



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



In the matter of:)
)
) ISCR Case No. 08-11404
)
)
Applicant for Security Clearance)

Appearances

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

March 31, 2010

Decision

DAM, Shari, Administrative Judge:

Based upon a review of the record evidence, eligibility for access to classified information is denied.

On July 10, 2008, Applicant submitted an Electronic Questionnaires for Investigations Processing (e-QIP). On August 7, 2009, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing 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 September 21, 2009, Applicant answered the SOR in writing and elected to have the case decided on the written record in lieu of a hearing. On October 29, 2009,

Department Counsel prepared a File of Relevant Material (FORM) containing twelve Items, and mailed Applicant a complete copy on November 2, 2009. Applicant received the FORM on November 9, 2009, and had 30 days from its receipt to file objections and submit additional information. Applicant did not submit any documents. On February 17, 2010, DOHA assigned the case to me.

Findings of Fact

In his Answer to the SOR, Applicant admitted the allegations contained in ¶¶ 1.a, 1.c, 1.e, 1.f, and 1.g. He denied the allegations contained in ¶¶ 1.b and 1.d.

Applicant is 40 years old. He was an inactive reservist in the Army from February 1987 until January 1988 when he received an honorable discharge. He married his first wife in January 1993 and divorced in June 2000. They have three children, ages 9, 13 and 16 years old. He married his second wife in December 2007. They have a two-year-old child. Since July 2008, he has worked as a scientific programmer for a defense contractor. Prior to this position, he was consistently employed over the last ten years, except for a month in 2000. (Item 4.)

In April 2009, Applicant completed a set of Interrogatories regarding his delinquent debts. He attributed his financial problems to his separation and divorce in 2000, subsequent child support proceedings, a month of unemployment in 2000, and Hurricane Katrina in 2005 in which he lost his personal property. He also submitted his family budget that recorded a net annual income of \$63,150 (after deducting his child support payments), which is approximately a monthly income of \$5,262. He has approximately \$2,300 at the end of the month after paying expenses. (Item 6 at 7.)

Based on credit bureau reports (CBR) dated July 25, 2008 and June 15, 2009, the SOR alleged seven delinquent debts, totaling \$30,330, which became delinquent between 2001 and 2009. (Items 5, 9.) The status of each debt is as follows:

1. The debt alleged in SOR ¶ 1.a for \$11,643 is a federal tax lien that was filed on May 14, 2009, for taxes due for 2001. Applicant admitted that he owed the taxes and indicated that he had made payment arrangements and intended to pay the debt. (Item 6 at 6.) He did not submit any evidence that he is making payments on the lien. It remains unresolved.
2. The debt alleged in SOR ¶ 1.b for \$207 is owed to a communications company. It was reported to the credit bureau in June 2009. (Item 9.) Applicant denied owing this debt, but did not present any evidence that he disputed it or other evidence to support his assertion. The debt is unresolved.
3. The debt alleged in SOR ¶ 1.c for \$106 is a medical bill that was reported in June 2009. (Item 9.) Applicant denied owing this debt, but did not present any evidence that he disputed it or other evidence to support his assertion. The debt is unresolved.

4. The debt alleged in SOR ¶ 1.d for \$186 is a debt owed to a credit collection company. In his Answer, Applicant denied the debt. In his April 2009 Interrogatories, he stated that he was unaware of the debt, but would pay it. (Item 6 at 4.) He did not present any evidence that he disputed it or to support his assertion that it was not his debt. It is unresolved.
5. The debt alleged in SOR ¶ 1.e for \$291 is a medical debt. Applicant admitted the debt and stated in the April 2009 Interrogatories that he would pay it. (Item 6 at 4.) It remains unresolved.
6. The debt alleged in SOR ¶ 1.f for \$16,945 is a car loan that was charged off in July 2002, indicating that Applicant defaulted before that date. He admitted the debt and indicated in his April 2009 Interrogatories that he intended to make arrangements to pay. (Item 6 at 5.) It is unresolved.
7. The debt alleged in SOR ¶ 1.g for \$952 is owed to a creditor for a debt that became delinquent in 2002. In his April 2009 Interrogatories, he stated he was unaware of it, but indicated that he would pay it. (Item 6 at 5.) It is unresolved.

Other than his statements, Applicant submitted no documentation that he has taken any steps to resolve his debts. He presented no character references or other evidence 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 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, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense 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.

Directive ¶ E3.1.14 requires the Government to present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an “applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by 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 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.”

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.

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 two potentially disqualifying conditions raised by Applicant's financial delinquencies are AG ¶ 19(a), an “inability or unwillingness to satisfy debts,” and AG ¶ 19(c), “a history of not meeting financial obligations.” Based on two CBRs and his statements, Applicant has been unable or unwilling to satisfy debts that began accruing in 2001 and which he has not addressed. The evidence is sufficient to raise said disqualifying conditions.

After the Government raised potential disqualifications, the burden shifted to Applicant to rebut and prove mitigation of those security concerns. The guideline includes examples of conditions that could mitigate security concerns arising from financial difficulties. Under AG ¶ 20(a), the disqualifying condition 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 seven financial delinquencies arose in 2001 and remain unresolved to date. Because the problems are ongoing and not isolated, there is a likelihood that they will continue in the future and cast doubt about his current judgment. Hence, this condition does not apply.

AG ¶ 20(b) states that 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 stated that some of his financial problems arose after he divorced in 2000 and experienced personal losses in 2005 as a result of a hurricane. However, he did not offer any evidence that he attempted to act responsibly while the debts were accruing or after they accrued. This mitigating condition marginally applies.

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). Applicant did not present any evidence that he received credit counseling and/or that his financial problems are under control, as required under AG ¶ 20(c). Similarly, AG ¶ 20(d) applies where the evidence shows that “the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.” He did not provide evidence that he paid, attempted to pay, or has a repayment plan for any debt, including the smaller debts. AG ¶ 20(d) does not apply.

Applicant did not provide evidence that he legitimately disputed any of the debts in SOR. Said evidence is necessary to trigger mitigation under AG ¶ 20(e), which applies when “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.”

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). They include the following:

- (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 facts and circumstances surrounding this case. Applicant is 40 years old, married to his second wife, and has three children from a previous marriage for whom he pays child support. He has successfully worked for his employer since July 2008. He served in the military for a year. In April 2009, the Government put him on notice about the security concerns related to his delinquent debt. Despite stating that he would resolve his debts in April 2009, and subsequently receiving the SOR in August 2009, he has not taken any action to address his financial obligations. His persistent inaction, in view of a budget that could accommodate repayment, is troubling. It demonstrates a lack of good judgment and increases the likelihood that similar financial concerns will recur. The record contains insufficient other evidence about his character, trustworthiness, or reliability to mitigate these concerns.

Overall, the record evidence leaves me with questions as to Applicant's eligibility and suitability for a security clearance at this time. For all these reasons, I conclude Applicant did not mitigate all of the concerns arising under the guideline for financial considerations.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ 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

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.

SHARI DAM
Administrative Judge