



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----, -----) ISCR Case No. 08-11175
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Daniel F. Crowley, Esquire, Department Counsel
For Applicant: *Pro Se*

December 23, 2009

Decision

WHITE, David M., Administrative Judge:

Applicant had Chapter 13 bankruptcies dismissed in September 1999 and June 2000. He filed for Chapter 7 bankruptcy relief in February 2001, resulting in a discharge in July 2002. Since then he has incurred additional delinquencies, three of which he settled very recently. Applicant failed to demonstrate ongoing solvency or otherwise mitigate security concerns. Based upon a review of the case file, pleadings, and exhibits, eligibility for access to classified information is denied.

Applicant submitted a security clearance application on July 18, 2008.¹ On May 27, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant, detailing security concerns under Guideline F (Financial Considerations).² 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*

¹Item 4.

²Item 1.

Program (January 2, 1992), as amended (Directive); and the revised adjudicative guidelines promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant answered the SOR in writing on June 25, 2009, and requested that his case be decided by an administrative judge on the written record without a hearing.³ Department Counsel submitted the Government's written case on August 6, 2009. A complete copy of the file of relevant material (FORM)⁴ 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 August 14, 2009, and returned it to DOHA. On September 9, 2009, he submitted additional evidence for consideration with a letter, which contained no objection to consideration of any evidence submitted by Department Counsel. On September 19, 2009, Department Counsel initialed a memorandum to indicate that he did not object to the admissibility into evidence and consideration of the materials submitted by Applicant. I received the case assignment on September 28, 2009.

Findings of Fact

Applicant is a 58-year-old employee of a defense contractor, where he began working on contract in August 2004, and then was hired full-time in January 2005. He has no military service, and has never held a security clearance. He is married with two adult children.⁵ In his response to the SOR, he formally admitted each allegation except one debt that he disputed. Applicant's admissions, including his statements in response to the FORM, are incorporated in the following findings.

In his February 18, 2009, response to DOHA interrogatories, Applicant stated that he and his wife were both airline employees and doing well financially until being laid off in the industry downturn following the September 11, 2001, terrorist attacks. His employment and bankruptcy history contradict this explanation. He worked as a manager for a regional airline from 1998 to 1999, when he was held responsible for lost aircraft parts and fired. After about a month of unemployment, he worked for four months as a temporary employee through a staffing agency. He was then hired as a transportation manager by another aviation company. He worked there for three years before he was held responsible for an accident involving another employee driving a company vehicle after hours, and again lost his job. He remained unemployed from August 2002 until March 2003, when he began managing a concession stand at his

³Item 2.

⁴The Government submitted eight ~~items~~ items in support of the SOR allegations.

⁵

Item 4 at 6, 12-13, 21, 26-27, 29, 35. Applicant did hold a U.S. Customs clearance to access controlled areas of his local international airport in connection with his air freight duties for international flights in 1996.

local major league baseball stadium, a job he performed from March through September of each year through 2007. In September 2003, he was hired as a manager for a vending company, but left that job two months later due to disagreements with the owner over management decisions. He finally regained full-time employment with his current company in August 2004, having lived on temporary work, unemployment compensation, and charitable contributions from food banks and his church for much of the preceding two years.⁶

Applicant filed for Chapter 13 bankruptcy relief in July 1999, but soon fired his attorney and the court dismissed his case in September 1999. He hired another attorney and again filed for Chapter 13 protection in November 1999. This case was dismissed in June 2000, for reasons that are not revealed by the record evidence. Applicant said that the case was converted to a Chapter 7 bankruptcy proceeding on advice of his attorney. His credit report shows that his Chapter 7 petition was filed in February 2001, and his debts were discharged in July 2002. In the process, his mortgage lender foreclosed on his home. Records indicate that this creditor, or an affiliate, purchased the home in May 2003 for more than the outstanding balance on the mortgage, resolving that debt. The SOR ¶ 1.i. allegation, concerning the outstanding balance on the mortgage loan, is supported only by a credit bureau report dated August 1, 2008, that reflects an April 2003 listing by the creditor stating that foreclosure proceedings had started. His later credit reports do not reflect any post-foreclosure debt to that creditor.⁷

Department Counsel agreed with Applicant's contention in his SOR response that the debts alleged in SOR ¶¶ 1.d. and 1.i. are duplicate listings of the same \$87 cell phone bill that went to collections in 2007. Applicant claimed in his June 2009 SOR response that this bill had been paid. In his September 9, 2009, response to the FORM, he also claimed it had been "paid in full as stated on the attached document." That document is an August 25, 2009, letter from a collection attorney stating that an account with the same creditor is paid. The letter, however, does not reflect the amount of the debt and cites an account number different from that reported on all the record credit reports for the alleged debt. The September 8, 2009, credit report Applicant submitted with his FORM response continues to reflect the alleged debt as unpaid.⁸

Applicant has not made any payments toward, or other arrangements to resolve the \$1,291 delinquent debt that he admitted owing as alleged in SOR ¶ 1.e. He denied owing the \$1,404 debt alleged in SOR ¶ 1.f., stating that he had contacted a representative of the creditor who could not locate a record of the account. However, Applicant admitted during his September 2008 interview with an Office of Personnel Management (OPM) investigator that he opened this account in 2003 and let it become delinquent after using the credit to pay other bills while unemployed. The account was

⁶Item 7 at 35; Item 4 at 12-19, 32-33.

⁷Item 2 at 1; Item 5; Item 6 at 10; Item 7 at 32; Item 8.

⁸Item 2 at 1; Item 6 at 14; Item 8 at 1; FORM response at 1, 13.

charged off by the creditor, and is still reported on each of the credit reports in the record.⁹

Applicant submitted documentation with his response to the FORM that he fully resolved the \$43 medical debt alleged in SOR ¶ 1.g., the \$452 medical debt alleged in SOR ¶ 1.j., and the \$1,070 bank debt alleged in SOR ¶ 1.k. The documents confirming acceptance of final payments on the medical accounts were dated September 9, 2009, and the bank debt receipt was dated August 31, 2009.¹⁰

Applicant said he is making monthly \$50 payments toward the \$2,690 student loan debt alleged in SOR ¶ 1.h. His credit reports show payments toward one such loan that is now current, but also reflect another account that remains delinquent. Applicant submitted insufficient evidence to permit a determination that these accounts are the same, or that he is not still delinquent on the alleged debt.¹¹

Applicant submitted insufficient evidence about his current income, living expenses, or ability to resolve his remaining delinquent debts and avoid incurring additional ones. He provided no evidence concerning the quality of his recent professional performance, the level of responsibility his duties entail, or his track record with respect to handling sensitive information and observation of security procedures. He submitted no character references or other evidence tending to establish good judgment, trustworthiness, or reliability. 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 (DCs) and mitigating conditions (MCs), 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 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.

⁹Item 2 at 1, 2; Item 6 at 8; Item 7 at 30; Item 8 at 2; FORM Response at 1, 3.

¹⁰FORM Response at 1, 18, 21-23.

¹¹Item 2 at 2; Item 6 at 8, 10, 13; Item 8 at 2; FORM response at 1, 9-12.

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 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, “[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

The security concerns relating to the guideline for financial considerations are 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.

Department Counsel argued that the evidence established security concerns under four Guideline F DCs, as set forth in AG ¶ 19:

(a) inability or unwillingness to satisfy debts;

(b) indebtedness caused by frivolous or irresponsible spending and the absence of any evidence of willingness or intent to pay the debt or establish a realistic plan to pay the debt;

(c) a history of not meeting financial obligations; and

(e) consistent spending beyond one's means, which may be indicated by excessive indebtedness, significant negative cash flow, high debt-to-income ratio, and/or other financial analysis.¹²

Applicant has been unwilling and unable to satisfy several of his delinquent debts and only recently resolved a few in response to the proposed denial of his desired security clearance. Applicant did not meet his burden to demonstrate resolution of the debts alleged in SOR ¶¶ 1.d., e., f., and h., totaling \$5,472. He was also unable to satisfy his debts from 1999 to 2002, resulting in several bankruptcy filings. DC 19(a) is clearly established.

The evidence is insufficient to establish DC 19(b), in that Applicant's delinquencies primarily arose during the periods when he was attempting to support his family while unable to find or remain in full-time employment. I cannot confidently infer frivolous or irresponsible spending from the mere existence of this relatively modest amount of delinquent debt under such circumstances, and the record is devoid of other evidence that would demonstrate such spending.

Applicant has demonstrated a ten-year history of not meeting financial obligations, including a pattern of borrowing and spending beyond his means even after the discharge of his former debt through his Chapter 7 bankruptcy in 2002. Security concerns under DC 19(c) are also supported on this record.

Applicant regularly spent beyond his means from at least 1999 to August 2004, while he began working for his current employer. DC 19(e) thus applied during that period of time, when he lost his home to foreclosure and other delinquencies kept mounting. Only a few minor new delinquencies could be considered to have arisen since that period based on credit reports in the record, and those are insufficient to demonstrate any consistent spending beyond Applicant's means since late 2004. Accordingly, DC 19(e) supports no present security concerns independent of those arising under DC 19(a) and (c), as discussed above. The evidence supporting these two 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 in AG ¶ 20. Under MC 20(a), disqualifying conditions may be mitigated where "the behavior happened so long ago, was so infrequent, or

¹²FORM at 4.

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, involves numerous creditors, and continues to date. He remains substantially in debt, and he provided insufficient evidence concerning his current financial situation that would support a finding that delinquent indebtedness is unlikely to recur. The evidence does not support application of this potentially mitigating condition.

Under MC 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 suffered several years of under-employment after being fired or released for cause from several jobs in 1999, 2002, and 2003. He offered no evidence that these job losses were unjust or not his fault. He also did not demonstrate that he responsibly reduced non-essential spending in reaction to his mounting debts. The evidence indicates that Applicant chose to continue borrowing money on credit that he knew he could not repay, even after having earlier debts discharged through bankruptcy in 2002. Although fully employed since August 2004, Applicant did not address any of the SOR-listed delinquencies until mid-2009. He has not established mitigation of his presently delinquent debts, or of 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 MC 20(c). Similarly, MC 20(d) applies where the evidence shows "the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts." Applicant demonstrated the beginning stages of mitigation under these two provisions through his recent resolution of several delinquent debts. However, the absence of evidence demonstrating his current solvency or ability to resolve the remaining delinquencies precludes present findings of "clear indications that the problem is being resolved or is under control," or "a good-faith effort." His pattern of incurring additional delinquent debt, after two unsuccessful Chapter 13 bankruptcies led to Chapter 7 discharge in 2002, casts further doubt in that regard. Insufficient evidence was presented 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 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 guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all the relevant facts and circumstances surrounding this case. Applicant is a mature individual who is responsible for his voluntary choices and conduct that underlie the security concerns expressed in the SOR. He established a consistent pattern of financial irresponsibility dating back at least ten years, with only partial and very recent efforts to resolve his outstanding obligations.

Applicant failed to comply with the requirements of his two Chapter 13 bankruptcy proceedings, and voluntarily incurred additional delinquencies after obtaining Chapter 7 bankruptcy relief in 2002. He failed to demonstrate financial rehabilitation or evidence of solvency from that point forward, so recurrence cannot be said to be unlikely. He continues to bear financial obligations for significant past-due debt and ongoing living expenses. He accordingly remains subject to pressure, exploitation, or duress. The record contains insufficient other evidence about his character, trustworthiness, 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 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:	Against Applicant
Subparagraph 1.e:	Against Applicant
Subparagraph 1.f:	Against Applicant
Subparagraph 1.g:	For Applicant

Subparagraph 1.h:	Against Applicant
Subparagraph 1.i:	For Applicant
Subparagraph 1.j:	For Applicant
Subparagraph 1.k:	For Applicant
Subparagraph 1.l:	Duplicate of 1.d.

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