



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----, -----) ISCR Case No. 08-10798
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Melvin A. Howry, Esquire, Department Counsel
For Applicant: *Pro Se*

October 23, 2009

Decision

WHITE, David M., Administrative Judge:

Applicant owes more than \$27,600 in seven delinquent debts, including more than \$13,000 on his first mortgage loan. He began addressing some of the smaller debts right before and after his hearing, but has not yet established a track record of financial responsibility or solvency. He did not deliberately falsify his security clearance application. Based upon a thorough review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

Applicant submitted his security clearance application on April 7, 2008. On May 12, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines F and E. 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 (DoD) for SORs issued after September 1, 2006. Applicant

acknowledged receipt of the SOR on May 21, 2009. He answered the SOR in writing (AR) on May 28, 2009, and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on June 19, 2009, and DOHA assigned the case to me on the same day.

DOHA issued a Notice of Hearing on June 23, 2009, and I convened the hearing as scheduled on July 7, 2009. Department Counsel offered Government Exhibits (GE) 1 through 8, which were admitted without objection. Applicant testified on his own behalf, and offered Applicant's Exhibits (AE) A through H, which were also admitted without objection. I granted Applicant's request to leave the record open until July 21, 2009, for submission of additional evidence. On that date, Department Counsel forwarded 18 additional documents that were submitted by Applicant with no objection to their admissibility. This evidence was marked AE I, and admitted. DOHA received the transcript of the hearing (Tr.) on July 15, 2009.

Findings of Fact

Applicant is a 50-year-old employee of a federal contractor, where he has worked for a year and a half as a recruiter. In his answer to the SOR, he admitted the truth of the allegations in SOR ¶¶ 1.a through 1.f, with explanations, and denied the allegations in SOR ¶¶ 1.g through 1.i, and 2.a. Applicant's admissions are incorporated into the following findings of fact.

Applicant is married with three children, ages 24, 16, and 4. He held a security clearance for most of his 25-year enlisted career in the Army, which ended in 2002. He retired as a first sergeant (E-8), and earned five Meritorious Service Medals, three Army Commendation Medals, three Army Achievement Medals, and eight Army Good Conduct Medals during his career. (GE 1 at 15, 18-19; AE I doc 4; Tr. at 57-58.)

Until recent marital problems arose, his wife handled the family finances and was responsible for paying their bills. He earned more than \$100,000 per year with a different defense contractor until about September 2007, when that company lost its contract. Since then, his income (exclusive of retirement pay) has been around \$45,000 per year. His wife formerly earned about \$35,000 per year, but left her job and currently receives \$1,200 per month in unemployment compensation. (Tr. at 40, 44, 58-60, 63, 67-72.)

The delinquent government credit card account described in SOR ¶ 1.a has a \$6,500 limit, and the balance has been consistently between \$6,500 and \$7,000 since at least April 2008. The account was reported to be as much as five months past due during late 2007, was briefly brought current in early 2008, but has been continuously delinquent since February 2008. Applicant is being garnished \$345 per month from his retirement pay for this debt. His July 2009 account statement showed a balance of \$6,405, with the past-due amount of \$1,077. (GE 2 through 7; AE I docs 8 and 9; Tr. at 45-48.)

The debts alleged in SOR ¶¶ 1.b and 1.c are the first and second mortgages on Applicant's home. His wife failed to make a number of payments toward these loans without Applicant's knowledge. In April 2008, the loans were two months and four months delinquent respectively. By April 2009, the first mortgage was seven months past due, in the amount of \$11,868, and the second mortgage was four months (\$2,252) past due. Applicant made some payments toward these debts between February and July 2009. An \$810 payment on June 1 brought the second mortgage current except for the June and July 2009 payments. He made another \$600 payment on July 1, 2009, so that loan was only one month delinquent at that point. However, his first mortgage fell further behind to be eight months delinquent in the amount of \$13,620. He made a \$1,900 payment on July 1, 2009, to prevent it from falling further behind. Applicant is attempting to renegotiate the terms of his first mortgage because he cannot otherwise afford to bring it into a current status. (GE 2; GE 6; GE 7; AE H; AE I docs 15, 16, 17; AR at 1; Tr. at 40-44, 48-51.)

The debt alleged in SOR ¶ 1.d was a \$195 medical bill that became delinquent in March 2005, and was placed for collection in December 2007. Applicant settled this debt with the creditor on July 2, 2009, by making a payment of \$222.75. However, the payment of this check brought his checking account to a negative \$1,195 balance. Additionally, Applicant's account statement reflects six ATM cash withdrawals between July 3 and July 6, 2009. These withdrawals, four of which were at a local casino, totaled \$980 and incurred an additional \$133 in overdraft and transaction fees. (AE F; AE G; AE I doc 6; Tr. at 38-39, 51-52.)

The SOR ¶ 1.e debt is another medical bill that became delinquent in May 2006, which Applicant attributes to services received by his adult daughter. He finally acknowledged that he should pay it, however. He agreed with the collection agency to settle the debt for \$293.37 on June 30, 2009, but did not make that payment. (AR at 1; GE 7 at 2; AE E; AE I doc 7; Tr. at 52-53.)

The \$1,617 debt alleged in SOR ¶ 1.f was for dental services Applicant received after being told it would be covered by his insurance. It was not covered, and the debt became delinquent in March 2007. In his response to the SOR, he said he had made arrangements to take care of the debt, without further elaboration. During the hearing, he said he was disputing the debt, and had a court date to resolve the dispute on July 9, 2009. His post-hearing evidence submission included a July 10, 2009, letter from the collection agency referencing a judgment number and setting forth a total judgment debt of \$1,886.29. The letter detailed an agreed payment plan requiring Applicant to pay \$170 per month for 12 months beginning August 1, 2009. (GE 7 at 1; AR at 1; AE I doc 5; Tr. at 53-54.)

The \$2,433 debt alleged in SOR ¶ 1.g involves a charged off credit card account. In his response to the SOR, Applicant said he had never had an account with this creditor, and was disputing the listing with the three credit bureaus. Page 1 of AE A reflects a response from one credit bureau that his dispute of a debt to this creditor with an unknown account number could not be located. Page 2 of AE A and AE D (as well

as GE 2 at 16 and GE 3 at 2) reflect that Applicant resolved a different delinquent account with this creditor by payments through a financial counseling program. That account had been opened in 1998 and was paid and closed in October 2002. The SOR ¶ 1.g account was opened in November 2003, and became delinquent in August 2007. (GE 2 at 20, GE 3 at 2.) Applicant provided no evidence of any action to address or resolve this newer charged-off account.

Applicant successfully challenged the debt alleged in SOR ¶ 1.h, and it has been removed from his credit reports. (GE 7; AE I docs 11, 12, 13; Tr. at 54.) Although his SOR response claimed the ¶ 1.i debt, in the amount of \$2,413, was a case of identity fraud, he admitted during the hearing that it was a legitimate obligation incurred by his wife in his name. He disputed it with the credit bureaus at the same time as the disputes discussed above, but the debt was confirmed to have been delinquent since December 2004. He has made some informal arrangements with his wife and mother-in-law concerning repayment of this debt, but has not made any contact with the creditor to resolve it. (GE 7 at 3; AE C; Tr. at 41, 55.)

One week after his hearing, Applicant joined a credit counseling service. They prepared a budget for him reflecting regular monthly income of \$7,063 and expenses of \$6,815, leaving a surplus of \$248. He agreed to pay the service \$240 per month into a debt management plan (DMP) starting July 20, 2009, and to make 25 monthly payments ending in August 2011. The DMP only includes payments toward the delinquent debts alleged in SOR ¶¶ 1.e, 1.f, and 1.i, and makes no provision for repayment of his mortgage delinquencies, the ¶ 1.g credit card debt, or more than the garnishment toward the ¶ 1.a debt. (AE I doc 18.)

Applicant testified, and his wife corroborated, that he was unaware of their delinquent debts when he answered “no” to questions 28a and 28b on his security clearance application. He did not learn about these debts until January 2009, when she temporarily left him. (AR at 2; AE H; Tr. at 36-38, 40-44, 58.) He served as a recruiter for many years, and is fully aware of the obligation to truthfully disclose financial matters on the application. In that regard, he added an “additional comment” on the final page of his application that said, “I have been late on bills before several times in my life.” (GE 1 at 31.) Applicant’s demeanor while denying the alleged falsification of financial information was sincere and forthright.

Applicant submitted letters from three coworkers attesting to his trustworthiness, competence, and communication skills. They each described him as a valuable asset to the military and highly recommended that he be granted a security clearance. (AE I at 1 through 3.) He is well educated, mature, and performs his job with excellence.

Policies

When evaluating an applicant’s suitability for a security clearance, the administrative judge must consider and apply 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 AG ¶ 2, describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial and commonsense decision. According to AG ¶¶ 2(a) and (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 "[a]ny 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 in 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, "[t]he 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, "[a]ny 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

AG ¶ 18 expresses the security concern pertaining to financial considerations:

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 over-extended is at risk of having to engage in illegal acts to generate funds. Compulsive gambling is a concern as it may lead to financial crimes including espionage. Affluence that cannot be explained by known sources of income is also a security concern. It may indicate proceeds from financially profitable criminal acts.

AG ¶ 19 describes conditions that could raise a security concern and may be disqualifying. Department Counsel asserted the applicability of two of these potentially disqualifying conditions: "(a) inability or unwillingness to satisfy debts;" and "(c) a history of not meeting financial obligations." (Tr. at 19.) Over the past five years, Applicant has accumulated multiple delinquent debts that totaled approximately \$27,600 at the time of his hearing. He successfully disputed one relatively minor SOR-listed debt, and paid a second one, albeit by overdrawing his checking account. However, his financial inability or unwillingness to pay seven substantial remaining delinquencies supports ongoing security concerns under AG ¶ 19(a). He is under continuing financial duress, so remains at risk of having to engage in illegal acts to generate funds. The evidence further established a five-year history of not meeting some significant financial obligations, raising security concerns under AG ¶ 19(c). This history potentially indicates poor self-control, lack of judgment, and unwillingness to abide by rules and regulations, thereby raising questions about his reliability, trustworthiness, and ability to protect classified information.

AG ¶ 20 provides conditions that could mitigate security concerns arising from financial considerations. The potentially applicable mitigating conditions are:

- (a) 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;
- (b) 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;
- (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;
- (d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and

(e) 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 actions to resolve the issue.

AG ¶¶ 20(a) and (b) were not established because Applicant's delinquencies resulted from continuing to spend more than he was earning after a job change resulted in reduced family income. Substantial delinquencies continue to date, with no demonstrated means available to resolve them. The fact that he was unaware of the specifics of some delinquencies directly caused by his wife's failure to pay some bills neither restores confidence in his good judgment nor establishes that he acted responsibly under the circumstances. His payment of the \$195 debt alleged in SOR ¶ 1.d was made by overdrawing his checking account. Applicant received some financial counseling a week after his hearing, but the resulting debt management plan addresses less than half of his delinquent debt and no actual payment under the plan was proven. While these are steps in the right direction, meaningful mitigation is not yet established under AG ¶¶ 20(c) or (d).

Finally, Applicant successfully disputed the debt alleged in SOR ¶ 1.h. However, the evidence he provided concerning SOR ¶ 1.g involved an earlier debt to the same creditor and did not substantiate a legitimate basis for dispute. He was also in the process of disputing the legitimacy of the debt alleged in SOR ¶ 1.f on his hearing date, but AE I doc 5 showed that this dispute resulted in a judgment against him. AG ¶ 20(e) thus provides mitigation of only the \$424 debt alleged in SOR ¶ 1.h.

Guideline E, Personal Conduct

AG ¶ 15 expresses the security concern pertaining to personal conduct:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

The following will normally result in an unfavorable clearance action or administrative termination of further processing for clearance eligibility:

(a) refusal, or failure without reasonable cause, to undergo or cooperate with security processing, including but not limited to meeting with a security investigator for subject interview, completing security forms or releases, and cooperation with medical or psychological evaluation;

(b) refusal to provide full, frank and truthful answers to lawful questions of investigators, security officials, or other official representatives in connection with a personnel security or trustworthiness determination.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. The potentially disqualifying condition alleged in this case is:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities.

Applicant denied that he deliberately or knowingly omitted, concealed or falsified relevant financial information on his security clearance information when he incorrectly answered “no” to questions 28a and 28b. He proved by a preponderance of the evidence that he did not know about these debts at the time, and further established his good-faith effort to be forthcoming by adding a comment that he had encountered financial delinquencies in the past. The record does not support application of AG ¶ 16(a), nor does it raise any personal conduct security concerns independent of those that overlap duplicate reliability and trustworthiness issues arising under Guideline F.

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 relevant 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 commonsense judgment based upon careful consideration of the applicable guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all the pertinent facts and circumstances surrounding this case. Applicant’s conduct of security concern was incurring eight delinquent debts which totaled \$27,942 when the

SOR was issued. By the time of his hearing, one \$195 debt had been paid by overdrawing his checking account, and the remaining seven delinquent debts still totaled more than \$27,600. While he was unaware of the delinquent debts when he completed his security clearance application in April 2008, he became aware of the problems in January 2009 but did nothing to address or resolve any of them until he received the SOR. His actions since that time have begun to address the resulting security concerns, but he has not yet established a good-faith track record of financial responsibility or permanent behavioral changes. Moreover, the record demonstrates his ongoing inability to address the majority of his delinquent debt, including the first mortgage on his home that is now eight months and more than \$13,000 delinquent. The resulting threat to his family home exacerbates the potential for pressure, coercion, and duress over that normally arising from unsecured consumer debts of an equivalent amount. Applicant exhibited an incomplete understanding of his financial situation and failed to demonstrate that his financial problems are unlikely to continue or worsen.

Applicant has a long record of excellent and honorable service to the national defense, and is highly regarded by those with whom he serves. On balance, however, he presented insufficient evidence to mitigate security concerns arising from his history of failing to meet financial obligations, and his inability or unwillingness to pay his substantial delinquent debts. The record generates significant doubt as to his present eligibility and suitability for a security clearance. Applicant rebutted personal conduct security concerns, but did not mitigate security concerns related to his financial considerations.

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:	For Applicant
Subparagraph 1.e:	Against Applicant
Subparagraph 1.f:	Against Applicant
Subparagraph 1.g:	Against Applicant
Subparagraph 1.h:	For Applicant
Subparagraph 1.i:	Against Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraph 2.a:	For 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