



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 08-09916
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Caroline H. Jeffreys, Esquire, Department Counsel

For Applicant: *Pro se*

September 18, 2009

DECISION

ROSS, Wilford H., Administrative Judge:

Applicant submitted his Questionnaire for National Security Positions (SF86), on October 22, 2007 (Item 3). On March 9, 2009, the Defense Office of Hearings and Appeals (DOHA) issued to the Applicant a Statement of Reasons (SOR) detailing the security concerns under Guideline F. 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 27, 2009, and requested a decision without a hearing. Department Counsel submitted a File of Relevant Material (FORM) to the Applicant on May 4, 2009. The Applicant received the FORM on July 4, 2009, and was given 30 days to submit any additional information. He submitted additional information on July 22, 2009. The Department Counsel had no objection to

this material and it is admitted into evidence as Applicant's Exhibit A. The case was assigned to me on July 31, 2009. Based upon a review of the case file, pleadings, and exhibits, eligibility for access to classified information is denied.

Findings of Fact

The Applicant is 30 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 denied subparagraphs 1.a., 1.c., and 1.j. The Applicant admitted all of the remaining allegations under this paragraph. Those admissions are hereby deemed findings of fact.

1.a. The Applicant denies that he is indebted to a collection agency in the amount of \$131 since 2006. Credit reports dated March 18, 2008 (Item 7 at 6), and February 12, 2009 (Item 6 at 1), support the existence of this debt. There is evidence that the Applicant disputed this debt to the credit reporting agencies, but he did not submit the result of this dispute. (Item 5 at 6.) Based on all of the available evidence, I find that this debt has not been paid.

1.b. The Applicant admits that he is indebted to a credit union in the amount of \$8,510 for a vehicle repossession. (Item 5 at 7; Item 6 at 2; Item 7 at 12.) This debt has not been paid.

1.c. The Applicant denies that he is indebted to a department store in the amount of \$3,539. Credit reports dated March 18, 2008 (Item 7 at 14), and February 12, 2009 (Item 6 at 2), support the existence of this debt. The Applicant submitted no information in support of his denial. Based on all of the available evidence, I find that this debt has not been paid.

1.d. The Applicant admits that he is indebted to a loan company in the amount of \$2,042. (Item 5 at 7; Item 6 at 2; Item 7 at 8.) This debt has not been paid.

1.e. The Applicant admits that he is indebted to another loan company in the amount of \$3,396. (Item 5 at 7; Item 6 at 2; Item 7 at 10.) This debt has not been paid.

1.f. The Applicant admits that he is indebted to a third loan company in the past due amount of at least \$627 as of February 12, 2009. (Item 5 at 6; Item 6 at 2; Item 7 at 5.) This debt has not been paid.

1.g. The Applicant admits that he is indebted to a bank in the past due amount of at least \$233 as of February 12, 2009. (Item 5 at 6; Item 6 at 2; Item 7 at 5.) This debt has not been paid.

1.h. The Applicant admits that he is indebted to a collection agency in the amount of \$6,689. (Item 7 at 6.) This debt has not been paid.

1.i. The Applicant admits that he is indebted to a bank in the past due amount of at least \$28. (Item 5 at 6; Item 6 at 2; Item 7 at 7.) This debt has not been paid.

1.j. The Applicant denies that he is indebted to a credit union in the amount of \$10,746 for a past due automobile loan. The Applicant provided a copy of the title to the automobile, showing that the credit union released their lien in October 2007. (Applicant's Exhibit A at 3.) Based on all of the available evidence, I find that the Applicant has paid this debt. This subparagraph is found for the Applicant.

1.k. The Applicant admits that he is indebted to a fourth loan company in the charged off amount of \$5,673. (Item 5 at 7; Item 6 at 2; Item 7 at 10.) This debt has not been paid.

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 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 over-arching 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, has approximately \$30,000 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.” Applicant’s financial difficulties arose primarily after 2002. He submitted evidence showing that he paid off a substantial debt concerning his automobile, but has not submitted any evidence showing that he has paid any of the other debts. The fact that the rest of the debts have been due and owing for so long is troubling. This mitigating condition is not applicable to this case.

The Applicant submitted no evidence showing that AG ¶ 20(b) is applicable. That condition states 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.”

The Applicant has not 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 approximately \$30,000.00 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).

Based on all of the available evidence, I cannot find that the Applicant has mitigated the allegations under this Guideline. Paragraph 1 is found against the Applicant.

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) in making such a decision:

- (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 has a history of not paying his debts. As set forth above, I cannot find that there have been permanent

behavioral changes under AG ¶ 2(a)(6). In addition, I find that there is the potential for pressure, coercion, exploitation, or duress (AG ¶2(a)(8)), and that there is a 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 considerations.

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.:	Against the Applicant
Subparagraph 1.b.:	Against the Applicant
Subparagraph 1.c.:	Against 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.:	For the Applicant
Subparagraph 1.k.:	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