



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 08-08387
SSN: -----)
)
Applicant for Security Clearance)

Appearances

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

November 9, 2009

Decision

LYNCH, Noreen A., Administrative Judge:

Applicant answered and signed his Security Clearance Application (SF-86) on May 6, 2008. On April 3, 2009, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) detailing the security concerns under Guidelines F 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.

On April 21, 2009, Applicant answered the SOR and requested a hearing. DOHA received the request and assigned the case to me on August 5, 2009. On August 27, 2009, a Notice of Hearing scheduled the hearing for September 30, 2009. The hearing was convened as scheduled. Department Counsel submitted five exhibits (GE) 1-5, without objection. Applicant did not present any documents. He testified on his own behalf. The transcript (Tr.) was received on October 8, 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 Answer to the SOR, Applicant admitted the factual allegations in ¶¶ 1.a through 1.m of the SOR. He did not admit the allegation in ¶ 2.a of the SOR.

Applicant is a 44-year-old employee of a defense contractor. He graduated from high school in 1985, and attended college for two years. He served in the U.S. Army from 1986 until 1987 (Tr. 34). Applicant's first marriage ended in divorce in 1994. He remarried in 1999, and has two children from his second marriage (GE 1). He has worked for his current employer since August 2006, but he has worked steadily since high school (Tr. 21).

In 2005, Applicant suffered financial difficulties after Hurricane Katrina. He left the state and lived with relatives. He and his wife returned several months later. In 2007, Applicant's wife left him and took their son with her. Her income which contributed to the family household, was lost. Applicant had several months of unemployment (Tr. 23).

Applicant's wife promised to pay for the delinquent debts that occurred during the marriage (Tr. 71; GE 2). She has not done so. Applicant firmly believes she is responsible for paying them. After the 2007 separation, Applicant's wife continued to charge items on the accounts (Tr. 79).

Applicant suffered a heart attack in 2007. He also has medical issues relating to high blood pressure (Tr. 55). Applicant acknowledged that some of the bills were delinquent before 2005 (Tr. 54). He acknowledged that he fell behind in paying his bills due to his wife's part-time work and the several weeks of unemployment that he had over the years. He contacted some of the creditors, but claimed that many went out of business after Katrina. He states that he has not received any bills from them.

The SOR alleges 13 delinquent debts, including medical accounts. The approximate total for Applicant's debts is \$30,000 (GE 3). The current status of Applicant's delinquent debts is as follows:

The debt alleged in SOR ¶ 1.a is for a cell phone in the amount of \$342. Applicant has not paid the account.

Applicant states the allegation in SOR ¶ 1.b is \$4,000 for another cell phone account. He states that the account is closed. He claims the bill is in his wife's name (Tr. 41).

Applicant states the allegation in SOR ¶ 1.c is a medical bill for \$143 and that it was paid by insurance (Tr. 43).

The debt alleged in SOR ¶ 1.d for \$1,500 is a collection account for a credit account. According to Applicant, this account was paid in 2008 (Tr. 43). He did not provide any documentation.

The debt alleged in SOR ¶ 1.e for \$600 is for another cell phone account. Applicant could not contact them. The bill is unpaid.

The debt alleged in SOR ¶ 1.f for \$7,540 is unknown to Applicant (Tr. 47).

The debt alleged in SOR ¶ 1.g is for \$2,409. This is a credit card account. He made attempts to pay, but he has not received a bill (Tr. 48). The account remains unpaid.

The debt alleged in SOR ¶ 1.h is a credit card account for \$2,877. This account was for home repairs. Applicant contacted the company, but he has not made any payments (Tr. 48).

The debt alleged in SOR ¶ 1.i is an automobile repossession of his wife's car. The 2004 vehicle was repossessed in 2007, after Applicant and his wife separated. He believes the amount of \$8,341 is not accurate (Tr. 49). He has not paid the account as he believes his wife will do so.

The debt alleged in SOR ¶ 1.j is for a phone bill in the amount of \$362. Applicant does not recognize this account.

The debt alleged in SOR ¶ 1.k for \$20 is a medical account for a medical visit for his wife. It is unpaid. Applicant stated that his wife agreed to pay the amount (Tr. 50).

The debt alleged in SOR ¶ 1.l is a past due account in the amount of \$836. Applicant believes this belongs to his wife (Tr. 50). He believes she has made some payments on the account.

The debt alleged in SOR ¶ 1.m is for a collection account in the amount of \$781. Applicant states this is an account that his wife opened. He believes she has paid \$200 on the account (Tr. 51).

Applicant earns approximately \$35,000 a year. His net monthly income is approximately \$1,300 (Tr. 38). He is current with his monthly expenses. He pays monthly child support of \$680. His two cars are paid for. His net monthly remainder is approximately \$200. He has a savings account (GE 2). He has no credit cards (Tr. 64). He receives approximately \$800 a month in rent from a house that he owns (Tr. 25). He estimates that over the past three years he has paid \$1,500 on delinquent accounts (Tr. 57). He hopes to use his income tax refund to pay more creditors (Tr. 27).

Applicant completed his May 6, 2008 security clearance application. In that application he answered "No" to question 28a concerning financial delinquencies in the

last seven years over 180 days, and “No” to question 28b concerning financial delinquencies over 90 days (GE 1). Applicant’s wife helped him with the application. He orally answered the questions and she filled out the application. She made a mistake by answering the question in the negative (Tr. 67). He believed the form was very complicated. He relied on her help to complete the application (Tr. 14). Since his wife was a teacher and used to completing paper work, Applicant thought it best for his wife to actually complete the application.

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 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 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 (EO) 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 on many accounts for a period of time. 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 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.^o Applicant acknowledged that he and his wife had delinquent debts before Hurricane Katrina. He acknowledged that they were both working. He has not paid any of the accounts. 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.^o I find this a factor for consideration in this case. As noted above, the separation that occurred in 2007 impacted Applicant financially. Also, Katrina exacerbated the Applicant's financial situation. In addition, Applicant has some unemployment. However, he has not acted responsibly in paying his accounts.

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 not received financial counseling. He has not resolved the delinquent accounts. He relied on his wife's promise to pay the accounts. His efforts are insufficient 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." In this case, Applicant stated that he did not believe he owed some accounts. He provided no documentation for this assertion. I conclude this mitigating condition applies in part.

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 2008 security application, he did not answer "yes" to questions 28a or 28b. He denied the allegation concerning a falsification of his answers. At the hearing, he stated that he answered the questions to the best of his ability and did not know about the incorrect answers. His wife helped him complete the application because he found it confusing. He incorrectly answered the question but he did not intentionally falsify his application.

When a falsification allegation is controverted or denied, the Government has the burden of proving it. Proof of an omission, standing alone, does not establish or prove an applicant's state of mind when the omission occurred. An administrative judge must consider the record evidence as whole to determine whether there is direct or

circumstantial evidence concerning an applicant's state of mind at the time the omission occurred. ISCR Case No. 03-09483 at 4 (App. Bd. Nov. 17, 2004) (explaining holding in ISCR Case No. 02-23133 at 5 (App. Bd. Jun. 9, 2004)). Thus, AG ¶ 16(a) does not apply in this case. I find for Applicant on SOR ¶ 2.a.

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 worked all his life. He supported his family. He was in the military. Separation and Katrina was the partial cause of the delinquent accounts. He has not acted responsibly in handling the delinquent debts. He acknowledged that he had some delinquent debts before his separation and Katrina. He answered question 28a concerning financial delinquencies in the last 7 years to the best of his ability. He did not intentionally falsify his SF 86.

Overall, the record evidence leaves me with questions or 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 under financial consideration guideline. He has mitigated the concerns under the personal conduct guideline.

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.m:	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