



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 09-00837
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Allison O’Connell, Esquire, Department Counsel
For Applicant: *Pro se*

September 30, 2009

Decision

CURRY, Marc E., Administrative Judge:

Applicant failed to mitigate the government’s financial considerations security concern. Clearance is denied.

On April 16, 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. 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.

Applicant answered the SOR on May 13, 2009, admitting all of the allegations except subparagraphs 1.f and 1.k. He requested an administrative determination. On June 11, 2009, Department Counsel prepared a File of Relevant Material (FORM). DOHA mailed a copy of the FORM to Applicant on June 12, 2009. He received it on

June 25, 2009 along with instructions to file any objections or supplementary information within 30 days. Applicant did not respond, and the case was assigned to me on September 4, 2009.

Findings of Fact

Applicant is a 27-year-old single man with no children. He has a high school education, and is currently taking college courses (Item 5 at 11). Since 2006, he has worked as a security guard.

Applicant owes 14 creditors approximately \$9,500 in delinquent debt, including, among other things, utility bills (SOR subparagraphs 1.a, 1.d, 1.g, and 1.l), debts owed to banks (SOR subparagraphs 1.c, 1.e, 1.i, and 1.j), and department store credit cards (SOR subparagraphs 1.f and 1.h). He denies the debt alleged in SOR subparagraph 1.f, in the amount of \$575. The government's contention that he owes this debt is supported by page 12 of Item 6. Applicant provided no documentary evidence supporting his denial. Consequently, I included this delinquency in calculating his total delinquent debt.

Applicant also denied SOR subparagraph 1.k, a delinquency allegedly owed to a furniture store for \$415. He provided documentary evidence supporting his contention that he had satisfied it by June 2006 (Exhibit 6 at 6). Applicant contends he has been making payments to satisfy SOR subparagraphs 1.g and 1.l. He provided no supporting documentary evidence.

Applicant was unemployed for approximately a year and a half, from January 2002 through July 2003 (Item 5 at 20). At or about this time, four of the debts listed in the SOR (subparagraphs 1.d, 1.e, 1.f, and 1.k) grew delinquent (*see generally*, Item 8). There is no record evidence of the circumstances surrounding the unemployment.

In response to interrogatories that the government propounded, Applicant provided a budget. Although it indicates that Applicant has \$40 of after-expense monthly income, it includes neither the purported monthly payments toward the debts listed in SOR subparagraphs 1.g and 1.l, nor payments toward the satisfaction of any other SOR debt.

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. 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.”

Under Directive ¶ E3.1.14, the government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . .” The applicant has the ultimate burden of persuasion as to obtaining a favorable security decision.

Analysis

Guideline F, Financial Considerations

Under this guideline, “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” (AG ¶ 18). Applicant’s history of financial problems triggers the application of AG ¶¶ 19(a), “inability or unwillingness to satisfy debts,” and 19(c), “a history of not meeting financial obligations.”

Applicant satisfied the debt listed in SOR subparagraph 1.k, therefore, I resolve it in his favor. The remainder of his delinquencies, however, remain outstanding rendering AG ¶ 20(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,” inapplicable. Although several of Applicant’s delinquencies coincide with a lengthy period of unemployment, he did not assert that his unemployment contributed to his delinquencies. Also, he produced scant evidence of efforts to organize his finances or to repay overdue creditors. Neither AG ¶¶ 20(b), “the conditions that resulted in the financial problem were largely beyond the person’s control (e.g., loss of employment, business downturn, unexpected medical emergency, or a death, divorce, or separation), and the individual acted responsibly under the circumstances,” 20(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,” nor AG 20(d), “the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts,” 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 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.

Applicant's finances remain delinquent, and he has produced negligible evidence demonstrating that he is resolving them. Also, he did not produce any evidence addressing his bout of unemployment, and how it contributed to his financial problems. Moreover, it is unclear how Applicant would be able to incorporate an effective debt repayment plan into his budget given the dearth of after-expense income. Upon considering this case in the context of the whole person concept, I conclude Applicant failed to mitigate the financial considerations security concern. Clearance is denied.

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
Subparagraphs 1.a - 1.j:	Against Applicant
Subparagraph 1.k:	For Applicant
Subparagraphs 1.l - 1.n:	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.

MARC E. CURRY
Administrative Judge