 5; AR at 3; Tr. at 37-39.)

The \$51 delinquent telephone bill, alleged in SOR ¶ 1.m, was incorrectly reported on Applicant's January 7, 2008, credit bureau report (CBR) that was obtained by the Office of Personnel Management (OPM) investigator. Applicant explained this during his OPM interview on January 25, 2008, and contacted the credit bureau thereafter to have it removed. This dispute was successful, and the debt does not appear on any of his

more recent CBRs. This was the only SOR-listed debt that Applicant denied in his response to the SOR. (GE 2 at 18; GE 3; GE 4 at 7-8; GE 5; GE 6; AR at 2; Tr. at 49-55.)

Applicant admitted that the remaining SOR-listed delinquent debts, totaling \$49,088, were his and remained unpaid as of October 2008. These 12 debts involved loans and credit cards, with balances ranging from \$183 to \$10,754. They all became delinquent between February and October 2007, and most did so during April or May of that year. (GE 4; GE 5; AR at 1-2.)

Applicant entered a debt settlement and debt negotiation service agreement with a law firm in January 2009. This arrangement required Applicant to make two initial monthly payments of \$921, followed by 38 monthly payments of \$531. The law firm undertook to attempt to negotiate settlement agreements with the creditors holding ten of his delinquent debts totaling \$37,200. The 40-month estimate for resolution of the debts is based on a forecast average settlement-agreement rate of 40% of the original debt amounts. Applicant thought all his delinquent debts were included, but the two debts listed in SOR ¶¶ 1.h and 1.k were inadvertently omitted. After his hearing, he modified the agreement to include the ¶ 1.h debt (\$10,754), and paid ¶ 1.k debt (\$183) himself. The plan modification increased his remaining 34 monthly payments to \$699. In May 2009, the law firm negotiated a resolution and settled the SOR ¶ 1.e debt (\$925) for a payment of \$379. (AR at 3, 7-12; AE H; AE I; AE M; AE O; Tr. at 28-31, 36, 44-47, 49, 56-60.)

The remaining ten SOR-listed debts (¶¶ 1.a through 1.d, 1.f through 1.j, and 1.l) had risen to a total reported delinquent amount of \$49,548 by June 19, 2009. (GE 6.) The debt plan now calls for Applicant to make \$27,743 in total payments to the law firm, of which \$8,701 pays fees to the law firm and \$19,042 is available for funding debt settlements. (AE O.) Applicant submitted a personal financial statement showing different monthly expenses than those appearing on the budget generated in connection with his debt settlement agreement, but both showed a monthly net surplus of about \$400. (AE J; AR at 11.) He is current on all debt payments except those described above, including his first and second mortgage loans and his auto loan. (GE 6 at 4.)

A supervisor from the Army Depot for which Applicant provides support submitted a letter attesting to his strong character, integrity, and honesty, and describing him as loyal, helpful, and intelligent. (AE A.) His May 2009 performance counseling form reported his outstanding work quality, cooperation, and dependability. (AE B.) Applicant did not demonstrate a full understanding of his financial situation during his hearing. However, his testimony and demeanor were forthright and credible.

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider and apply 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 AG ¶ 2, describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶¶ 2(a) and (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.

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 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 in 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, "[t]he 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, "[a]ny 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 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.

Analysis

Guideline F, Financial Considerations

AG ¶ 18 expresses the security concern pertaining to financial considerations:

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 over-extended is at risk of having to engage in illegal acts to generate funds. Compulsive gambling is a concern as it may lead to financial crimes including espionage. Affluence that cannot be explained by known sources of income is also a security concern. It may indicate proceeds from financially profitable criminal acts.

AG ¶ 19 describes conditions that could raise a security concern and may be disqualifying. Department Counsel asserted the applicability of two of these potentially disqualifying conditions: "(a) inability or unwillingness to satisfy debts;" and "(c) a history of not meeting financial obligations." (Tr. at 16, 62.) From February to October 2007, Applicant accumulated multiple delinquent debts that totaled more than \$49,000. He successfully disputed one minor SOR-listed debt, paid a second one shortly after his hearing, and entered into an agreement with a law firm to attempt resolution of the remaining debts for less than half the amount due. One debt has been settled under this agreement to date, and it will require three more years to complete, even under the optimistic assumption that all creditors will cooperate. Applicant's present financial inability to pay ten substantial remaining delinquencies, still totaling more than \$49,000, supports ongoing security concerns under AG ¶ 19(a). He is under continuing financial duress, so he remains at risk of having to engage in illegal acts to generate funds. The evidence further established a two-year history of not meeting some significant financial obligations, raising security concerns under AG ¶ 19(c). This history potentially indicates poor self-control, lack of judgment, and unwillingness to abide by rules and regulations, thereby raising questions about his reliability, trustworthiness, and ability to protect classified information.

AG ¶ 20 provides conditions that could mitigate security concerns arising from the foregoing financial considerations. The potentially applicable mitigating conditions are:

- (a) 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;
- (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;
- (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;

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and

(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.

AG ¶ 20(a) was not established because Applicant's many delinquencies arose within the last few years and most continue at present. They resulted from his failure to reduce expenditures during a 14-month period of unemployment after he was fired for unreliable and untrustworthy behavior as a store manager. While loss of employment is potentially mitigating under AG ¶ 20(b), his job loss was the direct result of his irresponsible conduct, and drawing unemployment compensation for 14 months before going back to work while spending on credit did not constitute responsible action thereafter. Substantial delinquencies continue to date. His only demonstrated means available to resolve them is a three-year plan, conditioned on his creditors accepting settlements averaging 40% of what they are due, while the lawyers' fees consume 32% of his total program payments. This program involves some financial and legal counseling and Applicant intends for it to lead to resolution of his outstanding debt. However, it has yielded minimal results so far, with no substantial basis to conclude it will succeed going forward. Only the debts listed in SOR ¶¶ 1.e and 1.k have actually been resolved, and more than \$49,000 in delinquent debts remain outstanding. While these are steps in the right direction, meaningful mitigation is not yet established under AG ¶¶ 20(c) or (d). Applicant successfully disputed the debt alleged in SOR ¶ 1.m, providing mitigation for that \$51 delinquency under AG ¶ 20(e).

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 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 applicable guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all the pertinent facts and circumstances surrounding this case. Applicant's conduct of security concern was incurring 12 delinquent debts, which totaled more than \$49,000 when the SOR was issued. (The 13th SOR-alleged debt was not his, and he successfully disputed it with the credit bureaus.) By the time the record closed, one \$925 debt had been resolved through his debt settlement plan and he paid one \$183 debt directly to the creditor. However, the remaining ten delinquent debts still totaled more than \$49,000, due to continuing interest and fee charges. Although his 14-month period of unemployment ended in October 2007, he did nothing to address or resolve any of these debts until January 2009. His actions since that time have begun to address the resulting security concerns, but he has not yet established a good-faith track record of financial responsibility or permanent behavioral changes. The record demonstrates his ongoing inability to address the majority of his delinquent debt, except through a plan contingent on the creditors accepting 40% of what they are due and requiring almost three more years to complete. Applicant's ongoing insolvency generates continuing potential for pressure, coercion, or duress. He exhibited an incomplete understanding of his financial situation and failed to demonstrate that his financial problems are unlikely to continue or worsen, at least for the next several years.

Applicant has a long record of excellent and honorable service to the national defense, and is highly regarded by those with whom he now serves. On balance, however, he presented insufficient evidence to mitigate security concerns arising from his history of failing to meet financial obligations, and his inability to pay his substantial delinquent debts. The record generates significant doubt as to his present eligibility and suitability 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 APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	For 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
Subparagraph 1.k:	For Applicant
Subparagraph 1.l:	Against Applicant
Subparagraph 1.m:	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