



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 08-09309
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Richard A. Stevens, Esquire, Department Counsel
For Applicant: *Pro se*

September 30, 2009

Decision

CURRY, Marc E., Administrative Judge:

Although there is some evidence demonstrating that Applicant is in the process of rehabilitating his finances, significant questions remain, rendering the issuance of a security clearance premature at this time. Clearance is denied.

On March 25, 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 April 17, 2009, admitting all of the allegations, and requesting an administrative determination. On July 30, 2009, Department Counsel prepared a File of Relevant Material (FORM). That day, DOHA mailed a copy of the

FORM to Applicant, and he received it on August 11, 2009, along with instructions to file any objections or supplementary information within 30 days. Applicant filed a written response on September 2, 2009, Department Counsel did not object, and the case was assigned to me on September 16, 2009.

Findings of Fact

Applicant is a 43-year-old man who has been married to his current wife since 2005. A previous marriage ended in divorce in 2002 (Item 5 at 13). Applicant has one child, age 17, from his prior marriage. Since 2007, Applicant has worked for a defense contractor as a material handler (Item 5 at 2). There is no record evidence of what his job duties entail.

Applicant has spent the majority of his career working as a self-employed roofer (Item 5 at 3-4). In 1995, he decided to pursue a career as a minister, and he enrolled in Bible college. From 1995 to 2000, he attended school part-time. By approximately 2000, Applicant had earned a minister's license (Item 4 at 3). Unbeknownst to Applicant, his wife did not support his planned career change (Item 7 at 3). In approximately 2001, she left their state of residence with their child, ostensibly to vacation, and never returned (*Id.*).

The subsequent divorce proceedings left Applicant saddled with debt related to the divorce, and debt that he and his wife had accrued jointly during their marriage. Shortly after administrators at the Bible college learned of Applicant's divorce, they revoked his minister's license (Item 4 at 3). He was then unable to earn part-time income as a minister.

By 2003, Applicant had accrued approximately \$86,000 of debt (Item 8 at 15). Nearly 75% of the debt constituted student loans, a federal tax lien, delinquent child support, and an insurance claim from a 1999 car accident (*see generally*, Item 8 at 21, 25, 46). On May 16, 2003, Applicant filed for Chapter 7 bankruptcy protection (Item 8 at 40). The bankruptcy court discharged approximately \$40,000 of debt (Item 9). This included all of the debts listed in the bankruptcy petition except the child support delinquency and the delinquent student loan payments (*Id.*).

After the bankruptcy discharge, Applicant began paying his child support and student loan payments steadily (Item 4 at 3). In 2005, Applicant remarried (*Id.*). Approximately a year later, Applicant's adult stepson, who was living in another state, died. Applicant then had to pay for the transport of the stepson's remains from the state where he had been living at the time of death, to the state where he was going to be buried (*Id.*). Applicant's student loan and child support payments again lapsed (*Id.*).

By June 2008, Applicant's child support delinquency was \$8,269. Since July 2008, he has been paying approximately \$300 monthly, through a wage garnishment, toward its satisfaction (Item 7 at 8-12; 14-16).

As of June 2008, Applicant's student loan delinquency totalled \$27,821 (Item 4 at 1). Between July and December of 2008, he made \$50 monthly payments (Item 7 at 6-7). Applicant contends that he has continued to make monthly \$50 payments, but provided no supporting documentation.

In March 2008, Applicant opened a cell phone account (Item 10 at 5). Within the next three months, the account became delinquent (Item 11 at 2). It remains outstanding.

Applicant maintains a budget (Item 7 at 4). He has approximately \$294 of monthly, after-expense income. He has not sought the assistance of a financial counselor (Item 6 at 3).

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. 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 history of financial problems triggers the application of AG ¶¶ 19(a), "inability or unwillingness to satisfy debts," and 19(c), "a history of not meeting financial obligations."

Applicant's financial problems coincided with the separation and subsequent divorce from his first wife. In 2003, he began addressing his financial delinquencies, obtaining a discharge of approximately \$40,000 of delinquent debt through the Chapter 7 bankruptcy process. By 2005, Applicant had remarried, and had begun stabilizing his finances when his stepson died, triggering unexpected burial expenses, and causing Applicant's financial problems to recur. Since July 2008, Applicant has been making monthly payments toward the satisfaction of the child support delinquency. I conclude he has resolved the security concern relating to his outstanding child support balance. Although Applicant failed to provide comprehensive documentary evidence supporting his contention that he has been making consistent student loan payments, from December 2008 to the present, he did provide receipts demonstrating six months of student loan payments between July and November of 2008. AG ¶¶ 20(b), "the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, business downturn, unexpected medical emergency, or a death, divorce, or separation), and the individual acted responsibly under the circumstances," and 20(d), "the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts," apply.

Applicant has never enrolled in financial counseling. Also, he has accrued an additional delinquency, a cell phone bill, within the last two years. Although he deserves credit for mitigating the security concern related to his outstanding child support, its probative value is somewhat limited because the payments occurred through a wage garnishment. Moreover, it remains unclear whether Applicant is currently making payments toward the satisfaction of his debt owed to the student loan creditor. AG ¶ 20(c), "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 inapplicable.

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.

Applicant's financial problems were not caused by reckless spending. Instead, they were caused by his separation and subsequent divorce from his first wife. Later, his ability to make steady payments toward the satisfaction of the debts that were not discharged through his 2003 bankruptcy was disrupted by the death of his stepson and the attendant burial expenses. The circumstances surrounding the accrual of Applicant's debt weigh in his favor.

I am not persuaded, however, that the circumstances surrounding the accrual of Applicant's debt outweigh the remaining concerns regarding whether Applicant has rehabilitated his finances. Nothing in the FORM suggests that Applicant is not credible. However, given the amount of the remaining student loan delinquency, his unsupported contention that he is currently making payments is insufficient to establish financial rehabilitation. Further, Applicant has accrued an additional delinquency within the past two years that he has yet to satisfy. Upon considering this case in the context of the whole person concept, I conclude Applicant failed to mitigate the financial considerations security concern. 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
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	For Applicant
Subparagraphs 1.c-1.d:	Against 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.

MARC E. CURRY
Administrative Judge