



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 08-07292
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Braden M. Murphy, Esquire, Department Counsel
For Applicant: *Pro se*

July 24, 2009

Decision

CURRY, Marc E., Administrative Judge:

Applicant failed to mitigate the government’s security concerns raised under Guideline F, Financial Considerations. Clearance is denied.

On February 25, 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 for SORs issued after September 1, 2006.

On March 19, 2009, Applicant answered the SOR, admitting all of the allegations and requesting an administrative determination. On April 15, 2009, Department Counsel prepared a File of Relevant Materials (FORM), and DOHA mailed it to Applicant. He received it on February 30, 2009, along with instructions to file any objections or

supplementary information within 30 days. Applicant did not respond, and the case was assigned to me on June 11, 2009.

Findings of Fact

Applicant is a 54-year-old single man with two adult children. Three previous marriages ended in divorce. The last divorce occurred in 1990. Applicant is a veteran of the U.S. Marine Corps, serving from 1974 through 1986. He was honorably discharged. While in the Marines, Applicant attended college, earning a Bachelor of Science in Aviation Management in 1986 (Item 4 at 2). Since 2006, he has worked for a defense contractor as a logistician.

The SOR alleges nine delinquent debts totalling approximately \$33,800. SOR subparagraph 1.a alleges a delinquent account for \$18,859. The government's supporting evidence is contradictory. The creditor is listed twice on a credit report (See Item 5 at 33). The first listing indicates the debt is \$8,859, and that Applicant is paying it, "as agreed" (*Id.*). The second listing indicates it is a charged off debt in the amount alleged in the SOR. In his Answer, Applicant contends the creditor financed a car that he purchased, then repossessed it when it became delinquent. The creditor resold the car, and has been billing him for a deficiency of approximately \$9,000, which he has been paying in \$323 monthly increments (Item 1 at 1). I find that SOR subparagraph 1.a is not delinquent.

SOR subparagraphs 1.b through 1.d are state income tax liens for delinquent income taxes stemming from 1995 and 1996. They collectively total approximately \$1,200. Applicant contends he made arrangements to pay these delinquencies through his 2000 tax return. His 2000 state income tax return, which he provided, does not support this contention.

SOR subparagraphs 1.e and 1.g through 1.h are miscellaneous bills totaling approximately \$800. Applicant provided insufficient evidence to support his contention that he has contacted the respective creditors to either satisfy the debts or arrange payment plans.

SOR subparagraph 1.f is a \$12,589 delinquent debt owed to the U.S. Internal Revenue Service (IRS). The IRS filed a lien against Applicant's property in this amount in June 2002 (Item 5 at 6). The lien was released in November 2008. It is unclear from the record why the lien was released.

On December 5, 2008, Applicant retained a company that handles tax controversies to assist him in resolving this matter (Item 3 at pp. 3-13). Under their agreement, the company will file tax returns for tax years 2001, 2002, 2004, and 2008, and file amended returns for 2005 through 2007 (Item 3 at 9). Then, it will perform an income and expense analysis, and develop a settlement plan (*Id.*). Applicant has paid the company an initial start-up fee of \$3,000 (*Id.* at 3).

SOR subparagraph 1.i is a debt owed to a fitness center that Applicant joined in October 2001 (Item 5 at 8). Applicant contests this debt. He stated in his Answer that he is appealing it because he lost his job shortly after joining the fitness center. His security clearance application does not reflect any period of unemployment since joining the fitness center (*see generally*, Item 4, Section 11).

Applicant attributes his financial problems to his multiple divorces, child support expenses, and “various years with lean or less than adequate income” (Item 6 at 3). Also, in 2005, his mother, who was suffering from cancer, and his brother, an epileptic, moved in with Applicant (*Id.*). Only his mother was able to assist with household expenses.

In August 2008, Applicant organized a budget. He is paying several debts, which are not listed in the SOR, in a timely fashion, including a car note and a major car repair bill (Item 6 at 6-28).

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 required to be considered 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 commonsense 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.

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.”

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.

Analysis

Guideline F, Financial Considerations

Under this guideline, “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” (Adjudicative Guideline ¶ 18). Applicant denied SOR subparagraph 1.a, and the government’s supporting evidence was contradictory. SOR subparagraph 1.a is not delinquent, and does not generate a security concern.

The eight remaining SOR debts, totaling approximately \$15,000, are delinquent. Six of these debts are for less than \$400 each. These remaining delinquencies trigger the application of AG ¶¶ 19(a), “inability or unwillingness to satisfy debts,” and 19(c), “a history of not meeting financial obligations.”

Applicant’s financial problems were exacerbated by multiple divorces and the financial strain when two sickly relatives moved into his home in 2005. Since then, he has organized a budget, arranged a payment plan for his most significant debt, (the IRS delinquency), and has been paying several other unlisted debts in a timely fashion. The following mitigating conditions apply:

AG ¶ 20(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; and,

AG ¶ 20(d) - the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant failed to present persuasive evidence supporting his contention that he is satisfying the state tax debts as listed in SOR subparagraphs 1.c through 1.d. Moreover, he provided insufficient evidence that he is working toward satisfying or resolving the remaining SOR debts. None of the remaining mitigating conditions 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.

Applicant's financial problems were caused, in part, by multiple divorces. His ability to resolve them has been hampered by the additional strain of having to assist in the support of a disabled brother. His maintenance of a budget, effort at resolving the IRS tax delinquency, and payment of several debts unlisted in the SOR is indicative of rehabilitation.

Although Applicant has retained professional assistance to satisfy the IRS debt, and paid their initial fee, he has yet to make any payments to the IRS. His contention that he was either researching or disputing the remaining debts was unsupported by sufficient evidence. Consequently, despite some presence of rehabilitation, it is too soon to conclude Applicant's financial problems no longer pose a security risk.

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 - 1.i:	Against 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.

MARC E. CURRY
Administrative Judge