



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



In the matter of:)	
)	
-----)	ISCR Case No. 08-07473
SSN: -----)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Francisco Mendez, Esquire, Department Counsel
For Applicant: *Pro se*

May 29, 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 November 4, 2008, 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.

Applicant answered the SOR, admitting all of the allegations, on December 1, 2008, and requested a hearing. The case was assigned to me on March 5, 2009. On March 16, 2009, a Notice of Hearing was issued scheduling the case for April 9, 2009. It

was held as scheduled. At the hearing, I received six government exhibits and Applicant's testimony. The transcript was received on April 17, 2009.

Findings of Fact

Applicant is a 51-year-old man with two adult children. He has been married for 32 years. He has a high school diploma, and has earned two years of college credits. He has worked in the marine design field since 1980 (Tr. 17).

Applicant has approximately \$25,000 of debt in various stages of delinquency including, but not limited to, car notes (SOR subparagraphs 1.g and 1.r), a payday loan (SOR subparagraph 1.d), credit card bills (SOR subparagraphs 1.h through 1.j), and medical bills (SOR subparagraphs 1.m through 1.o). One of the car note delinquencies stems from a repossession (SOR subparagraph 1.g), and three of the SOR debts resulted in judgments (SOR subparagraphs 1.d through 1.f).

Applicant's finances were stable through the late 1990s. Then, his mother-in-law was stricken with terminal cancer (Tr. 9). As she became increasingly disabled, Applicant incurred more of her household management expenses (Tr. 27).

In June 2000, Applicant filed for Chapter 7 bankruptcy. Later that year, the bankruptcy debt was discharged. The amount discharged is unknown from the record.

In 2002, Applicant's employer reduced his work hours (Tr. 66). This reduction was unrelated to Applicant's performance. At or about the same time, his wife was diagnosed with cancer, and was rendered unable to work for several months (Tr. 71). He again began to accrue delinquent debt. Both Applicant and his wife, whose cancer is now in remission, have been working full-time without interruption for the past four years (Tr. 54).

In September 2002, Applicant filed a petition for Chapter 13 bankruptcy. The amount included in the plan is unknown from the record. In June 2004, the plan was dismissed because of Applicant's noncompliance. The following month, Applicant re-filed the Chapter 13 bankruptcy petition. It was dismissed in October 2005 because he did not complete the court-ordered payment plan (Tr. 29; Exhibit 3 at 22).

In August 2006, a judgment was entered against Applicant in favor of a jewelry store in the approximate amount of \$3,000 (SOR subparagraph 1.e). The debt stemmed from jewelry Applicant purchased the year he filed for Chapter 7 bankruptcy (Tr. 36).

In May 2007, a judgment was entered against Applicant in the approximate amount of \$950 (SOR subparagraph 1.f). He does not recognize the creditor (Tr. 38).

At some time in 2007, Applicant's car was repossessed (Tr. 39-40). At the time of the repossession, he owed approximately \$15,500 (SOR subparagraph 1.g). It is unknown from the record whether the dealer has resold the car.

Applicant listed a \$5,000 tax lien on his security clearance application that is not included on the SOR (Exhibit 1 at 37). This tax debt stems from a tax return delinquency that began accruing in the 1980s. He satisfied the lien through a payment plan in 2008.

Applicant attributes some of his difficulty in managing his finances to his children's college costs. He spent approximately \$28,000 on his son's tuition (Tr. 73). He pays approximately \$6,000 toward his daughter's tuition (Tr. 74). She is still in college.

Applicant has satisfied his home mortgage (Tr. 46). In an effort to get his finances under control, he and his wife moved into a rental property, and rented their home. They pay \$1,400 monthly in rent. They receive \$725 from the tenant who rents their home (Tr. 56).

Applicant has retained an attorney, and is preparing to file for Chapter 13 bankruptcy again. The attorney is in the process of identifying and contacting all of Applicant's creditors. Applicant anticipates that all of the SOR debts will be included in the bankruptcy filing. Currently, Applicant's monthly expenses exceed his monthly income by approximately \$1,400 (Exhibit 3 at 5).

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 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.

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” (AG ¶ 18). Applicant’s financial delinquencies accrued over the past nine years, trigger the application of AG ¶ 19(a), “inability or unwillingness to satisfy debts,” and AG ¶ 19(c), “a history of not meeting financial obligations.”

Applicant did not experience any major financial problems until the late 1990s when he incurred multiple expenses assisting his mother-in-law who was stricken with terminal cancer. The debts he accrued during these period, however, were discharged through a Chapter 7 bankruptcy. Within two years of the discharge, Applicant’s financial delinquencies recurred, compelling him to file for Chapter 13 bankruptcy protection. Although he attributes this recurrence to a work slowdown and his wife’s temporary unemployment, they have been working full-time without interruption for the past four years. 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,” is only partially applicable.

None of the remaining mitigating conditions apply. Although Applicant recently satisfied a tax delinquency that was not listed in the SOR, it was outstanding for nearly 20 years. Further, although Applicant is working with an attorney to file for Chapter 13 bankruptcy protection, two previous efforts failed. Applicant has not mitigated the financial considerations security concern.

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) 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 accrued approximately \$25,000 of delinquent debt between 2000 and 2008. Shortly before he began accruing this debt, he had received a discharge of his debts through the Chapter 7 bankruptcy process. Two successive attempts at satisfying his delinquencies through the Chapter 13 bankruptcy process have been unsuccessful. Consequently, the likelihood of continuance or recurrence of Applicant’s financial problems remains unacceptably high. Evaluating this case in light of the whole person concept, it is not clearly consistent with the national interest to grant or continue Applicant’s access to classified information. Clearance is denied.

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 - 1.r: 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