



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 09-00479
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Pamela C. Benson, Esquire, Department Counsel
For Applicant: *Pro Se*

March 25, 2010

Decision

HOWE, Philip S., Administrative Judge:

On April 4, 2008, Applicant submitted his electronic security clearance application (SF 86) (e-QIP). On July 17, 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 on September 1, 2006.

Applicant acknowledged receipt of the SOR on July 31, 2009. He answered the SOR on August 15, 2009, and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on September 30, 2009, and I received the case assignment on October 6, 2009. DOHA issued a Notice of Hearing on October 29 2009, and I convened the hearing as scheduled on November 17, 2009. The

Government offered Exhibits 1 through 4, which were received without objection. Applicant testified on his own behalf and submitted Exhibits A and B, without objection. DOHA received the transcript of the hearing (Tr.) on November 25, 2009. I granted Applicant's request to keep the record open until December 2, 2009, to submit additional matters. On December 22, 2009, he submitted Exhibits C through F, without objection. The record closed on December 22, 2009. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

Findings of Fact

In his Answer to the SOR Applicant admitted the factual allegations in SOR ¶¶ 1.c to 1.g, and 1.j, with explanations. He denied the factual allegations in SOR ¶¶ 1.a, 1.b, 1.h, and 1.i. He also provided additional information to support his request for eligibility for a security clearance.

Applicant is 45 years old. They married in December 1985. Their two sons are now 22 and 20 years old. He also has two children with a girlfriend with whom he lived from 1998 to 2003. Those children are eight and nine years old. Applicant pays child support for those children and is current on that obligation. He must also maintain health insurance for them. (Tr. 24-32; Exhibit 1)

Applicant works for a defense contractor as a network support specialist. He earns about \$51,000 annually. Applicant served in the U.S. Army and had a security clearance during his service from 1984 to 1987. He also had a security clearance when he worked for a defense contractor from 1987 to 1996. He does not have a security clearance now. (Tr. 25-28; Exhibit 1)

Applicant has 10 delinquent debts. They total \$13,574. Seven of the debts are under \$600 each. The remaining three delinquent debts are \$1,371, \$2,852, and \$7,952. Six debts are paid or in the process of being paid on an installment plan basis. They total \$10,172. Four debts remain unpaid because Applicant disputes his obligation to pay them or does not have the money at present to pay them. Those debts total \$3,372. (Tr. 32-77; Exhibits 2-4, E-F)

Applicant stated he disputes a \$53 medical debt because it resulted from medical treatment his former girlfriend and mother of his two youngest children sought in 2004 (Subparagraph 1.a). He is trying to have it removed from his credit report. He did not submit any documents to show he actually disputed this debt. This debt is unresolved. (Tr. 17, 59; Exhibits 2-4)

Applicant paid a \$30 debt owed on a returned check from 2005 (Subparagraph 1.b) on November 13, 2009. This debt is resolved. (Tr. 17, 61; Exhibits 2-4, C)

The three medical debts (\$210, \$1,371, and \$50) are owed to the same collector. They are debts resulting from medical treatments rendered to his two young children in

2007. Applicant is paying on an installment plan and made payments on October 13, 2009, November 13, 2009, and December 31, 2009 (Subparagraph 1.c, 1.d, 1.e). He paid \$800 and then \$100 monthly. These debts are being resolved. (Tr. 18-21, 61-65; Exhibits 2-4, B, C, D, E)

Applicant owes \$2,852 to a collector on a credit card debt (Subparagraph 1.f). This debt was incurred in 2008. The collector is willing to settle the debt for \$1,500. Applicant would like to accept the settlement, but does not have \$1,500 to pay the collector. He is paying other creditors and until they are paid he cannot pay this creditor. This debt is unresolved. (Tr. 18, 68; Exhibits 2-4)

Applicant agreed to settle a car loan debt of \$7,952 for \$4,200 (Subparagraph 1.g). He paid the creditor \$4,200 on November 12, 2009. He co-signed an auto loan with his former girlfriend. The vehicle was repossessed. This debt is resolved. (Tr. 19-22, 46, 69; Exhibits 2-4, A, C)

Applicant owed \$589 to a collector (Subparagraph 1.h). This debt was incurred in 2006. He paid \$375 in a settlement arrangement with the collector. This debt is resolved. (Tr. 20-22, 70; Exhibits 2-4, F)

Applicant disputes the \$230 debt owed to a collector for medical care given to his former girlfriend (Subparagraph 1.i). He disputed the debt with the Experian credit reporting agencies and had it removed from his record. He is attempting to have the debt removed from the other two national credit reporting agencies. This debt is unresolved. (Tr. 20, 70; Exhibits 2-4)

The final debt is owed to an auto insurance agency in the amount of \$237 (Subparagraph 1.j). Applicant asserts the debt is so old the company cannot provide him with any information about it. He does not find the debt listed on his Experian credit report. Applicant's answer admitted this debt. This debt is not paid and is not resolved. (Tr. 20, 73; Exhibits 2-4; Answer)

Applicant did not file or pay his Federal and state income tax reports for the years 1990 to 1996. His tax debt was \$11,000. He later established an installment payment plan with the taxing authorities and paid the debt. Applicant did not file his 2008 income tax returns for the Federal and state taxing authorities. He had no explanation why he did not file his returns. He was given additional time after the hearing to file his 2008 Federal and state income tax returns, but failed show proof of filing and payment. (Tr. 51, 75-77; Exhibits 2-4)

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.

Under Directive ¶ E3.1.14, the Government must 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."

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.

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." See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive 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.

AG ¶ 19 describes nine conditions that could raise a security concern and may be disqualifying. Two of those conditions apply to the facts in this case:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant incurred \$13,574 worth of delinquent debts. These debts are owed from 2004 through 2007. Applicant started paying them in 2009, after he received the SOR.

AG ¶ 20 provides six conditions that could mitigate security concerns. Two of the mitigating conditions have limited applicability:

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

Applicant has paid or is paying six of his delinquent debts totaling \$10,172. He disputes and has not paid four debts totaling \$3,372. However, he has not produced documentary evidence of his disputes filed with the creditor or the credit reporting agencies. These debts have existed for more than two years and Applicant has had ample opportunity to dispute and resolve these debts in some way. He has not done so. These mitigating conditions do not outweigh the disqualifying conditions on the four unpaid debts. He also delayed resolving these debts until 2009, and after the SOR was sent to him.

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.

AG ¶ 2(c) requires each case must be judged on its own merits. 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 incurred substantial debt, which he allowed to become delinquent. He undertook to resolve these debts only after he received the SOR in July 2009, when the earliest debt dates from 2004. Applicant was a mature adult when these debts were incurred. They demonstrate a pattern of financial mismanagement beginning in and continuing over the past six years. He exhibits a blasé attitude toward his financial debts. His actions are voluntary. No behavior changes are shown by this pattern of conduct from his actions as shown by his history of inaction. He failed to file and pay his income tax obligations from 1990 to 1996, incurring a tax obligation of \$11,000. It is likely his financial irresponsibility will continue in the future, as demonstrated by his failure to file his 2008 income tax returns even though given additional time after the hearing to do so and submit proof of filing.

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant did not mitigate the security concerns arising from his financial considerations. I conclude the "whole-person" concept against Applicant.

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
Subparagraphs 1.b to 1.e:	For Applicant
Subparagraph 1.f:	Against Applicant
Subparagraphs 1.g and 1.h:	For Applicant
Subparagraphs 1. i and 1.j:	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.

PHILIP S. HOWE
Administrative Judge