



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----, -----) ISCR Case No. 09-00351
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: James F. Duffy, Esquire, Department Counsel
For Applicant: *Pro se*

May 27, 2010

Decision

WHITE, David M., Administrative Judge:

Applicant owes 14 delinquent debts totaling more than \$60,000, including substantial child support and student loan balances. He demonstrated no voluntary action to resolve any of these debts despite continuous employment for the past three years. He falsely denied the existence of these debts on his security clearance application, and provided insufficient evidence to mitigate the resulting 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 (SF 86) on September 16, 2008.¹ On July 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) and Guideline E (Personal Conduct).² The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry*

¹Item 8.

²Item 1.

(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 adjudicative guidelines effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant answered the SOR in writing on August 28, 2009, and again on September 28, 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 October 27, 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 November 4, 2009, and returned it to DOHA. He provided no further response to the FORM within the 30-day period, did not request additional time to respond, and made no objection to consideration of any evidence submitted by Department Counsel. I received the case assignment on February 17, 2010.

Findings of Fact

Applicant is a 38-year-old employee of a defense contractor, where he was hired in August 2008. He reported receiving an honorable discharge in 1994 from the inactive reserve after nine months of enlisted military service. This is his first application for a security clearance. He and his wife have two children living with them. He also has three children living with his former wife and one living with a former girlfriend. Applicant earned a degree in computer network engineering from a college of technology in 2002. He also earned additional class certificates from another technology school that he attended in 2005 and 2006.⁵ In his responses to the SOR, he formally admitted the allegations in SOR ¶¶ 1.a through 1.n, and denied that the falsifications on his security clearance application, alleged in SOR ¶¶ 2.a and 2.b, were intentional. Applicant's admissions, including his responses to the SOR, to the FORM, and to DOHA interrogatories, are incorporated in the following findings.

Applicant admitted owing each of the 14 delinquent debts alleged in SOR ¶ 1, totaling \$60,484. He claimed to be paying off the \$1,480 debt from a judgment entered against him in February 2004, alleged in SOR ¶ 1.a, through garnishment of his pay. However, he provided no documents to substantiate such payments, and the

³Items 6 and 7.

⁴The Government submitted 14 Items in support of the SOR allegations.

⁵Item 5; Item 7 at 10.

outstanding balance remains unchanged on all record credit reports.⁶ He similarly claimed to be making payments toward his two delinquent child support accounts, totaling \$25,531, alleged in SOR ¶¶ 1.h and 1.i, through payroll deductions and tax refunds. He provided no substantiation of these claims, and the total due actually increased from his October 2008 credit report to the June 2009 credit report in the record.⁷ He admitted making no payments toward any of the remaining debts, and provided no documentation of any progress in his claimed “plan” to make repayment arrangements with the creditors involved.

Applicant provided no evidence of financial counseling, and no budget information from which to determine his present or future solvency. Applicant was hired by a cellular telephone company in 2002 upon completion of his computer engineering degree program. He worked there for two years, then was laid off. He did not explain the reason for losing his job. He remained unemployed for two and a half years, but has been continuously employed since February 2007.⁸ Some of his debts first became delinquent during each year between 2002 and 2008, except 2003.⁹

Applicant answered “No” in response to questions 28a and 28b on his security clearance application. The former asked whether he had been over 180 days delinquent on any debts in the past 7 years, and the latter asked if he was currently over 90 days delinquent on any debts.¹⁰ He subsequently admitted these answers were false, but denied that he intended to falsify the answers or to deceive anyone. He claimed to have been unaware of the existence of these debts.¹¹ During his interview with an investigator from the Office of Personnel Management, conducted about six weeks after he signed and certified the truth of his answers on the SF 86, he displayed his knowledge of most of his delinquent debts, including all of the large ones, by describing how they arose.¹²

Applicant submitted no evidence describing character, trustworthiness, or work performance. I was unable to evaluate his credibility, demeanor, or character in person since he elected to have his case decided without a hearing.

⁶Item 7 at 1; Item 10 at 2; Items 11 through 14.

⁷Item 7 at 8-9; Item 10 at 3; Items 11 through 14.

⁸Item 8 at 11-17; Item 9 at 3.

⁹Items 11 through 14.

¹⁰Item 8 at 38.

¹¹Item 6 at 16; Item 7 at 15-17; Item 10 at 6.

¹²Item 9 at 3-6.

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the 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.

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 two Guideline F DCs, as set forth in AG ¶ 19:

(a) inability or unwillingness to satisfy debts; and

(c) a history of not meeting financial obligations.¹³

Applicant has been unable or unwilling to satisfy 14 delinquent debts, totaling more than \$60,000, which arose between 2002 and 2008. DC 19(a) and (c) were clearly established, thereby shifting the burden to Applicant to rebut, extenuate, or mitigate the resulting security concerns.

The guideline includes four conditions in AG ¶ 20 that could mitigate security concerns arising from Applicant's financial difficulties:

(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; and

¹³FORM at 4.

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

Applicant's financial irresponsibility involves 14 different accounts, spans the past seven years, and continues to date. He did not demonstrate that these obligations will be fulfilled anytime soon, or that he can avoid additional delinquencies in the future. The evidence does not support application of MC 20(a).

Applicant was unemployed for about a third of the time since he left school in 2002, but he provided no evidence tending to show that the causes of this unemployment were largely beyond his control. Similarly, he made no showing that the medical, educational, and child support debts arose from conditions that were beyond his control. Finally, he provided nothing to substantiate that he acted responsibly under the circumstances, so no mitigation under MC 20(b) was established.

Applicant documented neither financial counseling nor any good-faith effort to resolve any of his outstanding debts. His claimed involuntary garnishments for the child support and judgment debts alleged in SOR ¶¶ 1.a, 1.h, and 1.i, even if true, do not qualify as good-faith efforts at resolution.¹⁴ Accordingly, Applicant failed to establish mitigation under MC 20(c) or MC 20(d). "An applicant is not required to show that [he] has completely paid off [his] indebtedness, only that [he] has established a reasonable plan to resolve [his] debts and has 'taken significant actions to implement that plan.'"¹⁵ Applicant demonstrated neither a reasonable plan nor significant actions to implement one.

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.

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

¹⁴ISCR Case No. 08-06058 at 6 (App. Bd. Sep 21, 2009).

¹⁵ISCR Case No. 06-12930 at 2 (App. Bd. Mar. 17, 2008) (quoting ISCR Case No. 04-09684 at 2-3 (App. Bd. Jul. 6, 2006)).

qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities.

Applicant falsely answered “No” to two questions on his security clearance application. His explanation for denying the existence of his numerous and substantial delinquent debts was unconvincing. He admitted knowledge of the circumstances giving rise to most the debts shortly after certifying the truth of his false answers denying their existence. Appellant is highly educated, and did not claim to misunderstand the questions. His possible, and plausible, ignorance of the existence or particulars of a few of his smaller delinquencies does not justify his affirmative denial of any delinquent debt. He knew that he had a large amount of significantly delinquent debt, including more than \$25,000 in child support arrears and almost \$30,000 in student loans, yet denied that fact twice on his SF 86. Serious security concerns under AG ¶ 16(a) were raised by these facts.

Other than self-serving statements that his falsifications were not intended to deceive the government, Applicant offered no evidence that would tend to support any mitigating condition under Guideline E. After careful review of the record, I find that none of them 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 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 relevant facts and circumstances surrounding this case. Applicant is a mature, educated, and experienced individual, who is responsible for his voluntary choices and conduct that underlie the security concerns expressed in the SOR. His financial irresponsibility spans the past seven years, including two and a half years of unemployment, and continue at present. He demonstrated little, if any, voluntary effort

to resolve his debts since regaining employment more than three years ago. He remains subject to coercion and duress from his financial obligations, and made no showing that such problems are unlikely to continue or recur.

Applicant's deliberate attempt to conceal relevant information about his delinquent debts on his SF 86 also raises serious and unmitigated security concerns. The record contains insufficient other evidence about his character, trustworthiness, or responsibility to mitigate these concerns. Recurrence of this disregard for the fundamental integrity of security procedures and requirements was not shown to be unlikely.

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 and personal conduct.

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
Subparagraphs 1.a through 1.n:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraphs 2.a and 2.b:	Against 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