



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----, -----) ISCR Case No. 08-10493
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Julie R. Mendez, Esquire, Department Counsel
For Applicant: *Pro Se*

July 9, 2009

Decision

WHITE, David M., Administrative Judge:

Applicant admitted owing more than \$43,000 in delinquent debts. He made no meaningful attempt to resolve any of these 19 debts, and provided insufficient evidence to mitigate resulting security concerns. Based upon a review of the case file, pleadings, and exhibits, eligibility for access to classified information is denied.

Applicant submitted his Electronic Questionnaires for Investigations Processing (e-QIP), on May 7, 2008. On April 2, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant, detailing security concerns under Guideline F.¹ 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.

¹Item 1.

Applicant answered the SOR in writing on April 14, 2009, and requested that his case be decided by an administrative judge on the written record without a hearing.² Department Counsel submitted the Government's written case on April 28, 2009. A complete copy of the file of relevant material (FORM)³ was provided to Applicant, and he was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of his receipt of the FORM.

Applicant signed the document acknowledging receipt of his copy of the FORM on May 4, 2009, and returned it to DOHA. He did not submit any additional information, and made no objection to consideration of any evidence submitted by Department Counsel, during the 30-day response period. I received the case assignment on June 17, 2009.

Findings of Fact

Applicant is a 51-year-old employee of a defense contractor. He was widowed in 2002, divorced in 2007, and currently lives with a woman in a long-term spouse-like relationship. He has seven adult step-children, none of whom reside with him. He has been employed in his present capacity since May 2008. He has no military service, and has never held a security clearance.⁴ In his response to the SOR, he admitted the truth of all the factual allegations in SOR ¶¶ 1.a through 1.s.⁵ Applicant's admissions, including those contained in his response to interrogatories,⁶ are incorporated in the following findings.

The 19 delinquent debts to which Applicant admitted in his SOR response totaled \$43,074. These debts are for various utility and medical services, as well as credit card accounts. They range in amount from \$52 to \$13,661, with six of them under \$150. Eight of the debts, totaling \$3,637, are medical bills. Applicant provided no proof of any payment toward, or agreement to repay any of these debts. During his June 6, 2008 interview with an investigator from the Office of Personnel Management (OPM), he said he was in the process of contacting each of his creditors to make arrangements to pay off his delinquent debts. On January 14, 2009, DOHA forwarded the financial interrogatories cited above to Applicant, asking him to document payment or the current status of his delinquent debts. In his February 17, 2009, response he submitted copies of nine letters to creditors, all dated February 5, 2009, asking them to contact him with arrangements he could make to work with them to repay the debts within the means he

²Item 3.

³The Government submitted seven items in support of the allegations.

⁴Item 4.

⁵Item 3.

⁶Item 7.

has available. These letters claimed his failure to pay the debts resulted from his unemployment and illness, without further elaboration.

Applicant is a designer. He worked for one company from August 1996 to March 2002. Although he reported that he had never been fired, or left a job under other unfavorable circumstances, his e-QIP reflected subsequent periods of unemployment from March to August 2002, April 2003 to January 2004, March to April 2004, April to June 2005, September to November 2005, June to September 2006, and September 2007 to March 2008. The only record evidence concerning illness is Applicant's e-QIP response to question 21, where he stated, "I have had the disease of schizophrenia since my late teens. I stay under a psychiatrist's care and take daily medication."⁷

Applicant's Personal Financial Statement indicated monthly net income of \$2,596, with expenses of \$2,493, leaving \$103 in "cushion and entertainment" funds. He claimed to own no assets.⁸ Applicant offered no evidence of credit or financial counseling. He offered no other evidence concerning his character, trustworthiness or responsibility. I was unable to evaluate his credibility, demeanor or character in person since he elected to have his case decided without a hearing.

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 to be used 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 common sense decision. According to AG ¶¶ 2(a) and 2(c), the entire process is a conscientious scrutiny of applicable guidelines in the context 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 "Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the 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.

⁷Item 4.

⁸Item 7.

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 the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision.” Section 7 of Executive Order 10865 provides: “Any determination under this order adverse to an applicant 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.”

A person applying for access to classified information seeks to enter 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.

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. Department Counsel cited AG ¶ 19(a), “inability or unwillingness to satisfy debts,” and AG ¶ 19(c), “a history of not meeting financial obligations,” and both are supported by this record. Applicant did not even show an effort to resolve any of his smaller delinquencies, and has insufficient monthly income to make meaningful payments toward his larger debts. He did not demonstrate the ability to pay these debts going forward. He has a history of not meeting his financial obligations and apparent inability to hold a job for long enough to avoid additional delinquencies. The evidence supporting these disqualifying conditions requires a closer examination and balancing of resulting security concerns with any potentially mitigating matters, and shifts the burden to Applicant to rebut, explain, extenuate or mitigate those concerns.

The guideline includes several conditions that could mitigate security concerns arising from financial difficulties. Under AG ¶ 20(a), disqualifying conditions 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 irresponsibility is recent and continues to date. He remains substantially in debt and his current financial situation precludes a finding that delinquent indebtedness is unlikely to recur. The evidence does not support application of this potentially mitigating condition.

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.” Applicant’s medical expenses arose from a chronic condition for which he has been under treatment for more than 30 years, and will continue to be into the foreseeable future. His medical delinquencies represent less than 10% of his bad debt. He did suffer about 30 months of unemployment between 2002 and 2008. However, he neither showed that these periods were beyond his control nor demonstrated that he responsibly reduced non-essential spending in reaction to them. Applicant has not established mitigation of any of his debts or his financial history as a whole under this provision.

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.” There is no evidence of financial counseling, nor of any meaningful efforts to resolve his delinquencies. The record is also devoid of evidence supporting his ability to repay more than \$43,000 in outstanding delinquent debts. Insufficient efforts have occurred to date to alleviate the substantial security concerns raised by the length and degree of financial irresponsibility that continues to date.

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 common sense 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. Applicant is a mature individual who is responsible for his choices and conduct. He presently has at least \$43,000 in debt, and did not meet his burden to prove an ongoing ability to repay it. None of his debt was shown to have arisen for reasons beyond his control. There is insufficient evidence to support a finding that such financial irresponsibility will not recur. His debts continue to create substantial potential for pressure, coercion, or duress. The record contains insufficient other evidence about his character or responsibility to mitigate these concerns, or tending to make their continuation less likely.

Overall, the record evidence creates substantial doubt as to Applicant's present eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated the security concerns arising from his history of not meeting his financial obligations and inability to satisfy his current debts.

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:	Against Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	Against Applicant
Subparagraph 1.f:	Against Applicant
Subparagraph 1.g:	Against Applicant
Subparagraph 1.h:	Against Applicant
Subparagraph 1.i:	Against Applicant
Subparagraph 1.j:	Against Applicant
Subparagraph 1.k:	Against Applicant
Subparagraph 1.l:	Against Applicant
Subparagraph 1.m:	Against Applicant
Subparagraph 1.n:	Against Applicant
Subparagraph 1.o:	Against Applicant
Subparagraph 1.p:	Against Applicant
Subparagraph 1.q:	Against Applicant
Subparagraph 1.r:	Against Applicant
Subparagraph 1.s:	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the interests of national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

DAVID M. WHITE
Administrative Judge