



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 09-01366
SSN:-----)
)
Applicant for Security Clearance)

Appearances

For Government: Melvin A. Howry, Esquire, Department Counsel

For Applicant: *Pro se*

December 15, 2010

DECISION

ROSS, Wilford H., Administrative Judge:

Applicant submitted his Electronic Questionnaire for Investigations Processing (e-QIP), on October 7, 2007. (Government Exhibit 6.) On June 24, 2009, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing the 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 for SORs issued after September 1, 2006.

Applicant submitted Answers to the SOR on August 31, September 28, and October 19, 2009, and requested that a decision be made without a hearing. (Government Exhibits 3, 4 and 5.) Department Counsel submitted a File of Relevant Material (FORM) to Applicant on December 14, 2009. Applicant received the FORM on February 8, 2010, and was given 30 days to submit any additional information. The case was assigned to me on April 6, 2010. On April 19, 2010, and again on October 14,

2010, Applicant requested additional time to submit supplementary documentary information due to his being deployed overseas in support of current military operations. Those requests were granted, and the Applicant was given until November 19, 2010, to submit any additional documentation. Applicant did not submit any additional information. Based upon a review of the written record eligibility for access to classified information is denied.

Findings of Fact

Applicant is 48, and married to his second wife. He is employed by a defense contractor and seeks to obtain a security clearance in connection with his employment.

Guideline F, Financial Considerations

The Government alleges that Applicant is ineligible for clearance because he is financially overextended and therefore at risk of having to engage in illegal acts to generate funds. Applicant admits all of the allegations in the SOR. Those admissions are hereby deemed findings of fact. He also submitted additional statements supporting his request for a security clearance.

The SOR alleges, Applicant admits, and Government exhibits substantiate, 8 delinquent debts totaling \$59,215. Some of these debts have been due and owing since at least 2007. (Government Exhibits 7, 9, 10 and 11.)

1.a. Applicant admits filing for Chapter 13 Bankruptcy in June 2005. The case was dismissed in September 2005. He states in his Answer that the case was “dismissed due to my ex-wife . . . removing the funds from my account. I had not been able to separate our finances and she had access to my funds. She has continued to attempt to hurt me financially.”¹ (Government Exhibit 4.)

1.b. Applicant admits that he was indebted to a collection agent for a credit union in the amount of \$24,242. He further claims that this debt is the same debt as 1.d. Applicant stated in his Answer that he was working with the collection agent to resolve this account, but no further information was received. This debt is due and owing.

1.c. Applicant admits that he was indebted to a collection agent for a credit union in the amount of \$2,925. He submitted evidence showing he paid this account in July 2009. (Government Exhibit 3 at 10.) This debt is resolved.

1.d. Applicant admits that he was indebted to a credit union on a charged off account in the amount of \$19,000. He submits that this is the same debt as the one set forth in 1.a. The available credit reports show both debts as being due and owing. (Government Exhibits 7, 9, 10 and 11.) Applicant has not supplied any documentation

¹Applicant alleges that his ex-wife engaged in other actions to affect his financial stability. (Item 8 at 9.)

supporting his statement that these are the same debts. Based on the available evidence, I find that this is a different debt, and continues to be due and owing.

1.e. Applicant admits owing a collection agent \$74 for a past due account. He stated in his Answers that he had paid this account in April 2009. Applicant further stated, "I have been trying to get this updated on credit agency report." (Government Exhibit 4.) This debt is not listed on the most recent credit report in the file, dating from December 2009. (Government Exhibit 11.) Based on the available information, I find that this debt is resolved.

1.f. Applicant admits that he was indebted to a collection agent for a bank in the amount of \$1,691. He submitted evidence showing he paid this account in July 2009. (Government Exhibit 3 at 8.) This debt is resolved.

1.g. Applicant admits that he was indebted to a bank in the amount of \$1,028. He states that he paid this account in 2006. Applicant submitted no evidence to support this statement. The available credit reports show that this account was "transferred or sold," but do not report it as paid. (Government Exhibits 7, 9, 10 and 11.) This debt is unresolved.

1.h. Applicant admits that he was indebted to a bank in the amount of \$2,801. He states that he was contacting this creditor to confirm the accuracy of the debt. (Applicant Exhibit 4.) He submitted no evidence to support this statement. The available credit reports show that this account was "transferred or sold," but do not report it as paid. (Government Exhibits 7, 9, 10 and 11.) This debt is unresolved.²

1.i. Applicant admits that he was indebted to a state university in the amount of \$7,454. This debt occurred because the Applicant withdrew late from his classes at the university and still owed his tuition. Applicant states that he was forced to withdraw from class because of his then ongoing divorce from his first wife. He submitted an appeal in July 2009 to the university authorities to have the debt forgiven. (Government Exhibit 3 at 11-13.) No further information was submitted concerning the current status of this appeal. This debt is unresolved.

Policies

Security clearance decisions are not made in a vacuum. When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and

²Applicant submitted a copy of a letter from a collection agent for this bank concerning a \$340 payment in July 2009. (Government Exhibit 3 at 9.) The account number on the letter does not correspond with any of the Applicant's accounts with this bank, as shown on the available evidence. The payment does not correspond to the Applicant's statements about his accounts with this bank. Accordingly, I can give the fact of this payment little weight.

mitigating conditions, which are to be used as appropriate 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 over-arching 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. In addition, the administrative judge may also rely on his or her own common sense, as well as his knowledge of the law, human nature, and the ways of the world, in making a reasoned 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, 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.

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. Security clearance 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.

Finally, as emphasized in Section 7 of Executive Order 10865, "Any determination under this order . . . 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." 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.

The guideline notes several conditions that could raise security concerns. Under AG ¶ 19(a), an "inability or unwillingness to satisfy debts" is potentially disqualifying. Similarly under AG ¶ 19(c), "a history of not meeting financial obligations" may raise security concerns. Applicant, by his own admission, has over \$59,000 in past due debts, all of which have been due and owing for several years. The evidence is sufficient to raise these potentially disqualifying conditions.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Under AG ¶ 20(a), the disqualifying condition may be mitigated where "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." Applicant's financial difficulties arose recently, starting about 2007, and continue to the present. In addition, while Applicant has shown that several debts have been paid (1.c., 1.e., 1.f.), he failed to provide any evidence concerning paying off the rest of his debts. It is Applicant's burden to submit evidence showing that his financial situation has improved. He has not done so. This mitigating condition is not applicable to this case.

AG ¶ 20(b) states that the disqualifying conditions may be mitigated where "the conditions that resulted in the financial problem were largely beyond the person's control (e.g., . . . divorce or separation), and the individual acted responsibly under the circumstances." Applicant submits that his conflict with his first wife effected his ability to pay his debts. However, their divorce was in 2005, and Applicant did not show how it has had a continuing impact on his ability to pay his debts. He did not provide any information concerning what he has been doing about his debts in the past year, despite being given a substantial amount of time to do so.

Applicant has not initiated a good-faith effort to pay off his creditors. There is no track record of his making payments for a consistent period of time. Accordingly, AG ¶ 20(d) is not applicable. Finally, given the fact that he is still \$54,000 in debt, I cannot

find that “there are clear indications that the problem is being resolved or is under control,” as required by AG ¶ 20(c).³

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 relevant circumstances. 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. The administrative judge must 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.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant is under financial strain, and has been so for several years. His debt situation is not yet under control. Under AG ¶ 2(a)(3), Applicant’s conduct is recent. Based on the state of the record, I cannot find that there have been permanent behavioral changes under AG ¶ 2(a)(6). Accordingly, at the present time, I find that there is the potential for pressure, coercion, exploitation, or duress (AG ¶ 2(a)(8)); and that there is a high likelihood of recurrence (AG ¶ 2(a)(9)).

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 has not mitigated the security concerns arising from his financial situation.

On balance, I conclude that Applicant has not successfully overcome the Government’s case opposing his request for a DoD security clearance. Accordingly, the evidence supports a denial of his request for a security clearance.

³Assuming that allegations 1.b. and 1.d. are the same debt, he remains over \$30,000 in debt. As stated, he has provided insufficient information about how he is going to resolve his indebtedness.

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 THE APPLICANT
Subparagraph 1.a:	Against the Applicant
Subparagraph 1.b:	Against the Applicant
Subparagraph 1.c:	For the Applicant
Subparagraph 1.d:	Against the Applicant
Subparagraph 1.e:	For the Applicant
Subparagraph 1.f:	For the Applicant
Subparagraph 1.g:	Against the Applicant
Subparagraph 1.h:	Against the Applicant
Subparagraph 1.i.:	Against the 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.

WILFORD H. ROSS
Administrative Judge