



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 08-10940
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Jennifer I. Goldstein, Esquire, Department Counsel
For Applicant: *Pro se*

February 26, 2010

Decision

CURRY, Marc E., Administrative Judge:

Applicant failed to mitigate the government’s security concerns raised under Guideline F, Financial Considerations. Clearance is denied.

On September 2, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing 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 the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

On September 30, 2009, Applicant answered the SOR, denied all of the allegations except SOR subparagraph 1.a, and requested an administrative determination. On October 21, 2009, Department Counsel prepared a File of Relevant Material (FORM), and DOHA mailed it to Applicant. He received it on October 27, 2009,

along with instructions to file any objections or supplementary information within 30 days. Applicant prepared a written response within the allotted time, and Department Counsel had no objection. The case was assigned to me on December 14, 2009.

Findings of Fact

Applicant is a 46-year-old married man with three adult children. After graduating from high school in 1982, he joined the United States (U.S.) Air Force, where he served for 21 years through his retirement in 2003 (Item 4 at 10). Since 2003, he has been working as a security guard for a defense contractor (*Id.*).

Applicant has four delinquent debts, as listed in the SOR, totalling approximately \$245,000. SOR subparagraph 1.a is a dental bill in the amount of \$1,974. Applicant disputes this account contending that he paid the copayment, as required, but that his dental insurance provider failed to pay the remainder (Item 4 at 31). When Applicant contacted his insurer, he was informed that they were waiting to receive copies of x-rays from his dentist before they would pay the remainder (Item 2 at 3). Applicant's dentist never provided copies of the x-rays to the insurance provider, as Applicant requested (*Id.*). Applicant did not provide any documentation supporting his dispute.

SOR subparagraph 1.b is Applicant's home mortgage that the bank foreclosed upon. The date of the foreclosure is unknown from the record. Also, it is unclear whether the amount listed in the SOR (\$227,000) is the mortgage balance or the deficiency. Applicant fell behind on his mortgage after the monthly payment increased, per the terms of the loan, from \$1,765 to \$2,495 monthly (Item 2 at 3). At or about the time Applicant's mortgage payment increased, one of his children incurred a major medical bill (Item 4 at 33).

Applicant unsuccessfully attempted to negotiate a reduced monthly mortgage payment. He then used money borrowed from his 401(k) account to make mortgage payments. Ultimately, Applicant was unable to prevent the bank from foreclosing on his home. Applicant provided no evidence of the current status of the delinquency.

SOR subparagraph 1.c is a credit card account that became delinquent in November 2008 (Item 8 at 6). As of the SOR date, the balance was \$8,250. Applicant contends he has been making monthly payments debited from his military retirement account (Item 3 at 2). The evidence he provided in support of his contention (Item 3 at 5) is inconclusive.

SOR subparagraph 1.d is a delinquent credit card account in the amount of \$8,000. Applicant contends that he satisfied the account in August 2009 (Item 3 at 3). The evidence he provided indicates he made a \$300 payment in February 2009, but is inconclusive as to whether he made any other payments (*Id.*).

Applicant maintains a budget. He has approximately \$1,529 of after-expense income, and \$21,000 in his 401(k) plan (Item 5 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.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied together with the factors listed in the adjudicative process. 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 for obtaining a favorable security decision.

Analysis

Guideline F, Financial Considerations

Under this guideline, "[f]ailure 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 delinquencies triggers the application of AG ¶ 19(a), "inability or unwillingness to satisfy debts," and AG ¶ 19(c), "a history of not meeting financial obligations."

Applicant's most significant delinquency is the mortgage balance from his foreclosed home. The escalation of Applicant's adjustable rate mortgage on this home occurred at or about the same time a major medical bill for one of his children became due. Applicant took multiple steps to avoid foreclosure including negotiating with the lender and borrowing money from his 401(k) to make payments. Although these efforts were unsuccessful, they are sufficient to trigger the application of AG ¶ 20(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."

Applicant's dispute with his dental insurance provider, which is the source of the delinquency alleged in SOR subparagraph 1.a, is credible. However, Applicant failed to either "provide documented proof to substantiate the basis of the dispute or provide evidence of actions to resolve the issue," as required for AG ¶ 20(e) to apply.

Similarly, Applicant did not provide sufficient evidence to support his contention that he is satisfying the delinquency listed in SOR subparagraph 1.c, and that he has satisfied the delinquency listed in SOR subparagraph 1.d. Consequently, none of the other mitigating conditions apply.

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.

Absent sufficient proof that Applicant has rehabilitated his finances, the likelihood that his financial problems will continue is unacceptably high. Upon considering this case in the context of the whole person concept, I conclude Applicant's troubled finances continue to render him a security risk.

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:

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|---------------------------|-------------------|
| Paragraph 1, Guideline F: | AGAINST APPLICANT |
| Subparagraphs 1.a - 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