



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 08-07745
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Nichole Noel, Esquire, Department Counsel
For Applicant: *Pro Se*

January 12, 2009

Decision

LYNCH, Noreen A., Administrative Judge:

Applicant submitted his Security Clearance Application (SF 86), on December 31, 2007. On August 27, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guidelines F and E 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 requested a hearing before an Administrative Judge. I received the case assignment on October 28, 2008. DOHA issued a notice of hearing on November 18, 2008, and I convened the hearing as scheduled on December 10, 2008. The Government offered Exhibits (GE 1-3), which were received into the record without objection. Applicant testified in his own behalf. He did not submit any exhibits at the hearing, but I held the record open until December 18, 2008, so that Applicant could

submit documents. The submission was timely received and marked as (AE) A. Department Counsel did not object to the document, and it was admitted into the record. DOHA received the transcript on December 18, 2008. Based upon a review of the record, eligibility for access to classified information is denied.

Findings of Fact

In his Answer to the SOR, dated September 15, 2008, Applicant admitted the factual allegations in ¶¶ 1.a, through 1.l of the SOR. He denied the other allegations, including ¶ 2.a of the SOR. He provided additional information to support his request for eligibility for a security clearance.

Applicant is a 40-year-old employee of a defense contractor. He graduated from high school in June 1987 and received an Associate Degree in 2007. He served in the United States Army (USA) until he retired after 20 years service in August 2006. During his military career, he was deployed to Iraq on three occasions (2000, 2002, and 2004). He has worked for his current employer since August 2007 (GE 1). Applicant held a security clearance during his military and civilian career until the present (Tr. 12).

Applicant married in 1995. He and his wife separated in 2003 and divorced in May 2005. They have two children. As a result of the divorce agreement, Applicant's wife received some property, the marital home, and cars from the marriage (Tr. 27). Applicant pays child support in the amount of \$801 per month (Tr. 11). This amount has now increased to \$941. Applicant explained that due to an error in the amount of child support deducted from his pay, he was in arrears (Tr. 53).

Applicant had a difficult transition after leaving the military in 2007. He was unemployed for nine months. He used his savings to help pay his bills and his legal fees for the divorce (Tr. 9). He claimed he did not receive any delinquent bills because the bulk of the delinquencies were due to his wife's credit cards and loans.

The SOR alleges 11 delinquent debts, including a September 2006 foreclosure on the marital home. His wife is responsible for the home because she received that as part of the divorce settlement. The total amount of delinquent debt that Applicant owes is approximately \$46,596 (GE 2 and 3).

Applicant admitted owing the debts listed in the SOR. The debt listed in SOR ¶ 1.a and 1.f belong solely to Applicant. He acknowledged that since his name was also on the other accounts, he was responsible for the remaining debts as well. Applicant's wages are garnished for child support arrearage (\$1,803) listed in ¶ 1.h. The other debts in the SOR have not been paid. Applicant planned to file for bankruptcy in September 2008 but decided to refinance his home through a company that will also challenge debts and dispute certain accounts (AE A). The letter from the company states that Applicant is enrolled in a "credit restoration" program. If Applicant learns that he is responsible for the debts, he will use money from the refinancing to pay the

delinquent debts to his creditors. He will also volunteer for deployment to Iraq to help pay the delinquent bills.

At the hearing, Applicant stated that he would pay the past due mortgage payment of \$2,000 listed in SOR ¶ 1. f (Tr. 66). He did not submit any documentation for the record. He also did not provide any letters of recommendation from his employment or character references as promised.

Applicant earns approximately \$49,700 yearly. He also receives his military retirement. When he receives travel reimbursement and per diem for temporary duty, he tries to save a portion of the money for his bills (Tr. 40). After monthly expenses he has a net remainder but was not clear on the amount. He is paying on his current car loan.

Applicant completed his December 31, 2007 security application. In that application he answered “no” to question 28(a) and (b) which asks for information on debts either 180 days delinquent in the last seven years or 90 days currently delinquent (GE 1).

Applicant explained that he completed the security questionnaire online at work on the computer. He indicated that he did not believe he had any delinquent debts because the debts were actually that of his ex-wife. He explained that he had good credit and purchased a house in 2006 with no credit problems (Tr. 43). He said it was a misunderstanding and that he did not learn about the debts in the SOR until the security clearance investigation. He was credible in his testimony that he had no intent to deceive the government.

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 from his divorce and inability to pay child support. He did not meet some of his financial obligations from 2004 until the present time. His credit reports confirm the delinquent debts totaling approximately

\$46,596. 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. Applicant's financial worries arose in 2004. He accumulated some delinquent debt due to his separation and divorce and months of unemployment when he retired from the military in 2006. While those circumstances may have precipitated the debt, the inquiry does not end at that point. He admits that he was going to file for bankruptcy. He has not paid any debts in the SOR and intends to refinance his house to pay the accounts. 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. 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. Applicant has been steadily employed since September 2007. He did experience separation, divorce, and some unemployment but he also has debt that do not stem from that situation. Applicant was not as aggressive as he should have been in initially addressing or resolving his delinquent debts. I find this potentially mitigating condition partially applies.

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) Applicant pays child support in the amount of \$801 per month (Tr. 11). 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 contacted a mortgage company for "credit restoration" and financial counseling. He is investigating his credit report to dispute some accounts. He is paying a child support arrearage through a garnishment. I find his efforts are insufficient to carry his burden in this case. I conclude these potentially mitigating conditions apply in part.

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 stated that his wife owed the majority of the creditors. He submitted no documentation concerning specific details. I conclude this potentially mitigating condition partially applies.

Guideline E, Personal Conduct

The security concern relating to the guideline for Personal Conduct is set out in AG ¶ 15:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to cooperate with the security clearance process.

The guideline notes several conditions that could raise security concerns. Under AG ¶ 16(a), "deliberate omission, concealment, or falsification of relevant facts from any personnel questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities" is potentially disqualifying.

In this case, when Applicant completed his 2007 security application, he did not list any debts that were 90 or 180 days delinquent. He explained that he believed that he did not have delinquent debts of 90 or 180 days. Despite the fact that the questionnaire was not checked 'yes' on either section, I found him credible. He bought a house in 2006 with no credit problems. The allegation of falsification is unsubstantiated. I do not find that he deliberately provided false information on his SF 86 in 2005.

Thus, Applicant's allegation of deliberate omission is mitigated under AG 17(f) "the information was unsubstantiated or from a source of questionable reliability."

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." 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 and conclude they are not sufficient to overcome the government's case. Applicant served in the US Army for 20 years. After leaving the military, he had a difficult transition to civilian life. His wife left the marriage and he had many bills to pay. He has not been aggressive in paying his delinquent debts. His plan of action is to refinance his house and use the proceeds to pay for the delinquent debts. This plan is not in place at this time. He has disputed many accounts but did not provide sufficient documentation for this proposition. At this time, Applicant has not met his burden of proof to overcome the government's 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-1.g:	Against Applicant
Subparagraph 1.h:	For Applicant
Subparagraph 1.l-l:	Against Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraph 2.a:	For 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