



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----, -----) ISCR Case No. 09-02270
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Carolyn H. Jeffreys, Esquire, Department Counsel
For Applicant: *Pro Se*

March 9, 2010

Decision

WHITE, David M., Administrative Judge:

Applicant accrued 33 delinquent debts, totaling more than \$25,000, from 2004 to 2008. He demonstrated no effort to resolve any of these debts, and provided no evidence to establish ongoing solvency or otherwise mitigate financial security concerns. Based upon a review of the case file, pleadings, and exhibits, eligibility for access to classified information is denied.

Applicant submitted a security clearance application on September 26, 2008.¹ On August 4, 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).² 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

¹Item 5.

²Item 1.

adjudicative guidelines 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 in writing on August 20, 2009, and requested that his case be decided by an administrative judge on the written record without a hearing.³ Department Counsel submitted the Government's written case on August 28, 2009. A complete copy of the File of Relevant Material (FORM)⁴ was provided to Applicant, and he was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of his receipt of the FORM.

Applicant signed the document acknowledging receipt of his copy of the FORM on September 12, 2009, and returned it to DOHA. He submitted no further evidence or correspondence in response to the FORM by the October 12, 2009, deadline and expressed no objection to my consideration of the evidence submitted by Department Counsel. I received the case assignment on November 3, 2009.

Findings of Fact

Applicant is a 39-year-old employee of a defense contractor, where he began working in August 2008. He has no military service, and has never held a security clearance. He is divorced with two children, ages 22 and 9.⁵ In his response to the SOR, he formally admitted each allegation, except for three of the smaller debts.⁶ Applicant's admissions, including his statements in response to the SOR and to DOHA interrogatories, are incorporated in the following findings.

Applicant was interviewed by an investigator from the Office of Personnel Management (OPM) on November 17, 2008. He reviewed the investigator's written summary of the results of this interview, and adopted them as an accurate record of his statements, under oath, on June 3, 2009.⁷ He told the OPM investigator that he thought he had paid the full balance of the \$406 debt listed in SOR ¶ 1.b in 2004 or 2005, using his income tax refund.⁸ This creditor loaned Applicant \$1,600 in 2003 or 2004 toward the purchase of a swimming pool. He received another bill from the creditor for \$100

³Item 4.

⁴The Government submitted eight Items in support of the SOR allegations.

⁵Item 5 at 2, 9, 18-23, 25, 30.

⁶Item 4. Applicant denied SOR ¶¶ 1.b, 1.r, and 1.v, and admitted the remaining allegations on the copy of the SOR that he annotated and returned. (Item 4 at 1-4.) In the comments that he submitted following the annotated SOR, he said that he admitted all SOR-listed debts except those at SOR ¶¶ 1.b and 1.v. Neither Applicant nor Department Counsel elaborated on this discrepancy. The ambiguity will be resolved in Applicant's favor, and SOR ¶ 1.r will be treated in the analysis below as though he formally denied it.

⁷Item 8 at 3-12.

⁸Item 8 at 5-6.

about six to nine months after he thought he had paid off the account. He said he telephoned them and stated that he would not pay any more toward this account, after which they did not contact him further. He told the OPM investigator that he would contact the creditor again in May 2009 to resolve the issue. Applicant submitted no evidence documenting the basis for this dispute, or corroborating any efforts to contact the creditor about it. All record credit reports reflect the \$406 debt remains outstanding.⁹ Accordingly, the weight of the evidence supports a finding that Applicant still owes this delinquent debt.

Applicant told the OPM investigator that he had no knowledge of the \$77 delinquent debt alleged in SOR ¶ 1.r, but that he would contact the creditor in May 2009 and pay the debt if he owed it.¹⁰ He submitted no evidence concerning a valid basis for disputing this debt, or showing any attempt to contact the creditor to resolve it. Two record credit reports, including one submitted by Applicant, reflect that he still owes this debt, and he was ambiguous about admitting or denying it in his SOR response.¹¹ The weight of the evidence shows that Applicant still owes this debt, which became delinquent in October 2006 and was placed for collection in January 2007.

Applicant also told the OPM investigator that he had no knowledge of the \$54 collection account listed in SOR ¶ 1.v, which he denied owing in his response to the SOR. He stated the same thing about three other accounts held by the same collection agency that he admitted owing in his SOR response (SOR ¶¶ 1.p: \$448; 1.s: \$65; and 1.ff: \$35.) He told the investigator that he would contact the collection agency before November 21, 2008, and pay off the three smaller accounts and set up a payment plan for the largest one if they were his debts.¹² He submitted neither an explanation for, nor any evidence of, his basis to dispute this debt or efforts to resolve it. All three record credit reports report that this debt remains outstanding,¹³ and there is no evidence supporting Applicant's denial of it.

The other 30 SOR-alleged debts, to which Applicant admitted, became delinquent between 2004 and 2008, and total \$25,169.¹⁴ Accordingly, the evidence establishes that Applicant owes all 33 delinquent debts alleged in the SOR, totaling \$25,706.

⁹Item 6 at 3; Item 7 at 4, 16; Item 8 at 22.

¹⁰Item 8 at 9.

¹¹Item 7 at 16; Item 8 at 27. See fn 6 *supra*.

¹²Item 8 at 6.

¹³Item 6 at 2; Item 7 at 8; Item 8 at 28. It became delinquent in July 2005.

¹⁴Item 4.

Applicant offered no evidence of any payment toward, or other attempt to resolve, any of these debts. In his August 2009 response to the SOR, he stated that all of his admitted “past due debt is unpaid due to back injury in March 2009. The debt was accrued due to lose [sic] of job.”¹⁵ However, his security clearance application shows that he was continuously employed from May 1999 to present.¹⁶ No evidence was submitted to corroborate any back injury, but all debts of security concern were already delinquent before that date in any event.

The only evidence Applicant submitted about his current income, living expenses, and ability to resolve his delinquent debts or avoid incurring additional ones was a June 12, 2009, personal financial statement that is incomplete and unintelligible.¹⁷ He provided no evidence concerning the quality of his recent professional performance, the level of responsibility his duties entail, or his track record with respect to handling sensitive information and observation of security procedures. He submitted no character references or other evidence tending to establish good judgment, trustworthiness, or reliability. I was unable to evaluate his credibility, demeanor, or character in person since he elected to have his case decided without a hearing.

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 (DCs) and mitigating conditions (MCs), 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 2(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 on mere speculation or conjecture.

¹⁵Item 4 at 5.

¹⁶Item 5 at 9-16.

¹⁷Item 8 at 16-20.

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 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

The security concerns relating to the guideline for financial considerations are 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.

Department Counsel argued that the evidence established security concerns under two Guideline F DCs, as set forth in AG ¶ 19: “(a) inability or unwillingness to satisfy debts;” and “(c) a history of not meeting financial obligations.”¹⁸ Applicant has been unwilling or unable to satisfy any of his SOR-listed delinquent debts, and failed to provide any evidence of his willingness or ability to do so in the future. DC 19(a) is clearly established. He has demonstrated a five-year history of not meeting financial obligations, including a failure to address any of his delinquencies even after becoming aware of the security concerns raised by such conduct. Security concerns under DC 19(c) are also supported on this record. Applicant’s current financial state and history of irresponsibility indicate poor self-control, lack of judgment, and unwillingness to abide by rules and regulations.

¹⁸FORM at 6.

The guideline includes four conditions that could mitigate security concerns arising from Applicant's financial difficulties in AG ¶ 20. Under MC 20(a), disqualifying conditions 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 irresponsibility is recent, involves numerous creditors, and continues to date. He remains substantially in debt, and he provided no evidence concerning his current financial situation that would support a finding that delinquent indebtedness is unlikely to recur. The evidence does not support application of this potentially mitigating condition.

Under MC 20(b), it may be mitigating where "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." Applicant has worked continuously over the past ten years, and made no effort to address any of these delinquencies. He offered no evidence that any debt was incurred due to causes beyond his control. He also did not demonstrate that he responsibly reduced non-essential spending in reaction to his mounting debts. He has not established mitigation of his presently delinquent debts, or of his financial history as a whole, under this provision.

Evidence that "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" is potentially mitigating under MC 20(c). Similarly, MC 20(d) applies where the evidence shows "the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts." Applicant established no mitigation under these two provisions because he offered no evidence of financial counseling, and failed to address any delinquency. Moreover, the absence of evidence demonstrating his current solvency or ability to resolve his outstanding delinquencies precludes findings of "clear indications that the problem is being resolved or is under control," or "a good-faith effort." Insufficient evidence was presented to alleviate the substantial security concerns raised by the length and degree of financial irresponsibility that continues to date.

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 the relevant facts and circumstances surrounding this case. Applicant is a mature individual who is responsible for his voluntary choices and conduct that underlie the security concerns expressed in the SOR. He established a consistent pattern of financial irresponsibility dating back at least five years, with no evidence of any efforts to resolve his outstanding obligations.

Applicant failed to demonstrate financial rehabilitation or evidence of solvency from the present time forward, so recurrence and worsening of his financial concerns were not shown to be unlikely. He continues to bear financial obligations for significant past debt and ongoing living expenses. He accordingly remains subject to pressure, exploitation, or duress. The record contains insufficient other evidence about his character, trustworthiness, or responsibility to mitigate these concerns.

Overall, the record evidence creates substantial doubt as to Applicant's present eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated the security concerns arising from his financial considerations.

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.gg:	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