



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



In the matter of:)
)
-----) ISCR Case No. 08-07588
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Ray T. Blank, Jr., Esquire, Department Counsel
For Applicant: *Pro Se*

June 23, 2009

Decision

LYNCH, Noreen A., Administrative Judge:

Applicant answered and signed his most recent Security Clearance Application (SF 86), on March 10, 2008. On November 10, 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 and elected to have his case decided on the record in lieu of a hearing. Department Counsel submitted the Government's

written case on January 5, 2009.¹ Applicant received a complete file of relevant material (FORM) on April 30, 2009, and was provided the 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 June 18, 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 26, 2008, Applicant admitted the factual allegations in ¶¶ 1.a through 1.j; 1.l; 1.m; and 1.o of the SOR. He denied the factual allegations in ¶¶ 1.k; 1.n; and 1.p through 1.r of the SOR. He did not provide additional information to support his request for eligibility for a security clearance.

Applicant is a 44-year-old employee of a defense contractor. He graduated from high school, and received his undergraduate degree in information technology in June 2007. He served in the United States Navy from 1982 until 2005. He held a security clearance while in the military. He is married and has one child. He has worked for his current employer since January 2008 (Item 4).

Applicant filed for Chapter 7 bankruptcy in December 1992 and his delinquent debts were discharged in March 1993 (Item 5). In August 1995, he filed for Chapter 13 bankruptcy and his delinquent debts were discharged in March 1998. Applicant was in the military during this period. In addition, in November 1996, Applicant made an unjustified withdrawal on a Government credit card. He was a chief petty officer and was awarded nonjudicial punishment.

While still in the military in May 2002, Applicant filed for Chapter 7 bankruptcy and his delinquent debts (\$50,000) were discharged in August 2002 (Item 6).

After Applicant left the military in 2005, he was employed in a variety of positions. He was unemployed from September 2007 until November 2007. From November 2007 until December 2007, he worked for a building company. Applicant reported that some of his current credit problems are due to his 2007 unemployment and the inability to sell his home. He did not elaborate or give any other details (Item 4).

The SOR alleges thirteen delinquent debts, including student loans, for a total amount of approximately \$22,433 (Items 9 and 10). Applicant admits owing \$6,155 of the listed delinquent debts.

In his 2009 response to DOHA interrogatories, Applicant admitted and listed his numerous collection accounts as noted in the SOR (¶ 1.e, 1.f, 1.g, 1.h, 1.i, 1.j, 1.k, 1.l, 1.m, 1.o, and 1.q). He has not paid them nor produced any evidence to suggest that he has a plan to do so in the future. He listed one debt ¶1.o as unknown but there is

¹The Government submitted ten (10) items in support of its contention.

nothing to confirm that he has officially disputed the account. This account is listed on his credit report as in collection (Item 9).

Applicant denied owing the debt alleged in SOR ¶ 1.n for \$15,420. He submitted a release of lien dated June 16, 2008 for that account. His most recent credit report confirms that a settlement was accepted on that account (Item 10). His credit report also lists numerous other accounts as “pays as agreed.”

Applicant completed a personal financial statement in August 2008. His total net monthly income is \$7,209. After expenses and debt payments, he has a net remainder of \$1,647. Applicant listed monthly payments to two delinquent accounts listed in the SOR. He reported a monthly payment of \$245 for a student loan (SOR ¶ 1.k). He also listed a monthly payment of \$50 for a past-due account (SOR ¶ 1.j). He did not provide any documentation to support the payments.

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), Aa history of not meeting financial obligations^o may raise security concerns. Also, AG ¶ 19(d), “deceptive or illegal financial practices such as embezzlement, employee theft, check fraud, income tax evasion, expense account fraud, filing deceptive loan statements, and other intentional breaches of trust” is potentially disqualifying. Applicant has a history of financial problems since 1993. He accumulated delinquent debts after filing for bankruptcy on three occasions. He admitted withdrawing money from a Government credit card that was not authorized. He has accumulated more delinquent debt since his last bankruptcy in 2002. His credit reports confirm the debts. The evidence is sufficient to raise these 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 Athe 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 has delinquent debt that has not been resolved. He did not submit any mitigating information in response to the FORM. There is no indication that Applicant has any plan to pay these debts in the future. This mitigating condition does not apply in this case.

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. I do not find this a factor for consideration in this case.

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 resolved one debt. There is nothing in the record concerning financial counseling. His efforts are not sufficient to carry his burden in this case. I conclude these 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." Applicant stated that he did not recognize one debt but he did not provide any documentation to support a dispute concerning the account. I conclude this 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(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 has failed to provide any evidence that the debts are not his responsibility. He has not paid the majority of the accounts. He was unemployed in 2007 for two months but his delinquent debts precede

that time. He has filed for bankruptcy on three occasions. Bankruptcy is a legal means to resolve debts but Applicant has acquired more delinquent debt since his last bankruptcy filing in 2002. He has an income and a net remainder that would allow him to pay on his accounts. He has not met his 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.

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
Subparagraph 1.h:	Against Applicant
Subparagraph 1.i:	Against Applicant
Subparagraph 1.j:	Against Applicant
Subparagraph 1.k:	Against Applicant
Subparagraph 1.l:	Against Applicant
Subparagraph 1.m:	Against Applicant
Subparagraph 1.n:	For Applicant
Subparagraph 1.o:	Against Applicant
Subparagraph 1p:	Against Applicant
Subparagraph 1q:	Against Applicant
Subparagraph 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 national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

NOREEN A. LYNCH
Administrative Judge