



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 08-06775
SSN: -----)
)
Applicant for Security Clearance)

Appearances

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

February 13, 2009

Decision

LYNCH, Noreen A., Administrative Judge:

Applicant submitted his Security Clearance Application (SF 86), on March 4, 2008. On October 15, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline F for 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 the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant acknowledged receipt of the SOR on July 25, 2008, and elected to have his case decided on the record in lieu of a hearing. Department Counsel submitted the Government's written case on December 1, 2008.¹ Applicant received a complete file of relevant material (FORM) on December 29, 2008, and was provided the

¹The Government submitted ten items in support of its contention.

opportunity to file objections and submit material to refute, extenuate, or mitigate the Government's case. Applicant did not submit additional information. The case was assigned to me on February 10, 2009. Based upon a review of the case file, eligibility for access to classified information is denied.

Findings of Fact

In his Answer to the SOR, dated November 7, 2008, Applicant admitted the factual allegations in ¶ 1.a through 1.g of the SOR (Item 3). He did not provide additional information to support his request for eligibility for a security clearance.

Applicant is a 58-year-old employee of a defense contractor. He graduated from high school, and received an Associate Degree in May 1996. Applicant served in the U.S. Air Force from August 1968 until March 1972. He served in the U.S. Coast Guard from April 1974 until March 1978. He held a secret clearance while in the military. He is divorced and has no children. He has worked for his current employer since February 2008 (Item 4).

Applicant worked as a computer lab specialist from May 1996 until June 2004 (Item 4). He reports that he worked as a general laborer after June 2004 until October 2007. From October 2007 until February 2008, Applicant was unemployed (Item 4).

The SOR alleges six delinquent debts totaling approximately \$84,500 (Item, 5, 6, 7 and 8). The accounts were charged-off or in collection from approximately 2003.

Applicant admitted that the account in allegations ¶ 1.a through 1.g were delinquent accounts and gave the reason as he was unable to arrange payments due to unemployment from June 2004 (Item 3). He does not intend to file for bankruptcy.

The current status of Applicant's delinquent debts is as follows: the collection debts and charged off accounts from late 2003 until the present are delinquent and not paid. Applicant did not report receiving financial counseling.

Applicant's answer explains that he does not live in the lap of luxury and paid his taxes until 2005. He emphasized that he has no criminal background and two honorable discharges. He stated that not having a "good paying job" did not allow him to pay his creditors. He did not provide any documentation to support his position concerning the debts alleged.

Applicant's current net monthly income is \$0. He reported monthly expenses of \$30 a month. He did not list any payments for any debts. His net remainder is listed as-\$30 (Item7).

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 common sense decision. According to AG ¶ 2, 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. 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. Decisions include, by necessity, consideration of the possible risk 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 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^o is potentially disqualifying. Similarly under AG & 19(c), a history of not meeting financial obligations^o may raise security concerns. Applicant accumulated delinquent debts on numerous accounts totaling approximately \$84,500. He admitted to the delinquent debts. He has not met his financial obligations from 2003 until the present time. His credit reports confirm his debts. 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.^o Applicant's financial worries arose in approximately late 2003. He accumulated delinquent debt due to an inability to pay his expenses while not employed. While those circumstances may have precipitated the debt, the inquiry does not end at that point. He has not acted responsibly. His conduct over the last six months with his creditors does not remove security concerns or doubts about his current reliability, trustworthiness, and good judgment. He has approximately \$84,500 in delinquent debt. This potentially mitigating condition does not apply.

Under AG & 20(b), it may be mitigating 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.^o As noted above, Applicant reported a period of unemployment in his answer to the FORM. He listed laborer positions in his security clearance for the period of 2004 until 2007. Although Applicant's situation may have started due to no employment and may have initially started a downturn for him, he did not provide any explanation as to how this impacted

his ability to pay his debts. He did not provide any information that he acted responsibly in identifying and resolving these debts. I find this potentially mitigating condition does not apply.

Evidence that 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 is potentially mitigating under AG & 20(c). Similarly, AG & 20(d) applies where the evidence shows the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts. Applicant has not received counseling. He provided little or no information. His promises to pay in the future when he obtains "suitable employment" do not constitute evidence of financial reform or resolution of debts. His efforts are not sufficient to carry his burden in this case. I conclude these potentially mitigating conditions do not apply.

AG ¶ 20(e) applies where the evidence shows "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." In this case, Applicant did not dispute any of the debts. I conclude this potentially mitigating condition does not apply.

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©, the ultimate determination of whether to grant eligibility for a security clearance must be an overall common sense 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 and conclude they are insufficient to overcome the government's case. Applicant reports unemployment. The record contains scant information concerning Applicant. He chose to have his case decided on the written record. His answer to the SOR and lack of submissions to the FORM are not sufficient for him to meet the burden in this case.

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I

conclude Applicant has not mitigated the security concerns arising from his financial considerations and personal conduct.

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:	Against Applicant
Subparagraph 1.f:	Against Applicant
Subparagraph 1.g:	Against Applicant

Conclusion

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

NOREEN A. LYNCH
Administrative Judge