



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----, -----) ISCR Case No. 09-01321
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Melvin A. Howry, Esquire, Department Counsel
For Applicant: *Pro Se*

November 23, 2009

Decision

WHITE, David M., Administrative Judge:

Applicant owes more than \$79,000 for 26 delinquent debts that accrued over the past seven years. He partially resolved two other delinquencies, but has not established a track record of financial responsibility or solvency. Based upon a thorough review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

Applicant submitted his security clearance application on October 9, 2008. On June 15, 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 (DoD) for SORs issued after September 1, 2006. Applicant acknowledged receipt of the SOR on July 9, 2009. He answered (AR)

the SOR in writing on July 13, 2009, and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on July 27, 2009, and DOHA assigned the case to me on July 29, 2009.

DOHA issued a Notice of Hearing on August 4, 2009, and I convened the hearing as scheduled on August 24, 2009. Department Counsel offered Government Exhibits (GE) 1 through 7, which were admitted over Applicant's partial objection to the present accuracy of some information. Applicant's objection to page 2 of GE 5 was granted and that page was not admitted into evidence. Applicant testified on his own behalf, and offered Applicant Exhibits (AE) A through D, which were also admitted. Applicant declined my offer to leave the record open after the hearing for submission of additional evidence. However, on August 26, 2009, he submitted additional evidence via Department Counsel and requested that it be considered. On that date, Department Counsel forwarded these additional documents with no objection to their admissibility. This evidence was marked AE E and admitted. DOHA received the transcript of the hearing (Tr.) on September 1, 2009.

Findings of Fact

Applicant is a 51-year-old engineer who has worked for several federal contractors over the last 20 years. In his answer to the SOR, he denied the allegations in SOR ¶¶ 1.a through 1.j, 1.m through 1.u, and 1.x through 1.z. He admitted the allegations in SOR ¶¶ 1.k, 1.l, 1.v, and 1.w. Applicant's admissions are incorporated into the following findings of fact.

Applicant is separated pending divorce. He has two adult children, a 14-year-old child for whom he is required to provide child support, and two younger children who live with his estranged wife. He has no military service, but held security clearances in connection with several former jobs. He is presently unemployed, pending resolution of his security clearance application. (GE 1 at 6, 12-24, 27, 31-32; AR at 6; AE J; Tr. at 7-8, 74-75, 89.)

Due to an apparent typographical error, the amount of the debt alleged in SOR ¶ 1.n is identical to that alleged in SOR ¶ 1.o. All record evidence indicates that the amount owed on the SOR ¶ 1.n debt is \$679. This is significantly less than the alleged amount, and I corrected the SOR to conform to the evidence. Applicant also indicated his belief that the alleged amount was erroneous. (GE 2 at 74; GE 6 at 3; Tr. at 107.)

With the foregoing exception, all of the SOR-alleged delinquent debts accurately reflect the contents of Applicant's various credit bureau reports (CBRs) in the record. He claims not to recognize some of them, but he has neither investigated nor disputed those debts despite being on notice of potential security implications for the past eight months. The weight of the evidence clearly establishes that Applicant owes the 26 SOR-listed delinquent debts. The majority of these debts became delinquent between 2002 and 2004, but several became delinquent as recently as 2007 and 2008. These 26

debts, including two that were reduced to judgments, total \$79,513. (GE 2 through 6; Tr. at 84-114.)

On March 17, 2009, after receiving financial interrogatories from DOHA concerning his delinquent debts, Applicant entered a credit counseling and debt management agreement with a credit counseling service. The agreement included every SOR-listed debt, except the \$48 collection account alleged in SOR ¶ 1.q, and also listed several other debts for a total of \$87,414. The agreement called for Applicant to make monthly payments of \$2,569 to the service, and contemplated resolution of all the listed debts in 49 months (April 2013). (GE 4 at 107-114.)

Applicant provided no evidence that he made any payments under this plan. To the contrary, he testified:

I haven't taken the responsibility to look into them, because I hired a credit counselor and all those debts you just mentioned are listed on that form. Currently, I just don't have the resources to pay the credit counseling to address them, but she's all ready to go, and I will address those debts. . . . Well, currently they're waiting for payment. . . . And the reason why payment had not been received is because I ran into a new IRS debt and I've been paying support, and then I found out my job was going to end.

(Tr. at 115-116.) The IRS debt to which Applicant referred was a recent assessment of an undetermined amount in connection with his taking out an emergency loan from his 401(k) plan. The support payments were for current and delinquent child support that was not alleged in the SOR, for which his wages were being garnished. As of August 2009, he had paid the arrearage down to \$11,196. In January 2007, this arrearage was \$38,140. He is now drawing \$600 per week in unemployment compensation, of which \$150 is garnished for child support. (AE C; AE at 5; Tr. at 68, 72-75, 87, 101-102, 116, 119.)

Applicant traces his financial problems back to the early 1990s. He had a good-paying job as a software engineer for a major aerospace company from September 1996 to January 2002. He was "forced to quit" that job after his manager found out that he was also doing contract work for a competitor company, creating a conflict of interest. He then worked several jobs under various contractual arrangements. He testified and submitted several internet articles about outsourcing and layoffs in the aerospace industry after the September 11, 2001, terrorist attacks that made it hard for him to find work. He also submitted income tax documents showing his adjusted gross income in 2002 was \$9,641, and 2003 was \$16,767. In March 2004, he was hired by another defense contractor and his income rose to \$54,700 that year. From 2005 through 2007, he made over \$93,000 per year at that job, which he left in 2008. He did not provide any information concerning his 2008 income. (AR at 2-3; AE A; Tr. at 34-36, 65-68, 75-76; 79-82, 122-127.)

Applicant submitted "Affidavits of Character" that were filed on his behalf by his eldest sister, eldest brother, and two adult daughters in connection with his pending divorce action. They describe him as a good family man who is responsible and of good character. He also submitted three letters from day care, school, and Sunday school teachers describing his active participation in caring for his two youngest children. (AE E.)

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider and apply 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 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 (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 in 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 that 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

AG ¶ 18 expresses the security concern pertaining to financial considerations:

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 over-extended is at risk of having to engage in illegal acts to generate funds. Compulsive gambling is a concern as it may lead to financial crimes including espionage. Affluence that cannot be explained by known sources of income is also a security concern. It may indicate proceeds from financially profitable criminal acts.

AG ¶ 19 describes conditions that could raise a security concern and may be disqualifying. Department Counsel asserted the applicability of two of these potentially disqualifying conditions: "(a) inability or unwillingness to satisfy debts;" and "(c) a history of not meeting financial obligations." (Tr. at 20-21.) From 2002 to present, Applicant accumulated the 26 SOR-listed delinquent debts that total more than \$79,500. He has done nothing to effectively address or resolve any of those debts. He entered into an agreement with a credit counseling service to attempt resolution of these debts over the next four years, but did not and cannot afford to make any payments as required under the plan. Applicant's present financial inability to pay these substantial remaining delinquencies supports ongoing security concerns under AG ¶ 19(a). He is under continuing financial duress, so he remains at risk of having to engage in illegal acts to generate funds. The evidence further established a lengthy history of not meeting many significant financial obligations, raising security concerns under AG ¶ 19(c). This history indicates poor self-control, lack of judgment, and unwillingness to abide by rules and regulations, thereby raising questions about his reliability, trustworthiness, and ability to protect classified information.

AG ¶ 20 provides conditions that could mitigate security concerns arising from the foregoing financial considerations. The potentially applicable mitigating conditions are:

(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; 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.

AG ¶ 20(a) was not established because Applicant's many delinquencies arose over the last seven years and continue at present. Many resulted from his failure to reduce expenditures during a two-year period of under-employment after he was forced to quit a job for having engaged in outside work that created a conflict of interest. While loss of employment is potentially mitigating under AG ¶ 20(b), his job loss was the direct result of his irresponsible conduct, and failing to regain meaningful employment while spending on credit did not constitute responsible action thereafter. Applicant identified his pending divorce as another source of financial problems, but the vast majority of his delinquent debt preceded his recent marital troubles, which also remain unresolved. His only demonstrated attempt to resolve these debts was a four-year debt management plan toward which he made no payments. This program involved minimal financial and legal counseling, but it has yielded no results to date and there is no substantial basis to conclude it will succeed going forward. None of the debts listed in SOR ¶¶ 1.a through 1.z have been resolved, and more than \$79,500 in delinquent debts remain outstanding. While these are small steps in the right direction, meaningful mitigation is not yet established under AG ¶¶ 20(c) or (d). Applicant provided no documented proof to substantiate the basis for disputing any of his delinquencies under AG ¶ 20(e).

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 applicable guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all the pertinent facts and circumstances surrounding this case. Applicant’s conduct of security concern was incurring 26 delinquent debts, which total more than \$79,500. He demonstrated no effective progress toward resolving any of them, and remains financially overextended. Although his two-year period of under-employment ended in early 2004, he did nothing to address or resolve any of these debts, in part due to substantial delinquent child support obligations and IRS debt that was not listed on the SOR. His actions have done little to address the resulting security concerns, and he has not yet established a good-faith track record of financial responsibility or permanent behavioral changes. The record demonstrates his ongoing inability to address his delinquent debt. Applicant’s ongoing insolvency generates continuing potential for pressure, coercion, or duress. He exhibited an incomplete understanding of his financial situation and failed to demonstrate that his financial problems are unlikely to continue or worsen, at least for the next several years. Applicant presented insufficient evidence to mitigate security concerns arising from his history of failing to meet financial obligations, and his inability to pay his substantial delinquent debts. The record generates significant doubt as to his present eligibility and suitability for a security clearance.

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 through 1.z:	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