



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 09-01308
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: John Glendon, Esquire, Department Counsel
For Applicant: *Pro se*

December 7, 2009

Decision

MARSHALL, Jr., Arthur E., Administrative Judge:

On July 28, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing security concerns under Guideline F (Financial Considerations). The action was taken under Executive Order (EO) 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.

On May 29, 2009, Applicant responded to the SOR. He admitted all 21 of the allegations raised in the SOR, representing an approximate sum of \$46,600 in delinquent debt and balances equaling about \$7,400 on past due accounts. He also requested a hearing before a DOHA Administrative Judge. I was assigned the case on September 28, 2009. The parties proposed an October 21, 2009, hearing. A Notice of Hearing was issued designating an October 20, 2009, hearing date. It was amended on October 6, 2009, to reflect the originally contemplated hearing date.

The hearing took place as scheduled. Applicant gave testimony and offered six documents, which I accepted into the record without objection as Exhibits (Exs.) A - F. Also accepted without objection were five documents from Department Counsel, marked as Exs. 1 - 5. Applicant was given through November 16, 2009, to submit any additional materials. The transcript (Tr.) was received on October 29, 2009. On November 16, 2009, Applicant timely submitted five additional documents, accepted without objection as Exs. G - K. On November 20, 2009, an eleventh document was submitted by Applicant through Department Counsel, who declined to object to the submission. It was accepted into the record as Ex. L and the record was closed. Based upon a review of the case file, exhibits, and testimony, security clearance is denied.

Findings of Fact

Applicant is a 42-year-old security officer who has worked for the same defense contractor since May 2008. He has earned a high school diploma. He is married and has three children, ages 21, 16, and 15.

Between March 2006 and May 2006, Applicant was unemployed after he was let go from a position as a special police officer. He had held that position for about three years. During his period of unemployment, he used some of his savings to meet his expenses. He then worked as a supervisor for another security-related entity from May 2006 until early January 2008. Because he believed he was about to be terminated, Applicant resigned from his position because he “didn’t want to mess [his] clearance up.”¹ He remained unemployed through May 2008. During this latter period of unemployment, Applicant did not apply for unemployment compensation or benefits because he “didn’t want to get complacent and get comfortable with getting that check in and not going to work, so I got up every morning, I got a newspaper, and I went out here, there and everywhere, and put applications in.”² He exhausted his savings while meeting his monthly obligations.³ After he was hired by his current employer in May 2008, Applicant tried to address his recently accumulated debt. It was the first time since he first used credit in 1996 that he was unable to timely meet his debts.⁴ He sought the assistance of a law firm and a debt consolidation entity to help him sort out his financial situation, but eventually discontinued using their services when he decided they were yielding few, if any, results.

The accounts at issue in the SOR reflect nearly \$18,000 in delinquent debt. The SOR also shows that Applicant is past due on several accounts with cumulative balances of approximately \$7,000. In addition, an adverse judgment for approximately

¹ Tr. 75.

² Tr. 73-74.

³ Tr. 19.

⁴ Tr. 20.

\$29,000 is noted at SOR allegation ¶ 1.u. Through Applicant's efforts, he negotiated a settlement for \$1,159.60 on a total account balance of about \$2,899 to satisfy one debt (SOR ¶ 1.d).⁵ On the day of the hearing, Applicant testified he was prepared to satisfy a negotiated settlement of \$735.33 on a debt with a balance of approximately \$1,223 (SOR ¶ 1.e.ii).⁶ That account was ultimately settled in November 2009.⁷ He also satisfied an account balance charged off in the approximate amount of \$2,537 (SOR ¶ 1.f) with a settlement payment received by the creditor on or about October 28, 2009.⁸

Applicant also accepted a settlement offer to pay \$440.42 to satisfy a collection account balance of \$978.71 (SOR ¶ 1.g).⁹ Applicant testified that he paid this balance, but failed to produce evidence the offer was paid. Applicant also stated he satisfied a balance with a medical provider secured in a judgment against him for \$1,120 (SOR ¶ 1.i),¹⁰ but he provided no evidence linking the medical provider with the party securing the judgment against him. Similarly, Applicant accepted a settlement offer to pay \$875.77 on a telecommunications account balance of about \$1,459.61, which was noted in his credit report as having been past due in the approximate amount of \$132. (SOR ¶ 1.m).¹¹ Again, however, he failed to provide evidence of payment.

Applicant received an overpayment of approximately \$1,000 on an annuity he had sold to a third party (SOR ¶ 1.u).¹² A judgment was secured against Applicant by the third party to preserve its rights for the annuity sums. He stated that an arrangement was made under which future payments would be diverted directly to the third party and the overpayment would be satisfied, but provided no direct documentary evidence that this arrangement was executed.¹³ Applicant provided sufficient circumstantial evidence to convince the government that the related adverse judgment for approximately \$29,000 was met and the evidence confirms this conclusion.¹⁴

⁵ Ex. C (Settlement receipt), Ex. J (Receipt); Tr. 31-33.

⁶ Due to a typographical error, the SOR contains two allegation entries designated as "e." At issue here is the second "e" entry, noted herein as "e.ii."

⁷ Ex. G (Letter of Nov. 5, 2009).

⁸ Ex. H (Letter of Oct. 28, 2009).

⁹ Ex. B (Settlement offer); Tr. 26-28.

¹⁰ Ex. D (History of payments for medical services indicating a zero balance); Tr. 33-43.

¹¹ Ex. A (Settlement offer); Tr. 19-24. Applicant failed to provide evidence that any payments toward this balance were made.

¹² Tr. 50, 54.

¹³ Tr. 50-51.

¹⁴ Ex. E (Court order); Tr. 56-57.

Currently, Applicant is working on negotiating a four-payment settlement on an account with an approximate balance of \$1,800. That account represents the purchase of computer-related items financed through the creditor noted at SOR ¶ 1.e.i.¹⁵ He stated payments will start in November 2009. He also stated payments would start in November 2009 on the delinquent account noted at SOR ¶ 1.t for about \$1,681.¹⁶ Applicant failed, however, to provide evidence demonstrating records of payment on those accounts.

Applicant has devised a plan under which he hopes ultimately to be debt free by June 2010.¹⁷ To accomplish this goal, he is currently working two jobs and saving available funds to devote toward his debt.¹⁸ He has allotted approximately \$1,500 per month to devote to his delinquent debts.¹⁹ Under his plan, he is first addressing his credit card accounts, negotiating settlement balances where possible. After eliminating those debts, he intends to address the remaining accounts, which are essentially for lesser amounts. "I wanted to clear the credit cards up first, to pay them all off. And then with the phone bills, the majority have not been that much, I can come back and knock them out way quicker that [sic] I can get these paid off."²⁰ He employed a law firm to help him handle his debts in the past, but it was unproductive. On November 19, 2009, Applicant received financial counseling that resulted in an analysis of his financial situation and proposed strategies for addressing his debt.²¹ Regarding his financial situation, Applicant stated: "your name and your credit's all you have and, like I said, prior to me losing my job I never had credit issue [sic] since 1996 and I just want to get back and put my name back in good faith."²²

At present, Applicant is current on all of his monthly obligations, including car payments, utilities, and child support. He may owe about \$2,000 for unpaid taxes dating back to 2007, but that issue has not been resolved.²³ His wife is a police officer who earns about \$40,000 to \$45,000 a year.

¹⁵ Tr. 62-64.

¹⁶ Tr. 64-65.

¹⁷ Tr. 68-69.

¹⁸ Tr. 72.

¹⁹ Tr. 77.

²⁰ Tr. 69.

²¹ Ex. L (Financial counseling documents).

²² Tr. 70.

²³ Tr. 82-83.

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. The 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 common sense decision. Under AG ¶ 2(c), this process is a conscientious scrutiny of a number of variables known as the "whole person concept." Consideration must be given to all available, reliable information about the person, past and present, favorable and unfavorable. 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. . . ." ²⁴ The burden of proof is something less than a preponderance of evidence. ²⁵ The ultimate burden of persuasion to obtain a favorable clearance decision is on the applicant. ²⁶

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 EO 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." EO 12968, Section 3.1(b), lists multiple prerequisites for access to classified or sensitive information. The Appeal Board has stated that "(t)he clearly

²⁴ See also ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

²⁵ *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

²⁶ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”²⁷ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.²⁸ The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of an applicant.²⁹ It is merely an indication that an applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Based upon consideration of the evidence, I find the following adjudicative guideline to be the most pertinent to the evaluation of the facts in this case:

Guideline F – Financial Considerations. *The Concern:* 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.³⁰

Conditions pertaining to this adjudicative guideline that could raise a security concern and may be disqualifying, as well as those that would mitigate security concerns, are set forth and discussed in the conclusions below.

Analysis

Applicant admitted he had numerous delinquent debts that were noted on his credit report and in the SOR. The accounts at issue reflected nearly \$18,000 in delinquent debt, several past due accounts, and a judgment for approximately \$29,000. Therefore, 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, the burden shifts to Applicant to overcome the case against him and mitigate security concerns.

Applicant attributes the majority of the delinquent debts at issue to a period of unemployment in 2008. It was his second period of unemployment since early 2006. He did not apply for unemployment compensation in 2008 and it is unclear whether he simply quit his position or was constructively terminated. There is no evidence demonstrating attempts to manage his growing debts while he was unemployed or to seek financial counselling to help him at that time. Given these facts, Financial Considerations Mitigating Condition (FC MC) AG ¶ 20(a) (*the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to*

²⁷ *Id.*

²⁸ *Id.*

²⁹ Executive Order 10865 § 7.

³⁰ AG ¶ 18.

recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment) does not apply.

Applicant stressed that he did not seek unemployment compensation in 2008, although the facts indicate that he quit his position of his own volition. Regardless, this volitional act obviates applicability of 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*).

Although Applicant received financial counselling, that counselling was received after the hearing. Therefore, there is no indication it has helped him address the debts at issue. On the other hand, he satisfied approximately \$7,000 of about \$18,000 in delinquent debt by settling the debts noted at SOR allegations ¶¶ 1.d, 1.e.ii, and 1.f. He also presented sufficient evidence to show that the judgment noted at SOR allegation ¶ 1.u for approximately \$29,000 has been addressed. Consequently, Applicant provided sufficient evidence to show that he has successfully resolved a significant portion of the debt at issue. Therefore, 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*) and FC MC AG ¶ 20(d), (*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*) apply.

No evidence was submitted showing that any accounts were formally disputed with a credit reporting bureau or are disputed based on a reasonable basis that the debt at issue is not owed. Consequently, FC MC AG ¶ 20(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*) does not apply. Moreover, FC MC AG ¶ 20(f) (*the affluence resulted from a legal source of income*) is not applicable.

In total, the SOR allegations set forth approximately \$53,000 in delinquent debts, past due accounts, and judgments. In the three months between his receipt of the SOR and the hearing, Applicant satisfied approximately \$7,000 in delinquent debts and presented evidence that the judgment for approximately \$29,000 was resolved. Consequently, over two-thirds of the debt at issue, including the total balances on accounts that were merely past due for lesser amounts, have been addressed. His strategy for paying off his debts was recently complemented by financial counselling, which provided him with suggested strategies for more efficiently addressing his remaining debts. Much work, however, remains to be accomplished. Applicant failed to substantiate his claims that some of his accounts already have been addressed. Some of his accounts lack evidence demonstrating Applicant has initiated any efforts toward working with his creditors. More importantly, nearly \$17,000 composed of both delinquent and past due accounts remain outstanding. While Applicant demonstrated both diligence and good faith in addressing the accounts at issue in the past few months, the amount remaining at issue is sufficiently significant to sustain the security concerns previously identified in the SOR.

Whole Person Concept

Under the whole person concept, an 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. An 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. In reviewing the complete record, 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 noted above. Applicant is a highly credible man who depleted his personal savings during a 2006 period of unemployment. Lacking sufficient financial reserves when he was unemployed in 2008, he acquired significant delinquent debt in about five months. To his credit, he has addressed over two-thirds of the amount at issue in three months.

Additional factors speak in his favor. He earned a high school diploma and has raised three children. He has been current on his child support. Applicant has had a successful career in his chosen profession. When unemployed, he actively pursued new job opportunities. He is current on his on-going obligations. Applicant developed a logical and apparently successful strategy for addressing his delinquent debts. Moreover, he recently received financial counseling that should help him address those remaining debts in a more expeditious efficient manner.

While Applicant demonstrated diligence in addressing the accounts at issue, considerable work remains to be done. Accounts representing approximately \$17,000 in debt remain at issue. While Applicant stated he paid the accounts noted at SOR allegations ¶¶ 1.g, 1.l, 1.m, 1.e.i, and 1.t, no evidence was presented substantiating this claim. No evidence was presented showing that Applicant has yet addressed the remaining accounts at issue. Lacking a concerted effort to satisfy all the accounts at issue, or at least initiate and document contact with all of his creditors, security concerns remain regarding Applicant's ability to sustain his recent efforts. While Applicant expressed his commitment to continue addressing his debts until all are satisfied, the Appeal Board has long held that promises to pay in the future are insufficient to mitigate security concerns arising from outstanding delinquent debts. Consequently, it would be premature to conclude that Applicant's recent efforts mitigate security concerns. 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
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	For Applicant
Subparagraph 1.e.i:	Against Applicant
Subparagraph 1.e.ii:	For Applicant
Subparagraph 1.f:	For Applicant
Subparagraph 1.g:	Against Applicant
Subparagraph 1.h:	Against Applicant
Subparagraph 1.i:	Against Applicant
Subparagraph 1.j:	Against Applicant
Subparagraph 1.k:	Against Applicant
Subparagraph 1.l:	Against Applicant
Subparagraph 1.m:	Against Applicant
Subparagraph 1.n:	Against Applicant
Subparagraph 1.o:	Against Applicant
Subparagraph 1.p:	Against Applicant
Subparagraph 1.q:	Against Applicant
Subparagraph 1.r:	Against Applicant
Subparagraph 1.s:	Against Applicant
Subparagraph 1.t:	Against Applicant
Subparagraph 1.u:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with national security to grant Applicant eligibility for a security clearance. Clearance is denied.

ARTHUR E. MARSHALL, JR.
Administrative Judge