



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 08-08022
SSN: -----)
)
Applicant for Security Clearance)

Appearances

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

April 30, 2009

Decision

CURRY, Marc E., Administrative Judge:

Applicant failed to mitigate the government’s security concerns raised under Guidelines F, Financial Considerations, and E, Personal Conduct. Clearance is denied.

On December 5, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines G and E. 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 on January 2, 2008, and requested a hearing. The case was assigned to me on February 12, 2009. On February 17, 2009 a Notice of Hearing was issued originally scheduling the case for March 2, 2009. The hearing was continued because of inclement weather, and rescheduled for April 6, 2009. It was then

held as scheduled. At the hearing, I received six government exhibits and Applicant's testimony. The transcript was received on April 15, 2009.

Rulings of Procedure and Evidence

1. I granted department counsel's motion to withdraw SOR subparagraphs 1.k and 1.m.

2. SOR subparagraph 1.g, alleging a debt to a creditor identified only as "a medical account," is vague and overbroad. Although SORs do not need to be drafted with the specificity of criminal pleadings, they must, at minimum, be drafted with enough specificity to enable applicants to prepare a response. SOR subparagraph 1.g does not meet this threshold, therefore I will not consider it.

Findings of Fact

Applicant is a 59-year-old married man with three adult children. He is a veteran of the U.S. Marine Corps where he served from 1969 through 1979. He was honorably discharged. While in the Marines, he served a tour of duty in Vietnam.

Applicant has a GED. In 1994, he attended vocational school, earning a mechanical drafting certificate (Exhibit 1 at 9). He has spent approximately the past 20 years working for various defense contractors in the mechanical drafting field (Tr. 18). He has been working for his current employer since February 2008 (Exhibit 1 at 9).

Appellant owes creditors approximately \$50,000 of debt in various stages of delinquency. He accrued the majority of the delinquencies during the past ten years.

SOR subparagraphs 1.a through 1.c are credit cards with balances ranging from \$150 to \$360 (Exhibit 3 at 1-2). Each is one month behind with amounts due ranging from \$43 to \$46 (*Id.*). The credit cards listed in SOR subparagraphs 1.d and 1.e, collectively totalling approximately \$11,600, have been charged off (Exhibit 3 at 2). SOR subparagraphs 1.f and 1.h, collectively totalling \$23,500, are in collection status (Exhibit 3 at 3). SOR subparagraph 1.i is the deficiency remaining from an automobile repossessed in 2004 (*Id.*). SOR subparagraph 1. j, is Applicant's mortgage payment, which is overdue in the amount of \$1,462 (Answer).

Applicant failed to pay his state income taxes between 1988 and 1993 (Tr. 50). This led to the imposition of three tax liens between 1991 and 1996. Applicant has satisfied two of them (Exhibits 4-5). One, in the amount of \$10,685, remains outstanding.

Applicant attributes his financial problems to health problems stemming from a work-related injury in 1991 and a number of chronic ailments experienced within the past ten years (Tr. 18). Also, he contends that several periods of unemployment have exacerbated his financial difficulties, including a one-year period of underemployment in

2004, and a four month unemployment period between November 2007 and February 2008 (Exhibit 1 at 10).

In June 2008, Applicant met with a security clearance investigator. In response to questions about his finances, he promised to contact the creditors and begin making payment arrangements (Exhibit 6 at 1). To date, he has not done so.

Applicant earns approximately \$52,000 per year. His wife works part-time at a bank and earns \$10 per hour. He does not maintain a budget. Although he has not sought financial counseling, he and his wife have discussed filing for bankruptcy protection.

Applicant disclosed neither the 2004 automobile repossession, nor the delinquent debts as required on his 2008 security clearance application. He contends that the repossession “slipped his mind” (Tr. 54). As for the other financial questions, he was aware of his indebtedness when he completed the security clearance application, but did not list them because he “needed the job” (Tr. 56).

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 longstanding delinquencies trigger the application of AG ¶¶ 19(a), “inability or unwillingness to satisfy debts, and 19(c), “a history of not meeting financial obligations.”

I also considered AG ¶ 19(g), “failure to file annual Federal, state, or local income tax returns as required, or the fraudulent filing of the same,” in evaluating Applicant’s income tax difficulties. Although record evidence establishes that he did not pay his income taxes timely between 1988 and 1993, there is no record evidence that establishes that he failed to file his income tax returns. AG ¶ 19(c) does not apply.

I have considered the mitigating conditions and conclude none apply. Despite promising a security clearance investigator that he was going to begin organizing and satisfying his debts, he failed to do so. Also, he has neither sought financial counseling nor developed a budget. Although his health and employment problems could conceivably trigger the application of AG ¶ 20(b), “the conditions that resulted in the financial problem were largely beyond the person’s control . . . , and the individual acted responsibly under the circumstances,” he failed to present any evidence establishing that he acted responsibly under the circumstances.

Guideline E, Personal Conduct

Under this guideline, “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” (AG ¶ 15). Applicant’s omission of pertinent financial information from his security clearance application raises the issue of whether AG ¶ 16(a), “deliberate omission, concealment, or falsification of relevant facts from any personnel security 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,” applies.

Applicant had a duty to provide candid, truthful responses on his security clearance application. His concealment of relevant, material information is not mitigated by his concern that he may not have gotten the job if he had disclosed his financial delinquencies, as required on his security clearance application (*see generally*, DISCR OSD NO. 89-1586 (App. Bd. October 26, 1990)). His intentional omission of delinquent debts from the security clearance application undermines the credibility of his contention

that he did not list the 2004 automobile repossession because he forgot about it. AG ¶ 16(a) applies without mitigation.

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's financial delinquencies were caused partially by his history of health problems and job instability. However, he failed to follow through on a promise to begin satisfying them. Currently, all of the SOR delinquencies remain outstanding. In light of this broken promise and his SOR falsifications, any future promises to pay the delinquencies have limited probative value. Upon considering the disqualifying and mitigating conditions together with the whole person concept, I conclude Applicant has not mitigated the Financial Considerations and Personal Conduct security concerns. 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
Subparagraphs 1.a - 1.f:	Against Applicant
Subparagraph 1.g:	For Applicant
Subparagraphs 1.h -1.j:	Against Applicant
Subparagraph 1.k:	WITHDRAWN
Subparagraph 1.l:	Against Applicant
Subparagraph 1.m:	WITHDRAWN

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