



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



In the matter of:)
)
) ISCR Case No. 09-02514
)
)
Applicant for Security Clearance)

Appearances

For Government: Fahryn E. Hoffman, Esquire, Department Counsel
For Applicant: *Pro Se*

January 28, 2010

Decision

RIVERA, Juan J., Administrative Judge:

Applicant lacks a track record of financial responsibility. He failed to mitigate financial considerations security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On June 27, 2008, Applicant submitted a security clearance application. On July 9, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to him, pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as modified and revised; and the revised adjudicative guidelines (AG) promulgated by the President on December 29, 2005.

The SOR alleges security concerns under Guideline F (Financial Considerations). The SOR detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for him, and recommended referral to an administrative judge to determine whether a clearance should be granted, denied, or revoked.

On July 24, 2009, Applicant responded to the SOR allegations and requested a hearing before an administrative judge. The case was assigned to me on September 9, 2009. DOHA issued a notice of hearing on September 18, 2009. The hearing was convened as scheduled on October 7, 2009. The government offered Government Exhibits (GE) 1 through 4, which were admitted without objection. Applicant testified and submitted Applicant Exhibits (AE) 1 through 6, which were admitted without objection. AE 6 was received post-hearing. DOHA received the transcript of the hearing (Tr.) on October 15, 2009.

Findings of Fact

Applicant admitted all the SOR allegations, except for SOR ¶¶ 1.i and 1.k, which he denied. His admissions are incorporated herein as findings of fact. After a thorough review of the evidence of record, and having considered Applicant's demeanor and testimony, I make the following additional findings of fact.

Applicant is a 44-year-old senior analyst employed by a defense contractor. He attended college from 1983 to 1985, and received an associate's degree in electronics. Applicant started dating his wife in 2002, and they were married in September 2005. They are separated pending the completion of their divorce proceedings. He has no children.

Applicant's work history is summarized as follows: he was employed from October 2000 to April 2006, unemployed from April 2006 to February 2007, employed from March 2007 to July 2007, and self-employed from August 2007 to April 2008. In April 2008, he was hired by a private company. Around July 2008, Applicant was hired by his current employer, a government contractor. Under the sponsorship of his new employer, Applicant was issued an interim security clearance at the secret level. In February 2009, his interim security clearance was terminated because of the financial concerns alleged in the pending SOR. Pursuant to a waiver, Applicant's interim access to classified information was continued up to the date of his hearing.

In his June 2008 security clearance application, Applicant indicated that he had no debts that were over 180 days delinquent within the last seven years and/or 90 days delinquent at the time he completed his application. He also indicated that in the last seven years he had no property repossessed and had not been a party to any public record civil court action. His background investigation addressed his financial status and included the review of July 2008 and April 2009 credit bureau reports (CBRs) and Applicant's security clearance application.

The SOR alleges 11 delinquent or charged off accounts, totaling approximately \$66,500, most of which have been delinquent for a number of years. Applicant admitted all the SOR allegations, except for SOR ¶¶ 1.i and 1.k. The debt alleged in SOR ¶ 1.i concerns a truck Applicant purchased new in 2003 for \$34,297. After using the truck for one year, he returned it to the dealer. After the dealer sold the truck, Applicant had a balance of \$14,094 that he has never paid. The dealer offered to settle the debt for \$2,818. Applicant claimed he could not accept the settlement offer because he did not have the money. The debt is unresolved.

Applicant denied SOR ¶ 1.k claiming that he paid the \$554, and he is disputing the charges with his credit union. This debt is charged off based on GE-3. Applicant was allowed two additional weeks after the hearing to submit documentary evidence to support his claims of payment made, contacts with creditors, negotiations, settlement offers, and disputed claims. He failed to submit any information to support his case.

During his August 2008 background interview, in his answer to the SOR, and at his hearing, Applicant claimed his current financial problems were caused by his wife's lack of financial responsibility. He stated that most of the delinquent debts were his wife's personal debts or joint accounts opened by his wife without his knowledge. Applicant further claimed that he did not contact his creditors and made no effort to resolve any of the alleged delinquent debts because he was waiting for the divorce court to assign responsibility for the marital debts. He also averred he wanted to pay his delinquent debts, but did not have the financial means to do so. He further stated his periods of unemployment and his separation and divorce contributed to his financial problems.

Based on Applicant's credit reports, his testimony, and his statements, I find that the following two delinquent debts are joint debts incurred by Applicant and his spouse. These two debts total approximately \$6,561. Applicant and his wife are responsible for these debts and they are not resolved.

¶ 1.d (\$796) (Judgment filed on June 2007 after defaulting on a loan.); and,

¶ 1.h (\$5,765) (Consumer services credit account opened to make improvements on their home).

Applicant is individually responsible for the following unresolved delinquent debts that total approximately \$39,784:

¶ 1.a (\$622) (Applicant's individual credit card account (GE 4));

¶ 1.b (\$90) (Applicant acquired this medical debt in September 2006. He claimed no knowledge of the debt prior to being confronted with it during his August 2008 background interview.);

¶ 1.c (\$17,207) (Applicant bought a motorcycle in June 2007 and defaulted on his note payments.);

¶ 1.e (\$5,450) (After a breach of contract, the creditor obtained a judgment against Applicant in April 2003. Applicant has refused to pay the judgment.);

¶ 1.f (\$648) (Applicant's individual credit card account opened in 2008 (GE 4).);

¶ 1.g (\$574) (Applicant's individual telephone account (GE 4).);

¶ 1.i (\$14,094) (Balance on Applicant's voluntarily repossessed truck.);

¶ 1.j (\$545) (Individual credit card account (GE-4).); and,

¶ 1.k (\$554) (Applicant claimed he paid this debt and that he disputed the charges. He presented no documentary evidence to support his claims.)

Since July 2008, Applicant has been earning approximately \$92,000 a year. He presented no evidence of efforts taken to correct or resolve his financial situation. Applicant presented no evidence to show he has received any financial counseling or that he follows a budget. Applicant highlighted his good work performance and that he is a valued employee. He has served government contractors well. There is no evidence that Applicant has compromised or caused others to compromise classified information.

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 required 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 controlling 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

In the decision-making process, the government has the initial burden of establishing controverted facts alleged in the SOR by “substantial evidence.”¹ Once the government has produced substantial evidence of a disqualifying condition, the burden shifts to applicant to produce evidence “to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by department counsel, and [applicant] has the ultimate burden of persuasion as to obtaining a favorable clearance decision.” Directive ¶ E3.1.15. The burden of disproving a mitigating condition never shifts to the government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

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* Executive Order 12968 (Aug. 2, 1995), Section 3.

Analysis

Guideline F, Financial Considerations

Under Guideline F, the security concern is that 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 ¶ 18.

The SOR alleged 11 delinquent debts, many of which have been delinquent for a number of years. SOR ¶¶ 1.d and 1.h allege delinquent joint accounts for which Applicant and his spouse are responsible. The remaining SOR debts are Applicant’s

¹ See Directive ¶ E3.1.14. “Substantial evidence [is] such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the contrary evidence in the record.” ISCR Case No. 04-11463 at 2 (App. Bd. Aug. 4, 2006) (citing Directive ¶ E3.1.32.1). “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994).

individual delinquent debts as established by the admitted CBRs and his testimony at the hearing.

Applicant presented no documentary evidence to show that he has paid, settled, or attempted to resolve any of the alleged debts since he acquired them. Other than claiming that the delinquent debts were his wife's accounts, or accounts opened by his wife without his consent, he presented no documentary evidence of efforts to resolve his financial obligations. It is not clear from his testimony whether Applicant has the financial means to pay his legal obligations, delinquent debts, and his day-to-day living expenses. AG ¶ 19(a): inability or unwillingness to satisfy debts; and AG ¶ 19(c): a history of not meeting financial obligations, apply.

AG ¶ 20 lists six conditions that could mitigate the financial considerations security concerns:

(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 established circumstances beyond his control, which contributed to his inability to pay his debts, i.e., his periods of unemployment and his separation and divorce. I find AG ¶ 20(b) partially applies, but does not fully mitigate the financial concerns. Applicant's evidence is not sufficient to show he acted responsibly under the circumstances. He presented no evidence of debt payments, contacts with creditors, and settlement or negotiations to resolve his SOR debts. Because of his failure to address several small SOR debts, I also find he is not financially responsible. Considering the evidence as a whole, his financial problems are not under control.

Applicant does not seem to have a viable financial plan to resolve his financial predicament or to avoid similar financial problems in the future.

AG ¶¶ 20(a), (c), (d), and (e) do not apply because Applicant's financial problems are not yet under control, and he has not participated in financial counseling. He also failed to show he made good-faith efforts to resolve his debts. His actions cast doubt on his current reliability, trustworthiness, and judgment. AG ¶ 20(f) does not apply.

Despite partial applicability of AG ¶ 20(b), financial considerations concerns are not mitigated. Applicant has not demonstrated his financial responsibility by taking sufficient actions to resolve his debts.

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. 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.

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. AG ¶ 2(c).

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant is a mature man and a good worker. There is no evidence he has ever compromised or caused others to compromise classified information. Applicant established some circumstances beyond his control, which contributed to his inability to pay his debts. These factors show some responsibility, good judgment, and mitigation.

Notwithstanding, Applicant's evidence is not sufficient to show he acted responsibly under the circumstances. He presented little documentary evidence of debt payments, contacts with creditors, and settlement or negotiations of debts. His favorable information fails to show financial responsibility and good judgment. He has made no effort to resolve his financial obligations. His financial problems are not under control.

He has not participated in financial counseling, and he does not have a viable plan to avoid similar financial problems in the future.

Moreover, considering the record evidence as a whole, I find Applicant's testimony blaming his wife for his financial irresponsibility to be not credible. His lack of candor throughout the security clearance process demonstrates Applicant lacks reliability, trustworthiness, and judgment.

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
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Subparagraphs 1.a - 1.k:	Against Applicant
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Conclusion

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

JUAN J. RIVERA
Administrative Judge