



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 08-06348
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Alison O’Connell, Esquire, Department Counsel

For Applicant: *Pro Se*

July 29, 2009

DECISION

ROSS, Wilford H., Administrative Judge:

Applicant submitted his Electronic Questionnaire for Investigations Processing (eQIP), on November 30, 2007 (Item 6). On October 21, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline F concerning the 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 President Bush 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 December 12, 2008, and February 4, 2009, and requested a decision without a hearing before. Department Counsel submitted the Government’s written case (FORM) to the Applicant on March 2, 2009. The Applicant received the FORM on March 12, 2009, and was given 30 days to submit any additional

information. No additional information was received from the Applicant and I received the case assignment on May 15, 2009. Based upon a review of the case file, pleadings, and exhibits eligibility for access to classified information is denied.

Findings of Fact

The Applicant is 60 and single. He is employed by a defense contractor and seeks to obtain a security clearance in connection with his employment.

Guideline F, Financial Considerations

The Applicant admits all of the allegations in the SOR. Those admissions are hereby deemed findings of fact.

1.a. The Applicant admits that he is indebted to his state tax authority in the amount of \$1,689.00 for a tax lien filed in January 2008.

1.b. The Applicant admits that he is indebted to the Internal Revenue Service (IRS) in the amount of \$1,718.00 for a tax lien filed in August 1996.

1.c. The Applicant admits that he is indebted to the IRS in the amount of \$19,548.00 for a tax lien filed in January 1996.

1.d. The Applicant admits that he is indebted to the IRS in the amount of \$500.00 for a tax lien filed in December 1995.

1.e. The Applicant admits that he is indebted to his state tax authority in the amount of \$6,872.00 for a tax lien filed in August 1993.

1.f. The Applicant admits that he is indebted to the IRS in the amount of \$21,107.00 for a tax lien filed in May 1993.

There is no evidence that these liens have been released or that any of these amounts have been paid. In his Answer of February 4, 2009, at page 3, the Applicant states, "Process has been established to begin with a payment plan for both parties Federal taxes and state taxes." The Applicant states in his Financial Interrogatory that approximately \$175.00 per month would be paid towards this debt. (Item 7 at 2.)

1.g. The Applicant admits that he is indebted to a collection agency for a medical bill in the amount of \$422.00.

1.h. The Applicant admits that he is indebted to the same collection agency for a second medical bill in the amount of \$279.00.

The Applicant states in his Answer of February 4, 2009, that he has made arrangements with the collection agency to begin payments on these debts. He states that \$40.00 a month will be automatically withdrawn from his checking account beginning in February 2009. (Item 7 at 4.)

1.i. The Applicant admits that he owed a collection agency for an account in the amount of \$152.00. In his Answer of February 4, 2009, the Applicant states that this debt was paid on December 15, 2008. (Item 7 at 5.)

1.j. The Applicant admits that he owed a collection agency for an account in the amount of \$539.00. In his Answer of February 4, 2009, the Applicant states that this debt was paid on August 15, 2008. (Item 7 at 6.)

1.k. The Applicant admits owing a medical bill in the amount of \$132.00. However, in both of his Answers, the Applicant states that he has been unable to obtain any information from the creditor about the account, including whether it is his and the amount owed. (Item 4 at 4, Item 5 at 7.) Accordingly, this subparagraph is found for the Applicant.

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 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 overarching adjudicative goal is a fair, impartial and common sense 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 by President Eisenhower 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 *a/so* 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 has over \$52,000.00 in past due debts, including a large Federal tax debt, which have been due and owing for several years. 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.” The most recent tax lien was filed in January 2008, in the very recent past. In addition, the Applicant submitted no information which explains how he got into this financial situation or how he proposes to get out of it. This mitigating condition is not applicable to this case.

The Applicant has initiated a good-faith effort to pay off some of his creditors. Accordingly, AG ¶ 20(d) is arguably applicable. However, given the fact that he is over \$50,000.00 in debt and has paid less than \$1,000.00, 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 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. The Applicant obviously has made poor decisions concerning his debts. It appears that he has just now begun to resolve his debt situation.

Of course, the issue is not simply whether all the Applicant’s debts are paid - it is whether his financial circumstances raise concerns about his fitness to hold a security clearance. Given the Applicant’s complete failure to begin to resolve these debts until just recently, I cannot find that there have been permanent behavioral changes under AG ¶2(a)(6). Accordingly, at the present time, I cannot find that there is little to no potential for pressure, coercion, exploitation, or duress (AG ¶2(a)(8)); or that the likelihood of recurrence is close to nil (AG ¶2(a)(9)).

Overall, the record evidence leaves me with questions or doubts or both 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 considerations.

On balance, it is concluded that the Applicant has not successfully overcome the Government's case opposing his request for a DoD security clearance. Accordingly, the evidence supports a finding against the Applicant as to the factual and conclusionary allegations expressed in Paragraph 1 of the Government's Statement of Reasons.

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.:	Against the Applicant
Subparagraphs 1.i.:	For the Applicant
Subparagraphs 1.j.:	For the Applicant
Subparagraphs 1k.:	For 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