



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



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| In the matter of: |) | |
| |) | |
| |) | ISCR Case No. 08-11950 |
| |) | |
| |) | |
| Applicant for Security Clearance |) | |

Appearances

For Government: David F. Hayes, Esq., Department Counsel
For Applicant: *Pro se*

February 28, 2011

Decision

LYNCH, Noreen A., Administrative Judge:

On October 20, 2010, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) listing security concerns arising 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 (DoD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) implemented in September 2006.

Applicant timely answered the SOR, admitted the debts alleged in the SOR, and requested a hearing. DOHA assigned the case to me on December 14, 2010. A Notice of Hearing was issued on December 23, 2010, and the case was heard on February 8, 2011. Department Counsel offered eight exhibits, which were admitted without objection as Government Exhibits (GE) 1-8. Applicant testified and submitted exhibits AE A through AE J at the hearing, which were admitted. I kept the record open at Applicant's request, and he submitted AE K and L, which were admitted without objection. DOHA received the hearing transcript (Tr.) on February 16, 2011. Based on a review of the

pleadings, testimony, and exhibits, I find Applicant failed to meet his burden regarding the security concerns raised. Security clearance is denied.

Findings of Fact

Applicant is a single 27-year-old employee of a defense contractor. He graduated from high school in 2002. He attended one semester of college. Applicant has one child, who is seven years old, from a previous relationship. He has worked for his current employer since August 2008. (Tr. 19) He believes he has an interim security clearance. (Tr. 26)

Financial

Applicant bought a car in 2002. He had just graduated from high school. He obtained a loan from a credit union for approximately \$5,600. He bought a 1992 vehicle but after just three weeks, his car was totaled in an accident. This was not his fault. He recalls that he received \$3,300 for the car from insurance. He did not use the money to pay for the car loan. (Tr. 55) He did not arrange a payment plan. (SOR 1.c) (GE 3)

In January 2004, Applicant had his tax returns prepared by a Rapid Refund group who worked out of a liquor store. He paid them a fee of \$200 and they prepared his tax returns. He was given a sum of approximately \$5,000 or \$6,000 based on an expected tax refund. However, he learned a few months later that an error was made and that he owed the money to the tax group. He had spent the money buying furnishings for his apartment. (Tr. 35) Thus, he did not have the money to return to the tax group. He recalls that the group took an amount each year from him from his tax refunds. He believes he also paid on the account, but could not provide any documentation. (SOR 1.b) However, a recent credit report shows a balance of \$2,811. (GE 6)

In 2005, Applicant purchased another vehicle for \$10,000. However, he returned the car a few days later because a "cigarette tray" was missing. (Tr. 64) He had not made a down payment. The dealership gave him a different truck that he thought was a loaner until he would get his original car back. He kept the truck for 30 days and he learned he was then responsible for the truck. (Tr 67) He did not want this particular type of truck so he returned the truck to the dealership. Applicant did not make any payments on the vehicle. He now owes \$13,550. (SOR 1.d) He recalls a year ago he was offered a settlement of \$8,000 but could not afford it.

Applicant was employed during these years. After high school, he worked as a tire technician until 2005. He then started work as a security officer. (Tr. 22) He was unemployed from September 2006 until March 2007. (Tr. 22) He took available temporary work while he was unemployed. He knew he had delinquent debts but did not address them. In fact, he acknowledged that instead of paying some of his delinquent debt, he took out a loan for a vacation in the amount of \$1,000. (Tr. 73) (SOR 1.e.) He believes that the loan was in 2002 or 2003. He also admits that he just stopped paying on the loan despite the fact that he was working. (Tr. 76)

The SOR lists six delinquent accounts totaling \$20,000. The debts include auto loans, an overdraft, and a medical bill. The credit reports confirm these debts. (GE 4-8) Applicant notes that he paid some small debts that are not listed in the SOR. (AE A and GE 2) The total amount paid for the accounts is approximately \$200.

Applicant contacted a credit consolidation company in 2006 to help him with his delinquent bills from the tax refund error and other bills. He paid them an initial fee of \$400, but they did not help him. They advised him to stop paying any debts. (Tr. 35). Despite his frequent phone calls, he has not heard from them. Applicant recalls that he tried other consolidation companies but decided to just start paying his small debts. (Tr. 47)

Applicant submitted documentation showing that certain accounts were paid in January 2011. At the hearing, he did not know whether a medical bill for \$385 belonged to him. (SOR 1.a) After the hearing, he investigated the matter and paid the entire sum. Applicant submitted a receipt for SOR allegation 1.a. (\$385). (AE K) Applicant also submitted a receipt for \$500 showing that parking tickets from 2008 or 2009 have been paid recently. (AE I) The debt alleged in SOR 1.f is due to a bank overdraft. Applicant acknowledged that this account has been delinquent for several years. He provided receipts for payment of the overdraft of \$281.

Applicant claims he has payment plans for the debts in SOR ¶ 1.b, 1.c, 1.d., and 1.e. He sends \$25 a month. He started the repayment plans in January 2011. He did not submit any structured payment plans. He testified that he will make larger payments as he can. (Tr. 63)

Applicant's monthly net income is \$3,300. After expenses he has approximately \$900 in net remainder. He started a second job, but the hours vary. Since 2005, Applicant pays \$460 a month for child support. The money is automatically deducted from his pay. Applicant has a 2007 car with a monthly car payment of \$500. He has no new debt and has no credit cards. His financial statement showed that he was not paying anything on his delinquent debts in 2009.

At the hearing, Applicant was sincere in his testimony that he has every intention of paying his delinquent debts. He realized he made some mistakes when he was younger. He also admitted that he was irresponsible. He was candid and forthright in his testimony. He spoke to his father about his financial situation. He is now engaged and told his fiancée that he is addressing his credit issues. He has taken a second job to help pay his debts. He has learned the importance of his credit issues. He has no new debts. However, he admitted that recently he paid for his fiancée's books (about \$400). He is also planning a wedding with a budget of \$5,000. He noted that he took a vacation last summer.

Applicant acknowledged that he used poor judgment with regard to his finances when he was younger. However, he did not begin addressing the debts alleged on the SOR until recently. He recently began a payment plan for three debts alleged in the

SOR. He now monitors his credit reports and keeps track of his bills. He is taking his financial issues seriously due to his livelihood. (Tr. 50)

Applicant submitted a letter of recommendation from his employer. (AE J) Applicant is described as a professional with sound ethics. Applicant provides critical security for the agency. He is dedicated and trustworthy.

Policies

When evaluating an applicant's suitability for a security clearance, an administrative judge must consider the 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, they are applied in conjunction with the factors listed in the adjudicative process. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. Under AG ¶ 2(c), this process is a conscientious scrutiny of a number of variables known as the "whole-person concept." An 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.

The Government must present evidence to establish controverted facts alleged in the SOR. 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. . . ." ¹ The burden of proof is something less than a preponderance of evidence.² The ultimate burden of persuasion is on the applicant.³

A person seeking access to classified information enters into a fiduciary relationship with the Government based on 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 classified information. Such

¹ See also ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

² *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

³ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

decisions entail a certain degree of legally permissible extrapolation of 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.”⁴ “The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”⁵ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such information.⁶ The decision to deny an individual a security clearance does not necessarily reflect badly on an applicant’s character. It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense established for issuing a clearance.

Analysis

Guideline F, Financial Considerations

The security concern for Financial Considerations is set out in AG ¶ 18:

Failure or an 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.” It also states that “an individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

Applicant currently has delinquent debts that have existed for at least five years. He has known about the accounts since 2004. Consequently, Financial Considerations Disqualifying Condition (FC DC) AG ¶ 19(a) (inability or unwillingness to satisfy debts) and FC DC AG ¶ 19(c) (a history of not meeting financial obligations) apply. With such conditions raised, it is left to Applicant to overcome the case against him and mitigate security concerns.

Applicant has unresolved debt for several accounts. He agrees that his debts have languished over time. He has no new delinquent debt. However, he just started making the payments last month for the four accounts that are in repayment. He has a \$500 a month car note. He is planning a wedding with a budget of \$5,000. Consequently, Financial Considerations Mitigating Condition (FCMC) AG ¶ 20(a) (the

⁴ See also EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information), and EO 10865 § 7.

⁵ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

⁶ *Id.*

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) does not apply.

Financial Considerations Mitigating Condition (FC MC) AG ¶ 20(b) (the conditions that resulted in the behavior 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) does not apply. Applicant has worked since high school. He was working when he became delinquent with his auto debts. He was unemployed for a brief period, but there does not seem to be a nexus for the delinquent debts. He took out a loan to take a vacation in 2003 or 2004. However, there is no evidence that he acted responsibly under the circumstances for several years. He allowed the delinquent debts to remain unpaid for several years. He noted that he also took another vacation last summer.

FC MC AG ¶ 20(d), (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts) does not apply in full. Applicant has made attempts to obtain help with his delinquent accounts. He paid small accounts in 2009 and 2010. He is now beginning some repayment plans. However, at this time failure to provide information about financial counseling obviates the applicability of FC MC AG ¶ 20(c) (the person has received or is receiving counseling for the problem and there are clear indications that the problem is being resolved or is under control). He has a net remainder but has not made his delinquent debts a priority. He may be on the right track, but he has not met his burden in this case.

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 an 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.

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. As noted above, the ultimate burden of persuasion is on the applicant seeking a security clearance.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case, as well as the whole-person factors. Applicant is 27 years old. When he was young, he did not manage his finances very well. He allowed his delinquent debts to languish for years. He does have good intentions. He is a father who cares for his son through child support. He is on the right track, but at this time he has not met his burden in this case.

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 |
| Subparagraph 1.a: | For Applicant |
| Subparagraph 1.b: | Against Applicant |
| Subparagraph 1.c: | Against Applicant |
| Subparagraph 1.d: | Against Applicant |
| Subparagraph 1.e: | Against Applicant |
| Subparagraph 1.f: | For 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 a security clearance. Clearance is denied.

NOREEN A. LYNCH.
Administrative Judge