



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



In the matter of:)
)
) ISCR Case No. 08-06483
)
)
Applicant for Security Clearance)

Appearances

For Government: Braden M. Murphy, Esq., Department Counsel
For Applicant: *Pro Se*

May 26, 2009

Decision

DAM, Shari, Administrative Judge:

Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

On February 28, 2008, Applicant submitted an Electronic Questionnaires for Investigations Processing (e-QIP). On December 10, 2008, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR), 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.

On January 6, 2009, Applicant answered the SOR in writing and elected to have the case decided on the written record in lieu of a hearing. On February 5, 2009, Department Counsel prepared a File of Relevant Material (FORM) containing ten Items, and mailed Applicant a complete copy on February 10, 2009. Applicant received the FORM on February 17, 2009, and had 30 days from its receipt to file objections and submit additional information. Applicant did not submit any additional information. On April 30, 2009, DOHA assigned the case to me.

Findings of Fact

In his Answer to the SOR, Applicant admitted all factual allegations contained in the SOR ¶¶ 1.a through 1.j.

Applicant is 35 years old and divorced since August 2005. He has three children, who live with his former wife. He pays child support through the court. From 1993 until February 2008, he worked for several different companies when he obtained a job, as a warehouseman with a defense contractor. Over the course of those years, he was unemployed from September 2005 to May 2006 and from September 2007 to February 2008. (Item 4)

In July 2005, Applicant filed a petition for a Chapter 7 bankruptcy. In November 2005, the court entered an order discharging approximately \$106,000 in liabilities, which included a \$49,000 mortgage, \$21,000 on two automobile loans, and \$36,000 in medical bills and credit card debts. His petition noted that his year-to-date income for 2005 was \$14,300, for 2004 it was \$28,600, and for 2003 it was \$27,000. (Item 9)

In August 2008, Applicant completed a set of Interrogatories related to his finances and several delinquent debts. He noted that he was unaware of some of the delinquent debts, but that he would investigate the matters. (Item 6) According to the budget he submitted, his yearly salary is around \$24,000. His net monthly income is \$1,400 and expenses are \$1,095, leaving about \$300 as a remainder at the end of the month. (Item 6) In his Answer, he stated he was pursuing a second job to help pay his debts.

Based on credit bureau reports (CBR), dated March 2008, September 2008 and November 2008, the SOR alleged eight delinquent debts, totaling \$28,697. The status of the debts is as follows:

1. SOR ¶ 1.a for \$610 is a medical bill. Applicant claimed he is making payments on the bill, but did not provide any documentation. (Item 6) It remains unpaid or unresolved.
2. SOR ¶ 1.b for \$172 is a medical bill. Applicant stated he is making monthly payments on this bill, but did not submit proof of those payments. It remains unpaid or unresolved.

3. SOR ¶ 1.c for \$6,777 appears to be a loan or credit card debt. It was sold to the creditor listed in SOR ¶ 1.e. It is listed as a debt of \$8,110 in a credit report, as well as in the Interrogatories Applicant answered. (Item 5 at 39, 40; Item 7 at 2; Item 8 at 2; Item 6) It was not included in the Chapter 7 bankruptcy, as Applicant asserted. (Items 6 and 9) It remains unpaid or unresolved.
4. SOR ¶ 1.d. for \$441 is a debt owed to a cable company. Applicant disputed the debt. (Item 7)
5. SOR ¶ 1.e for \$8,110. (See SOR ¶ 1.c) It is listed as \$6,777 on the September and November 2008 CBRs. (Item 7 and 8)
6. SOR ¶ 1.f for \$562 was owed to an apartment complex. It was discharged in the 2005 bankruptcy. (Item 8 at 2)
7. SOR ¶ 1.g for \$326 is a debt owed to a telephone company. Applicant claimed he contacted the creditor, who told him the account was closed. It does not appear on the September or November 2008 CBR. It is resolved.
8. SOR ¶ 1.h for \$11,699 is owed on an automobile. It is listed on the March 2008 CBR, which indicates that it was transferred or sold to another company. (Item 5 at 39). It does not appear on the September or November 2008 CBRs, nor is any similar amount listed. (Items 7 and 8) Applicant did not address this debt in either the Interrogatories or Answer. It remains unresolved.

In summary, Applicant owes about \$19,250 in delinquent debt, rather than the \$28,697 alleged in the SOR, of which \$11,699 is owed on an account that was opened in January 2006, after the bankruptcy discharge order was entered in November 2005. (Item 5 at 39) Applicant did not provide any documentation that he has addressed any of the debts.

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. The administrative judge's over-arching adjudicative goal is a fair, impartial and commonsense decision. According to AG ¶ 2(a), 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. 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. According to Directive ¶ E3.1.15, “The 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 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 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.

Section 7 of Executive Order 10865 provides that decisions adverse to an applicant 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* Executive Order 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline F, Financial Considerations

The security concerns relating to the guideline for financial considerations are 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, two of them are potentially disqualifying:

- (a) an inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

Based on three CBRs and his admissions, Applicant has been unable or unwilling to satisfy debts that began accruing prior to filing a Chapter 7 bankruptcy in 2005 and subsequent to a discharge of approximately \$106,000 in November 2005. The evidence is sufficient to raise these two disqualifying conditions.

After the Government raised potential disqualifications, the burden shifted to Applicant to rebut and prove mitigation of the resulting security concerns. The guideline includes six examples of conditions that could mitigate security concerns arising from financial difficulties under AG ¶ 20:

(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;

(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; and

(f) the affluence resulted from a legal source of income.

Applicant's financial delinquencies are not isolated and began prior to 2005, when he filed bankruptcy and continued after the completion of the bankruptcy. Hence,

AG ¶ 2 (a) cannot apply. Some of Applicant's financial difficulties may be the result of low paying positions and two extended periods of unemployment, during and after he filed for bankruptcy. However, there is no evidence in the record indicating that he responsibly managed his finances after November 2005 and subsequent to that time, which is necessary for full application of this mitigating condition. Thus, AG ¶ 20(b) has limited application. Applicant did not present any evidence that he received credit counseling or that the outstanding delinquent debts are resolved or under control, as required under AG ¶ 20(c). Applicant claimed he is paying two medical debts but did not submit any evidence of those payments; AG ¶ 20(d) is not applicable. There is evidence indicating that he disputed one of the debts; AG ¶ 20(e) is applicable. The record does not support the application of AG ¶ 20(f).

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). They include the following:

- (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.

According to 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 35-years old and has worked for a defense contractor since February 2008. Prior to that, he experienced two periods of unemployment, which could account for his financial difficulties since the November 2005 discharge of debt in bankruptcy.

In August 2008, Applicant learned of the Government's concerns about his finances and indicated that he would begin resolving them. In December 2008, he again received notice of those concerns through the SOR, but did not take steps or submit any information indicating that he was attempting to resolve the debts or further explain his situation. Without such proof, there is insufficient information in the record to mitigate the financial concerns. His failure to address the issues over the past year raises questions about his judgment.

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

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 through 1.c:	Against Applicant
Subparagraphs 1.d through 1.g:	For Applicant
Subparagraphs 1.h through 1.j:	Against 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.

SHARI DAM
Administrative Judge