



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ISCR Case No. 08-08660
SSN:)
)
Applicant for Security Clearance)

Appearances

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

August 12, 2009

Decision

CURRY, Marc E., Administrative Judge:

Applicant mitigated the security concern raised under Guideline F, financial considerations. Clearance is granted.

On February 12, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, financial considerations. 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 March 18, 2009, admitted all of the allegations and requested an administrative determination. On May 27, 2009, Department Counsel prepared a File of Relevant Material (FORM). Applicant received it on June 3, 2009, and

provided a nine-page reply on June 18, 2009. On June 25, 2009, the case was assigned to me.

Findings of Fact

Applicant is a 52-year-old, single man. He was married for three years in the 1990s. The marriage ended in divorce.

Applicant has been a naturalized U.S. citizen since 1992. The FORM contains no record of when he emigrated to the U.S. However, judging from the date he attended trade school in the U.S. (1986 to 1987), he has been living here for at least 23 years (Item 5 at 13).

Since approximately March 2008, Applicant has worked in an overseas combat theatre as an interpreter/linguist (Response to FORM at 3). Because of his unique language proficiency gained as a native of the country, he is “one of the most qualified and distinguished interpreters available” (*Id.*). His knowledge and personal experiences have helped interrogators “understand both the culture and the mentality” of the insurgents (Response at 4). His work ethic is “unprecedented” (*Id.*).

As of October 2008, Applicant owed four creditors approximately \$21,000 in delinquent debt (Item 1). Approximately \$9,100 constitutes a deficiency remaining from an April 2008 foreclosure (SOR subparagraph 1.d - Item 7 at 3). Two debts, collectively totalling approximately \$11,500, are owed to credit card companies (SOR subparagraphs 1.a and 1.c), and the remaining debt is a medical bill for approximately \$500 (SOR subparagraph 1.b).

Applicant’s debts began growing delinquent in 2002. The record contains no evidence concerning the origins of Applicant’s financial delinquencies. He admitted that his home was foreclosed, but denies he is subject to liability for any deficiency. He provided a copy of a form that the lender filed with the Internal Revenue Service certifying that he is not liable for this debt (Item 4 at 11). I find that Applicant is not subject to liability for the deficiency.

Applicant satisfied SOR subparagraph 1.b in March 2009 (Item 4 at 10). He satisfied SOR subparagraph 1.c in August 2007 (Response at 2). In his Interrogatory Responses, he disclosed another delinquent account, owed to the creditor listed in SOR subparagraph 1.c, for approximately \$3,000. By May 2009, he had satisfied this debt (Response at 11).

The debt listed in SOR subparagraph 1.a remains outstanding. Applicant’s research of this debt has revealed that the original creditor is no longer the holder. Instead, successive assignees have purchased it over the years (Item 4 at 8). The fact that Applicant has worked continuously overseas for the past 18 months has hindered his efforts to locate the current holder of this debt.

Applicant earns approximately \$7,269 of net monthly income (Item 6 at 10). He has approximately \$5,400 in monthly, after-expense income, and approximately \$1,900 in investments (*Id.*).

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, they are applied together with the factors listed in the adjudicative process. According to AG ¶ 2(c), the entire process is a 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). Moreover, "an individual who is financially overextended is at risk of having to engage in illegal acts to generate funds" (*Id.*). Applicant's financial delinquencies trigger the application of AG ¶¶ 19(a), "inability or unwillingness to satisfy debts," and 19(c), "a history of not meeting financial obligations."

The record contains no evidence of the circumstances surrounding the accrual of Applicant's debt. He accrued at least one of the debts more than six years ago. Neither AG ¶ 20(a), "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," nor AG ¶ 20(b), "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" apply.

Applicant has satisfied two of the delinquencies completely. He is not legally responsible for the deficiency remaining from the home foreclosure. Although one debt remains outstanding, he has attempted to contact the current account holder to resolve it. He has ample discretionary income to satisfy this debt. Having addressed the other three obligations, I believe Applicant is likely to pay the remaining debt once he locates its holder. AG ¶¶ 20(c), ". . . there are clear indications that the problem is being resolved or is under control," and 20(d), "the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts," apply.

Whole Person Concept

Under the whole person concept, the administrative judge must evaluate an applicant's eligibility to occupy a sensitive position 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). They are as follows:

- (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 must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole person concept.

Although Applicant has satisfied two of the delinquencies, and is no longer responsible for a third, one remains outstanding. Also, I am concerned that the FORM provides no evidence regarding his accrual of the delinquencies. However, these concerns are outweighed by the positive factors in Applicant's favor - his diligent steps to resolve the outstanding delinquency, his disclosure and resolution of an unlisted debt, and his strong work ethic. Upon considering this case in light of the whole person concept, I conclude Applicant has mitigated the security concern.

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:	FOR APPLICANT
Subparagraphs 1.a - 1.d:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

MARC E. CURRY
Administrative Judge