



**DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS**



In the matter of:)
)
) ISCR Case No. 08-10541
)
)
Applicant for Security Clearance)

Appearances

For Government: Ray Blank, Jr., Esquire, Department Counsel
For Applicant: *Pro Se*

August 7, 2009

Decision

ANTHONY, Joan Caton, Administrative Judge:

After a thorough review of the case file, pleadings, and exhibits, I conclude that Applicant failed to rebut or mitigate the Government's security concerns under Guideline F, Financial Considerations. His eligibility for a security clearance is denied.

Applicant submitted his Electronic Questionnaire for Investigations Processing (e-QIP) on May 2, 2008. On April 17, 2009, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing the 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.

On May 20, 2009, Applicant answered the SOR in writing and elected to have a hearing before an administrative judge. The case was assigned to me on June 9, 2009.

I convened a hearing on July 13, 2009, to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. The Government called no witnesses and introduced four exhibits, which were marked Ex. 1 through 4 and admitted to the record without objection. Applicant testified on his own behalf. He introduced no exhibits and called no witnesses.

At the conclusion of the hearing, I left the record open for one week, until close of business July 20, 2009, so that Applicant could provide additional information for the record. Applicant timely filed one exhibit for the record, which I marked as Ex. A, and admitted to the record, without objection. DOHA received the transcript (Tr.) of the hearing on July 17, 2009.

Findings of Fact

The SOR contains 11 allegations of disqualifying conduct under AG F, Financial Considerations (SOR ¶¶ 1.a. through 1.k.) In his Answer to the SOR, Applicant admitted nine of the allegations (¶¶ 1.a. through 1.i.); he denied two allegations (¶¶ 1.j. and 1.k.). Applicant's admissions are admitted as findings of fact. (Answer to SOR; Tr. 32-41.)

Applicant is 37 years old and employed as a physical security specialist by a government contractor. Since 1998, he has been continuously employed in security work and has worked for three different employers. When he took his current job in 2008, Applicant accepted pay that was slightly lower than what he had earned in his previous job because he wanted to work in a new area of security and develop new skills. (Ex. 1; Tr. 24-27.)

Applicant, who is married, is the father of two children. He and his wife are the parents of a five-year-old son. Applicant is also the father of a 14-year-old son who does not live in his household. Applicant pays child support of \$352 a month to the mother of his 14-year-old son. (Tr. 47, 49.)

In 1999, Applicant's father died. Applicant paid his father's debts, and, in doing so, failed to pay his own debts. He became financially overextended. In 2003, Applicant filed for Chapter 7 bankruptcy; he identified debts of \$9,900 and assets of about \$1,500. The bankruptcy court discharged his debts in December 2003. (SOR ¶ 1.a.; Answer to SOR; Tr. 27-29.)

In 2004 or 2005, Applicant and his wife separated, and, in 2005 or 2006, Applicant purchased a home with another woman. Applicant and the woman moved into the home and were jointly responsible for two mortgages placed on the property. The two mortgages totaled approximately \$300,000. Applicant and the woman lived in the home together for about three months. Then, they ended their relationship, Applicant moved out of the home, and he had no further contact with the woman. The mortgages were not paid, and the property went into foreclosure. Applicant made no effort to contact the mortgage lenders to arrange payment or to discuss forbearance. (SOR ¶¶ 1.f. and 1.g.; Tr. 29-34, 51-52.)

Applicant resumed his relationship with his wife, and he continued to experience financial difficulties. In addition to the two unpaid mortgages, Applicant admitted the following debts in collection status: a cell phone debt of \$981 (SOR ¶ 1.b.); a debt of \$3,107 to a creditor he could no longer identify (SOR ¶ 1.d.); a debt of \$981 to a collection agency (SOR ¶ 1.h.);¹ and an unpaid account of \$11,981 (SOR ¶ 1.i.). He had neither responded to nor contacted these creditors, and he had made no payments on the debts. (Tr. 34-41.)

Applicant also admitted the following debts in charged-off status: charges of \$1,026 for bad checks written to a bank account (SOR ¶ 1.c.) and \$11,911 owed to a creditor for failure to timely pay an automobile loan (SOR ¶ 1.e.).² He stated he had not made contact with the creditors to pay the debts or arrange payment plans. (Tr. 35-37, 40-41.)

Applicant denied a \$183 medical debt alleged at SOR ¶ 1.j. and claimed he had paid the debt. However, he failed to provide documentation to corroborate payment. (Tr. 41-42.)

Applicant also denied a debt of \$3,727, which was alleged at SOR ¶ 1.k. In his answer to the SOR, he claimed the debt had been discharged in his 2003 bankruptcy. At his hearing, he averred that the debt may not have been discharged in his bankruptcy. Applicant's credit report of May 2008 showed the delinquent account was opened in May 2007. He acknowledged he had not contacted the creditor for clarification of the status of the debt. (Answer to SOR; Ex. 4 at 6; Tr. 42-43.)

Applicant stated he had sought a second job to earn money to pay off his delinquent debts. He said he had been searching for a second job for over a year, with no success. Applicant also made an application for a debt consolidation loan, but he was denied because he had so many debts. (Tr. 35-36, 44-45.)

In his response to DOHA interrogatories, Applicant reported that his net monthly income was \$1,840. He reported net monthly expenses of \$1,442 and a net monthly remainder of \$400. (Ex. 2 at 4; Tr. 46-47.)

At his hearing, Applicant reported that he and his wife had separated again in May or June of 2009. Applicant and his wife no longer live together, and they are planning to divorce. Applicant now rents an apartment. Since the recent separation, he is responsible for paying half of the monthly support for his five-year-old son, an amount he estimates to be approximately \$400. With this new child care expense for his younger son, he no longer has a net monthly remainder. (Tr. 48-49, 54-55.)

¹ This debt appears to duplicate the debt alleged at SOR ¶ 1.b. (Ex. 4 at 4; Tr. 39-40.)

² Applicant stated that this debt duplicated the debt alleged at SOR ¶ 1.i. He identified this as an automobile loan that he was delinquent in paying. He stated that he still had possession of the automobile. (Tr. 36, 39, 40-41.)

Applicant's Deputy Program Manager and Quality Assurance Manager provided a joint letter of character reference for the record. They praised Applicant's dedication to duty, attention to detail, and "impressive display of skill and knowledge" in carrying out his work assignments. They noted that he took initiative and responsibility for additional assignments, exhibited professionalism, and was a valued member of the company's team. (Ex. A.)

Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security, and it has emphasized that "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information." *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant Applicant's eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.

When evaluating an applicant's suitability for a security clearance, an 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, the administrative judge applies these guidelines in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial and common sense 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.

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. 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.

Section 7 of Executive Order 10865 provides that decisions shall be “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. Additionally, under AG ¶ 19(e) security concerns are raised when an applicant demonstrates “consistent spending beyond [his] means, which may be indicated by excessive indebtedness, significant negative cash flow, high debt-to-income ratio, and/or other financial analysis.” Applicant, who has a history of not meeting his financial obligations, incurred substantial delinquent debt and was unable or unwilling to pay his creditors. These facts are sufficient to raise the three potentially disqualifying conditions identified above.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Several Guideline F mitigating conditions

could apply to the security concerns raised by Applicant's financial delinquencies. Unresolved financial delinquency might be mitigated if it "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." (AG ¶ 20(a)) Additionally, unresolved financial delinquency might be mitigated if "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." (AG ¶ 20(b)) Still other mitigating circumstances that might be applicable include 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" (AG ¶ 20(c)) or "the individual has initiated a good-faith effort to repay overdue creditors or otherwise resolve debts." (AG ¶ 20(d)) Finally, if "the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of options to resolve the issue," then AG ¶ 20(e) might apply.

Applicant admitted a history of financial difficulties that spanned the period from September 2003, when he filed for Chapter 7 bankruptcy, to the present time. Applicant used the legal tool of bankruptcy for relief from the debts he incurred when he paid his father's debts. However, he did not manage his financial affairs responsibly after he received the fresh start provided by the discharge of his debts.

Applicant has been continuously employed in full-time work in the security industry since 1998. His net income from his full-time job was approximately \$1,840 a month. He admitted that nine of the ten delinquencies alleged on the SOR remained unresolved, resulting in substantial debt which continues to the present day, a situation which raises concerns about Applicant's good judgment. He failed to provide documentation to support his assertion that his medical debt had been satisfied.

However, it should also be noted that the record supports a conclusion that two debts alleged on the SOR are duplicates. Applicant's credit report of May 2008 supports a conclusion that the \$981 cell phone debt alleged at SOR ¶ 1.h. duplicates the \$978 cell phone debt alleged at SOR ¶ 1.b. Additionally, the record also supports a conclusion that the \$11,911 debt alleged at SOR ¶ 1.i. duplicates the \$11,911 debt alleged at SOR ¶ 1.e.

Although Applicant sought a consolidation loan as a way to manage his debt, he was turned down because his debts were high and numerous. He did not seek any other means of debt resolution or counseling. He did not contact his creditors to arrange payment or settlement of his debts. While he did not dispute his debts and admitted that he was responsible for them, it was not clear that he understood his financial problems or how to resolve them. He had no plan in place to systematically resolve his substantial delinquent debt and prepare for future contingencies. I conclude that AG ¶ 20(a), AG ¶ 20(b), AG ¶ 20(c), AG ¶ 20(d), and AG 20(e) do not apply in mitigation to the facts of Applicant's case.

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.:	For Applicant
Subparagraph 1.i.:	For Applicant
Subparagraph 1.j.:	Against Applicant
Subparagraph 1.k.:	Against Applicant

Conclusion

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

Joan Caton Anthony
Administrative Judge