



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 08-09126
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Jeff A. Nagel, Esquire, Department Counsel

For Applicant: *Pro se*

October 27, 2009

DECISION

ROSS, Wilford H., Administrative Judge:

Applicant submitted his Electronic Questionnaire for Investigation Processing (e-QIP), on March 3, 2008 (Government Exhibit 1). On February 12, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline F (Financial Considerations) concerning the 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 President Bush on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant submitted an Answer to the SOR on March 19, 2009, and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on June 10, 2009. I received the case assignment on June 11, 2008. DOHA issued a notice of hearing on July 1, 2009, and I convened the hearing as scheduled on July 28, 2009. The Government offered Government Exhibits 1 through 6, which were received

without objection. Applicant testified on his own behalf, and requested that the record stay open for presentation of additional information. The Applicant submitted Applicant's Exhibit A, which was received without objection. DOHA received the transcript of the hearing on August 7, 2009. The record closed on August 7, 2009. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

Findings of Fact

The Applicant is 55, and married. He is employed by a defense contractor and seeks to obtain a security clearance in connection with his employment.

Guideline F, Financial Considerations

The Government alleges that the Applicant is ineligible for clearance because he is financially overextended and therefore at risk of having to engage in illegal acts to generate funds. The Applicant admits allegations 1.a., 1.b., 1.c., 1.d., 1.e., 1.f., 1.g., 1.m., 1.n., 1.o., and 1.p. of the SOR. Those admissions are hereby deemed findings of fact. He denied allegations 1.h., 1.i., 1.j., 1.k., and 1.l.

1.a. The Applicant admits that he filed for Chapter 13 Bankruptcy protection on January 8, 2007. This bankruptcy was dismissed on February 28, 2007. According to the Applicant, he filed for bankruptcy because of a mistake by an escrow company. This escrow company failed to pay the second trust deed holder on a piece of property bought by the Applicant for his daughter. In order to prevent a foreclosure sale of the house, the Applicant filed for bankruptcy protection almost simultaneously with the escrow company issuing a check. The daughter failed to make future mortgage payments and the house was eventually subject to a foreclosure. (Government Exhibit 2 at 2-8; Applicant's Exhibit A at 12-18, 37-41; Transcript at 25-31, 59-61.)

1.b. The Applicant admits filing for Chapter 7 Bankruptcy protection in about July 1998. He was discharged of all dischargeable debts in November 1998. He filed this bankruptcy because his income was reduced due to a reduction in force at his employer. (Government Exhibit 2 at 10; Government Exhibit 3 at 4; Transcript at 31-33.)

1.c. The Applicant admits that he was indebted to an individual in the amount of \$723. This was the result of a lawsuit. The Applicant submitted documentation showing that this debt was paid. (Government Exhibit 2 at 11-12; Transcript at 33-34.) This allegation is found for the Applicant.

1.d. The Applicant admits that he is indebted to a loan company in the amount of \$2,582. This was the result of an automobile repossession and subsequent lawsuit. The Applicant has made no payments on this debt, and has no current plans to make payments on this debt. (Government Exhibit 2 at 13-14; Transcript at 35-39.)

1.e. The Applicant admitted that he is indebted to a medical provider in the amount of \$31. The Applicant alleged that he was making payments on this account through a hospital. (Government Exhibit 2 at 15; Transcript at 39-42.) The Applicant provided a credit report dated August 4, 2009. (ACR.) (Applicant's Exhibit A at 2-11.) That credit report showed the debt to this creditor as still being due and owing. (Applicant's Exhibit A at 6.) Based on all of the available evidence, I find that this debt has not been paid.

1.f. The Applicant admitted that he is indebted to a medical provider in the amount of \$3,143. The Applicant alleged that he was making payments on this account through a hospital. (Government Exhibit 2 at 15; Transcript at 39-42.) The Government's most recent credit report, dated July 28, 2009, showed the debt to this creditor as still being due and owing. (Government Exhibit 6 at 2.) Based on all of the available evidence, I find that this debt has not been paid.

1.g. The Applicant admitted that he is indebted to a medical provider in the amount of \$155. The Applicant alleged that he was making payments on this account through a hospital. (Government Exhibit 2 at 15; Transcript at 39-42.) The ACR showed the debt to this creditor as still being due and owing. (Applicant's Exhibit A at 5-6.) Based on all of the available evidence, I find that this debt has not been paid.

1.h. The Applicant denied owing a telephone company \$160 for a past due account. He testified that he had no knowledge of this account and was disputing this debt with the credit reporting agencies. (Transcript at 42-43.) The ACR actually shows four different collection agencies collecting separate debts for this telephone company. (Applicant's Exhibit A at 4-5.) The debt to the collection agency in this allegation of the SOR is stated to be \$424 in the ACR. The Applicant is stated to be a co-borrower on this account. (Applicant's Exhibit A at 5.) Based on all of the available evidence, I find that this is the Applicant's debt and that it has not been paid.

1.i. The Applicant denied owing a cable television company \$147 for a past due account. He testified that he had no knowledge of this account and was disputing this debt with the credit reporting agencies. (Transcript at 42-43.) The ACR actually shows two different past due accounts for this cable company, both with the same collection agency. (Applicant's Exhibit A at 6.) The second debt is stated to be in the amount of \$58 in the ACR. The Applicant is stated to be either a borrower or co-borrower on these accounts. Based on all of the available evidence, I find that this is the Applicant's debt and that it has not been paid.

1.j. The Applicant denied owing a credit card company \$413 for a past due account. He testified that he had no knowledge of this account and was disputing this debt with the credit reporting agencies. (Transcript at 42-43, 62.) The ACR shows this debt and states that the Applicant is a borrower on the account. (Applicant's Exhibit A at 5.) Based on all of the available evidence, I find that this is the Applicant's debt and that it has not been paid.

1.k. The Applicant denied owing a telephone company \$418 for a past due account. He testified that he had no knowledge of this account and was disputing this debt with the credit reporting agencies. (Transcript at 42-43.) As stated above, the ACR actually shows four different collection agencies collecting separate debts for this telephone company. (Applicant's Exhibit A at 4-5.) The ACR does not show a debt in this exact amount. However, based on all of the available evidence, I find that this is the Applicant's debt and that it has not been paid.

1.l. The Applicant admits that he owed a utility company \$676 for a past due debt. He stated that he had made a payment arrangement with the utility and was fulfilling his responsibility. The credit reports supplied by the Government and the Applicant show this as a paid, or paying, charge off. (Government Exhibit 6 at 2-3; Applicant's Exhibit A at 6, 32; Transcript at 45-46, 62-63.) This allegation is found for the Applicant.

1.m. The Applicant denies that he owes a loan company \$12,605 for a delinquent real estate loan. He states both of his houses have been foreclosed on and sold. Indeed, he alleges that this creditor sold the house for more than the deficiency and the Applicant is owed money. None of the documents the Applicant supplied support this version of events. The ACR, as well as other credit reports, shows this debt as being due and owing. (Government Exhibit 2 at 16; Government Exhibit 6 at 2; Applicant's Exhibit A at 4; Transcript at 46-49, 59-61.) Based on all of the available evidence, I find that this is the Applicant's debt and that it has not been paid.

1.n. The Applicant denies that he owes the Internal Revenue Service \$678 for back taxes. The available evidence shows that the Applicant had an earlier Federal tax lien released in the amount of \$5,163. However, none of the available evidence shows that the most current Federal tax lien has been paid or released. (Government Exhibit 3 at 3; Applicant's Exhibit A at 7, 31; Transcript at 49, 64-67.) Based on all of the available evidence, I find that this debt has not been paid.

1.o. The Applicant admits that he owed a collection agency the amount of \$4,941. He states that the company sued him, obtained a judgment, and that the judgment was satisfied. He submitted court documents, including an "Acknowledgment of Satisfaction of Judgment," that was filed by a different named creditor. The Applicant states that this is the same creditor, but did not submit any documentation in support of this statement. (Government Exhibit 2 at 18; Applicant's Exhibit A at 32-33; Transcript at 49-53.) Based on all of the available evidence, I find that this debt has not been paid.

1.p. The Applicant admits that he owes \$1,535 for a past due credit card account. The Applicant states that he is disputing the amount he owes. This account has not been paid, and the Applicant has no current plans to pay this debt. (Transcript at 53, 69.)

During his testimony, the Applicant was often unclear about the state of his financial affairs. As stated above, the documents he presented at the hearing, and afterwards, do not always support his version of events.

The ACR also shows additional delinquencies of the Applicant. There are at least eight debts showing as charge offs or collection accounts that are not specifically alleged in the SOR. (Applicant's Exhibit A at 4-6.)

Policies

Security clearance decisions are not made in a vacuum. 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 to be used as appropriate 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(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. In addition, the administrative judge may also rely on his own common sense, as well as his knowledge of the law, human nature, and the ways of the world, in making a reasoned 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. Security clearance 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.

Finally, as emphasized by President Eisenhower in Section 7 of Executive Order 10865, "Any determination under this order . . . shall be a determination 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" is potentially disqualifying. Similarly under AG ¶ 19(c), "a history of not meeting financial obligations" may raise security concerns. The Applicant, by his own admission, or as found by me, has over \$26,000.00 in past due debts, all of which have been due and owing for several years. The evidence is sufficient to raise these potentially disqualifying conditions.

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." The Applicant's financial difficulties are of a longstanding nature. As stated above, he has paid off several of his debts. However, the evidence is meager as to how he is going to pay his remaining past due debts. It is the Applicant's burden to submit evidence showing that his financial situation has improved. He has not done so. This mitigating condition is not applicable to this case.

The Applicant has barely initiated a good-faith effort to pay off his creditors. There is no track record of his making payments for a consistent period of time. Accordingly, AG ¶ 20(d) is not applicable. Finally, given the fact that he is at least \$26,000.00 in debt, I cannot find that "there are clear indications that the problem is being resolved or is under control," as required by AG ¶ 20(c).

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. 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. 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.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. The Applicant is under financial strain, and has been for several years. The most recent credit report in the record, supplied by the Applicant, shows additional past due debt which is not alleged by the Government. His debt situation is not yet under control. Under AG ¶ 2(a)(3), the Applicant's conduct is recent. Based on the state of the record, I cannot find that there have been permanent behavioral changes under AG ¶ 2(a)(6). Accordingly, at the present time, I find that there is the potential for pressure, coercion, exploitation, or duress (AG ¶ 2(a)8)), and that there is a high likelihood of recurrence (AG ¶ 2(a)9)).

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 the Applicant has not mitigated the security concerns arising from his financial situation at this time. If he continues to pay down his debts, and is able to document these payments, he may be eligible for a clearance in the future. He is not eligible now.

On balance, it is concluded that the Applicant has not successfully overcome the Government's case opposing his request for a DoD security clearance. Accordingly, the evidence supports a finding against the Applicant as to the factual and conclusionary allegations expressed in Paragraph 1 of the Government's Statement of Reasons.

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 THE APPLICANT
Subparagraph 1.a:	For the Applicant
Subparagraph 1.b:	For the Applicant
Subparagraph 1.c:	For the Applicant
Subparagraph 1.d:	Against the Applicant
Subparagraph 1.e:	Against the Applicant
Subparagraph 1.f:	Against the Applicant
Subparagraph 1.g:	Against the Applicant
Subparagraph 1.h:	Against the Applicant
Subparagraph 1.i:	Against the Applicant
Subparagraph 1.j:	Against the Applicant
Subparagraph 1.k:	Against the Applicant
Subparagraph 1.l:	For the Applicant
Subparagraph 1.m.:	Against the Applicant
Subparagraph 1.n:	Against the Applicant
Subparagraph 1.o:	Against the Applicant
Subparagraph 1.p:	Against the Applicant

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.

WILFORD H. ROSS
Administrative Judge