



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



In the matter of:)
)
-----) ISCR Case No. 09-01043
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Gina Marine, Esquire, Department Counsel
For Applicant: *Pro se*

September 29, 2010

Decision

HOWE, Philip S., Administrative Judge:

On May 15, 2008, Applicant submitted his electronic version of the Security Clearance Application (SF 86) (e-QIP). On April 23, 2010, the Defense Office of Hearings and Appeals (DOHA) issued to 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 adjudicative guidelines (AG) effective within the Department of Defense on September 1, 2006.

Applicant answered the SOR in writing on May 11, 2010. Applicant requested his case be decided on the written record in lieu of a hearing.

On July 1, 2010, Department Counsel submitted DOHA's written case. A complete copy of the file of relevant material (FORM) was provided to the Applicant. He

was given the opportunity to file objections and submit material in refutation, extenuation, and mitigation. Applicant received the file on July 12, 2010. Applicant filed a timely Response to the FORM on July 27, 2010. I received the case assignment on August 6, 2010. Applicant continued to submit exhibits on August 26, 2010, September 1, 2010, and September 8, 2010. Department Counsel had no objection to the response or the additional submissions. I marked all documents as Exhibits 1 to 21. The record closed on September 8, 2010. Based upon a review of the complete case file, pleadings, and exhibits, eligibility for access to classified information is granted.

Findings of Fact

Applicant admitted all allegations in the SOR. He provided additional information in support of his application for a security clearance. (Items 2 and 5)

Applicant is 40 years old, married, and has one child. He works for a defense contractor. Applicant's family lives in another country and he sends his wife \$1,000 monthly to support them. (Items 4, 5)

Applicant has nine delinquent debts totaling \$37,758. These debts started to accumulate in 2001. The latest debt became delinquent in 2009. He has paid seven debts by settlements, payment in full, or installment payment agreements. The remaining two debts need to be resolved, but Applicant has made efforts to contact the creditors and arrange installment payment agreements. (Items 3-9, Exhibits 1-21)

The current status of each debt as documented in the record is as follows:

1. Applicant owes \$15,204 (SOR Para. 1.a) to a loan company for the balance on a repossessed car. He contacted the lender but has not yet resolved the account. (Items 5-9, Exhibits 2, 5, Response)
2. Applicant owes \$7,185 to a collector for a credit card debt (SOR Para. 1.b). He contacted the creditor and arranged a settlement amount of \$2,500 payable in \$100 monthly installments. He paid two installments to date. This debt is being resolved. (Items 5-9, Exhibits 11, 21, Response)
3. Applicant owes another collector \$3,889 for a credit card debt (SOR Para. 1.c). This debt is not resolved. Applicant contacted the creditor. (Items 5-9, Exhibit 2)
4. Applicant owes \$2,676 to a credit card company (SOR Para.1.d). He has an installment payment arrangement with the creditor to pay \$150 monthly and started doing so in August 2010. This debt is being resolved. (Items 5-9, Exhibits 16, 19)

5. Applicant owes a collector \$60 for a phonograph record company membership fee (SOR Para. 1.e). Applicant claims he paid this debt in May 2010. He has no document to show the debt was paid. Applicant's volume of debt makes it unlikely he would falsify this miniscule debt. The debt is resolved and will show on his credit report after it is updated. (Items 5-9, Exhibit 2)
6. Applicant owes a collector \$251 for a telephone bill (SOR Para. 1.f). This debt was resolved by payment on August 2, 2010. The creditor submitted written verification of payment. (Items 5-9, Exhibits 2, 4, 5, 11, 20)
7. Applicant owes the military credit card \$3,958 (SOR Para. 1.g). He paid this debt. The creditor submitted written verification the debt is resolved. (Items 5-9, Exhibits 6, 10)
8. Applicant owes another debt to the credit card issuer listed in SOR Para. 1.d. This debt is for \$3,958. The debt is being resolved by an installment agreement. (Items 5-9, Exhibits 2, 12, 19)
9. Applicant owes a debt collector \$822 for two debts owed to a department store. These debts were paid in a settlement agreement in April 2009. The amounts paid were \$640.79 and \$363.99. These debts are resolved. (Items 5-9, Exhibits 2, 3, 5, 17, 18)

Applicant submitted his telephone records for July and August 2010, to show his efforts made in contacting his creditors to resolve these debts. He did make several telephone calls to the creditors in that monthly billing period. (Exhibit 7)

Applicant submitted four character statements. They are all favorable. Applicant has worked for his employer since September 2004. His character references regard him as honest and trustworthy. Applicant is also considered to have high moral standards and dedicated to his job and family. (Exhibits 8, 13-15)

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, the administrative judge applies the guidelines 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.

According to 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 the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable security 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 contains nine disqualifying conditions that could raise security concerns. Of these nine conditions, two conditions are applicable to the facts found in this case:

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

From 2001 to 2009, Applicant accumulated nine delinquent debts, totaling \$37,758 that remained unpaid or unresolved. These two disqualifying conditions apply.

AG ¶ 20 contains six conditions that could mitigate security concerns arising from financial difficulties. Two mitigating conditions may be potentially applicable:

- (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;
- (d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts;
- (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; and,
- (f) the affluence resulted from a legal source of income.

Applicant's failure to pay his delinquent debts is recent and continuous. His repeated failure over the past three years, and in the extra time given him after the hearing, to resolve these debts demonstrates a lack of reliability, trustworthiness, and good judgment by Applicant. AG ¶ 20 (a) does not apply.

AG ¶ 20 (b) does not apply because Applicant introduced no evidence to support the conditions in this mitigating condition.

There is no evidence Applicant sought or received any financial counseling on how to repay his delinquent debts. However, he undertook his repayment efforts on his own initiative. There are clear indications the problem is being resolved or is under control. Therefore, AG ¶ 20 (c) applies.

Applicant worked since April 2010, to repay his creditors. He took multiple actions to resolve these debts voluntarily. Applicant resolved by payment or installment payment agreements about \$20,000 of his debts. \$19,093 of debt remains and Applicant is working on those two remaining debts now. Therefore, AG ¶ 20 (d) applies.

Applicant initially disputed one \$251 debt. Recently, he withdrew the dispute and paid the debt. Therefore, AG ¶ 20 (e) does not apply.

Affluence from a legal source of income is not an issue. Therefore, AG ¶ 20 (f) does not 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 facts and circumstances surrounding this case. Applicant was an adult when he incurred the debts. He took action to resolve his delinquent debts. He is not vulnerable to pressure, coercion, exploitation, or duress based on his current actions involving the resolution of seven delinquent debts. Applicant displayed a lack of good judgment incurring the debts but has now rectified the situation by making a concentrated effort to

resolve them as quickly as he can afford the payments. Resolving about \$20,000 worth of debt in five months is good work. However, he should not have allowed the debts to accumulate to such an amount. He now understands the need to pay his debts in a timely manner. There is little likelihood Applicant will repeat this type of conduct based on his current experiences.

Overall, the record evidence leaves me without questions or doubt as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising under the guideline for Financial Considerations. I conclude the "whole-person" analysis for 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:	FOR APPLICANT
Subparagraphs 1.a to 1.i:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

PHILIP S. HOWE
Administrative Judge