



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----, -----) ISCR Case No. 08-06917
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Alison O’Connell, Esquire, Department Counsel
For Applicant: *Pro Se*

July 9, 2009

Decision

WHITE, David M., Administrative Judge:

Applicant admitted owing more than \$49,000 in delinquent debts. He claimed to have repaid one, documented no resolution concerning the other six, and provided insufficient evidence to mitigate resulting security concerns. Based upon a review of the case file, pleadings, and exhibits, eligibility for access to classified information is denied.

Applicant submitted his Electronic Questionnaires for Investigations Processing (e-QIP), on January 18, 2008. On January 22, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant, detailing security concerns under Guideline F.¹ 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.

¹Item 1.

Applicant answered the SOR in writing on February 27, 2009, and requested that his case be decided by an administrative judge on the written record without a hearing.² Department Counsel submitted the Government's written case on March 30, 2009. A complete copy of the file of relevant material (FORM)³ was provided to Applicant, and he was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of his receipt of the FORM. Applicant signed the document acknowledging receipt of his copy of the FORM on April 9, 2009, and returned it to DOHA. He did not submit any additional information, and made no objection to consideration of any evidence submitted by Department Counsel, during the 30-day response period. I received the case assignment on June 17, 2009.

Findings of Fact

Applicant is a 56-year-old employee of a defense contractor. He is married, with two children ages 25 and 21. He has been employed in his present capacity as a senior software engineer since July 2007. He has no military service, and has never held a security clearance.⁴ In his response to the SOR, he admitted the truth of all the factual allegations in SOR ¶¶ 1.b through 1.g, with some explanations, and denied SOR ¶ 1.a with an explanation that the debt in question had been resolved after the date alleged.⁵ Applicant's admissions, including those contained in his response to DOHA interrogatories,⁶ are incorporated in the following findings.

The six delinquent debts to which Applicant admitted in his SOR response totaled \$49,286. These debts are for various credit card accounts. Applicant provided no proof of any payment toward, or agreement to repay any of these debts. On July 16, 2008, DOHA forwarded financial interrogatories to Applicant, asking him to document payment or the current status of his delinquent debts. In his August 14, 2008, response he submitted a copy of a letter from the SOR ¶ 1.a creditor agreeing to a repayment schedule of \$131.91 per month from January 2008 through December 2008, during which finance charges would not be assessed. His September 25, 2008, credit bureau report showed a remaining balance of \$527 (as accurately alleged in the SOR), thus corroborating that he made the first eight payments as agreed. He claimed in his SOR response that this debt was repaid in full in December 2008, but provided no proof of further payments.⁷

²Item 4.

³The Government submitted eight items in support of the allegations.

⁴Item 5.

⁵Item 4.

⁶Item 6.

⁷Item 6 at 10; Item 7 at 1.

Applicant worked for one large technology company from June 1995 to June 2002, when he was laid off. He was unemployed from then until October 2003, when he began a series of four jobs with smaller organizations preceding his current job.⁸ Applicant explained that:

[During my 16 months of unemployment], I cashed in my [company] pension, my 401k, [a company] severance check, and used a \$25,000 inheritance in order to keep my home. I was able to keep up on all my debts until early 2003, when it became clear that all I could pay was my mortgages and utilities, or end up broke. During this time my wife and I consulted with a bankruptcy lawyer, and talked with various “Counseling Services.” We decided rather than bail on our debts, that we would pay these debts off on our own. From 2003 until late 2006, we did not have a sufficient income to consider paying down any of our debts. At that time, with two kids in college, and our regular expenses we just didn’t have enough income to address the bad debt. It wasn’t until late 2006 that we had an income that was sufficient to start the paybacks.⁹

After paying two non-SOR-listed debts, he entered the agreement described above to repay the debt alleged in SOR ¶ 1.a. He claimed, again without corroboration, that his home was worth \$249,000 with first and second mortgage balances of \$128,855 and \$8,109. They considered borrowing further against this \$112,000 in equity value, “to pay off the entire slate of bad debts,” but “delayed doing this to assess the needs of our daughter’s college expenses against our debt load.”¹⁰ He also provided no evidence that any lender would refinance his mortgages considering his credit history and the current financial climate. In response to the e-QIP § 18 questions concerning foreign travel, he reported visiting Mexico, Grand Cayman Island, and Jamaica during a May 2007 pleasure cruise.¹¹

Applicant’s Personal Financial Statement indicated monthly net income of \$7,295, with expenses and debt payments of \$6,585, leaving \$710 as a monthly net remainder. He claimed \$152,500 in assets.¹² Applicant offered no evidence of credit or financial counseling except the above-quoted remark. He offered no other evidence concerning his character, trustworthiness or responsibility. I was unable to evaluate his credibility, demeanor or character in person since he elected to have his case decided without a hearing.

⁸Item 5 at 10-17.

⁹Item 6 at 5.

¹⁰*Id.*

¹¹Item 5 at 28-30.

¹²Item 6 at 7-8.

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 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 the adjudicative process. The administrative judge's over-arching adjudicative goal is a fair, impartial and common sense decision. According to AG ¶¶ 2(a) and 2(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 "Any 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 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 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: "Any 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 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

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. AG ¶ 19(a), "inability or unwillingness to satisfy debts," and AG ¶ 19(c), "a history of not meeting financial obligations," are potentially disqualifying. Department Counsel cited only the former condition in her argument, but both are supported on this record. Applicant admitted extensive spending through use of credit he knew he could not repay from early 2003 to late 2006. Once his inability to repay any debt ended, he demonstrated unwillingness to do so in a responsible manner. He did repay one delinquency at the rate of \$132 per month, but did not apply any of his monthly \$711 remainder toward other debts. Even if all this combined available \$843 were dedicated to addressing his delinquent debt, it would take almost five years to resolve all of it. The evidence supporting these disqualifying conditions requires a closer examination and balancing of resulting security concerns with any potentially mitigating matters, and shifts the burden to Applicant to rebut, explain, extenuate or mitigate those concerns.

The guideline includes several conditions that could mitigate security concerns arising from financial difficulties. Under AG ¶ 20(a), disqualifying conditions 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 irresponsibility is recent, involves six different creditors, and continues to date. He remains substantially in debt and his current financial situation precludes a finding that delinquent indebtedness is unlikely to recur. The evidence does not support application of this potentially mitigating condition.

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." Applicant did suffer about 16 months of unemployment during 2002 and 2003. However, he did not demonstrate that he responsibly reduced non-essential spending in reaction to it. The evidence indicates that Applicant chose to continue an affluent lifestyle by borrowing money on credit he knew he could not repay. Even after regaining month-to-month

solvency, he chose to take a Caribbean pleasure cruise in May 2007 rather than address his obligations to those who had extended him that credit. Applicant has not established mitigation of any of his debts, or of his financial history as a whole under this provision.

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.” There is no evidence of financial counseling, nor of any substantial efforts to resolve his delinquencies. The record is also devoid of evidence supporting his ability to repay more than \$49,000 in outstanding delinquent debts in the next several years. Insufficient efforts have occurred to date to alleviate the substantial security concerns raised by the length and degree of financial irresponsibility that continues to date.

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 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. Applicant is a mature individual who is responsible for his choices and conduct. He presently has at least \$49,000 in delinquent debt, and did not meet his burden to prove an ongoing ability to repay it in a timely manner. There is insufficient evidence to support a finding that such financial irresponsibility will not recur. His debts continue to create substantial potential for pressure, coercion, or duress. The record contains insufficient other evidence about his character or responsibility to mitigate these concerns, or tending to make their continuation less likely.

Overall, the record evidence creates substantial doubt as to Applicant's present eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated the security concerns arising from his history of not meeting his financial obligations and inability to satisfy his current debts.

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:	For 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 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