



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 08-07970
SSN: -----)
)
Applicant for Security Clearance)

Appearances

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

October 22, 2009

Decision

LYNCH, Noreen A., Administrative Judge:

Applicant answered and signed his Security Clearance Application (SF 86), on February 28, 2007. On June 16, 2009, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) 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 June 29, 2009, Applicant answered the SOR and requested a hearing. DOHA received the request and the case was assigned to me on August 5, 2009. Applicant and Department Counsel agreed to a September 30, 2009 hearing date. On August 27, 2009, a Notice of Hearing was issued scheduling the hearing for that date. The hearing was convened as scheduled. Department Counsel submitted five exhibits (GE) 1-5 without objection. Applicant submitted five exhibits (AE) A-E which were

admitted without objection. He testified on his own behalf. The transcript (Tr.) was received on October 6, 2009. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

Findings of Fact

In his June 30, 2009 Answer to the SOR, Applicant admitted the factual allegations in ¶¶ 1.a through 1.k of the SOR with explanations.

Applicant is a 36-year-old employee of a defense contractor. He graduated from high school in 1992. He served in the U.S. Navy from 1995 until 2003. He obtained his undergraduate degree in naval aviation. Applicant married in 1999 and divorced in 2009. He has two children from that marriage. He has worked for his current employer since March 2006 (GE 1).

Applicant's transition from his military career to civilian employment was difficult. He was completing his college courses and trying to find employment. He was actively searching for employment at least six months prior to his separation from the military (Tr. 31). He was not able to pay his bills in 2003-2004 due to unemployment. His first full-time employment was in July 2004. He remained in that position until February 2006. He earned approximately \$34,000 a year. He could not sustain himself on that salary. His home was foreclosed in 2005.

The SOR alleges eleven delinquent debts, including a voluntary auto repossession and credit card accounts. The delinquent debts total approximately \$40,000 (GE 3). Applicant contacted his creditors. He drained his savings and had only a very small amount to offer his creditors. He explained that they were not willing to work with him but wanted a full amount (Tr.). He does not want to file for bankruptcy. He told his employer about his financial situation when he was first employed.

Applicant has not received financial counseling. He does not have a repayment plan for any of his debts. He states he does not know how to contact many of the creditors. However, he has received two raises during his current employment. He has not used any of his almost \$13,000 raise to pay any of his accounts. Some of his debts are small and could be paid or settled. He admitted at the hearing that he knows if he waits seven years the debts will be removed from his credit reports. He also acknowledged that before he and his wife separated, he co-signed a loan for an expensive auto in 2007. This car note required \$800 a month.

Applicant's monthly net income is approximately \$3,101. He also receives a check for disability. He is paying monthly child support in the amount of \$1,101. He has a retirement account. He sends money to his mother who is ill. He visits her in her home country. His student loans are in deferment. He has one credit card (Tr. 63).

Applicant loves his job. He wants to continue his work. He loves this country. His employer praises his performance in his position (AE C). He manages government

property. He is responsible and professional. He has received commendations and letters of appreciation for his work with his current employer (AE D). Applicant is deemed a competent, dedicated employee (AE E).

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.

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, 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 that 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 debts⁶ is potentially disqualifying. Similarly under AG & 19(c), a history of not meeting financial obligations⁶ may raise security concerns. Applicant accumulated delinquent debts over time. He admits that he has \$40,000 in delinquent debt. The evidence is sufficient to raise these disqualifying conditions.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Under AG ¶ 20(a), the concerns 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.⁶ Applicant acknowledged that his delinquent debts have been in existence since 2004. He has not paid any of the accounts. He co-signed for an expensive car in 2007. This 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.⁶ Applicant’s transition from the military to civilian life was difficult. He was unemployed for a period of time in 2004. He did not earn very much money when he became employed. His separation and divorce also impacted his financial situation. This may have exacerbated the problem, but he has not acted responsibly by paying the accounts. He has been steadily employed since 2004. Some of the accounts were delinquent prior to that time. He has not prioritized his debts. This mitigating condition is not applicable.

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 control⁶

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 not received financial counseling. He has not resolved the delinquent accounts. His efforts are insufficient to carry his burden in this case. I conclude these mitigating conditions do 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 commonsense 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 insufficient to overcome the Government's case. Applicant has been steadily employed since 2004. He has worked for a defense contractor since 2006. While he noted that his separation and divorce contributed to his problems, he admitted that he is ultimately responsible for the debts. When he learned of the delinquent accounts, he did not take action to resolve the debts.

Applicant has served honorably in the U.S. Navy. He is paying child support for his daughter. He loves this country and wants to continue in his employment. He sends money to his mother who lives out of the country and is ill. He faced unemployment when leaving the military.

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 issues.

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

Subparagraphs 1.a: - 1.k: 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