



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 09-02613
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Pamela C. Benson, Esquire, Department Counsel
For Applicant: *Pro se*

April 5, 2010

Decision

HOWE, Philip S., Administrative Judge:

On December 17, 2008, Applicant submitted his electronic security clearance application (e-QIP). On September 28, 2009, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guidelines F (Financial Considerations) and E (Personal Conduct). 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 on September 1, 2006.

Applicant acknowledged receipt of the SOR on October 5, 2009. He answered the SOR in writing on October 19, 2009, and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on November 24, 2009, and I received the case assignment on December 2, 2009. DOHA issued a Notice of Hearing on December 2, 2009, and I convened the hearing as scheduled on December 15, 2009. The Government offered Exhibits 1 through 5, which were received

without objection. Applicant testified and did not submit any exhibits. DOHA received the transcript of the hearing (Tr.) on December 28, 2009. I granted Applicant's request to keep the record open until January 8, 2010, to submit additional matters. Applicant did not submit any exhibits by that date. The record closed on January 8, 2010. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

Procedural and Evidentiary Rulings

Notice

At the hearing, Applicant indicated he received the hearing notice on December 2, 2009. (Tr. 9). I advised Applicant of his right under ¶ E3.1.8 of the Directive to 15 days notice before the hearing. Applicant affirmatively waived his right to 15 days notice. (Tr. 9)

Findings of Fact

In his Answer to the SOR, Applicant admitted the factual allegations in ¶ 1 and ¶ 2 of the SOR, with explanations. He also provided additional information to support his request for eligibility for a security clearance.

Applicant is 45 years old, married, and works for a defense contractor in the telecommunications business. His wife had a job with the U.S. Government that she resigned when she realized she did not like the location to which she was transferred. She has not found comparable paying employment in the city to which they returned after her resignation. Applicant resigned from a job he had because it involved too much weekly travel. He found employment with the defense contractor in the city to which they returned after his wife quit her job. (Tr. 20-25)

Applicant has 11 delinquent debts totaling \$25,217. None of these debts have been resolved. Applicant explained his and his wife's decreased incomes from prior years have adversely affected their financial ability to repay these debts. He consulted with a financial counseling service and contemplated filing bankruptcy. (Tr. 29, 30)

Applicant owes the following debts and their current status is:

- a. A utility bill for \$518 (subparagraph 1.a) owed from their former home. Applicant thought the debt was paid at the closing. This debt is unresolved. (Tr. 28, 31-33; Exhibits 2-5)
- b. A debt owed to a bank in the amount of \$1,577 (subparagraph 1.b). Applicant states he does not remember the precise origin of this debt. He speculated it could be an insufficient fund check or a credit card debt. He contacted the bank but it wanted a large down payment on the debt

that he could not afford. This debt is unresolved. (Tr. 33, 34; Exhibits 2-5)

- c. A utility bill for \$104 (subparagraph 1.c) that Applicant thought was paid from his house closing funds when he sold his home in March 2007. Applicant, at that time, was starting to fall behind on his house payments. He had refinanced the mortgage and made some improvements to the house. Selling soon after he completed those changes, he did not realize the profit he hoped to get. The creditor told Applicant it did not receive the payment from the closing. Applicant has not verified payment with the attorney or real estate agent at the closing. This debt is unresolved. (Tr. 28, 29, 34, 35; Exhibits 2-5)
- d. Applicant owes a jewelry company \$2,294 (subparagraph 1.d) for a ring he purchased for his wife in 2006. He has not contacted the company and has no money to pay this debt. It is unresolved. (Tr. 35, 36; Exhibits 2-5)
- e. Applicant owes a credit union \$6,352 (subparagraph 1.e) on a loan. Applicant cannot now recall for what purpose he borrowed the money. He opined it might be a car loan or a credit card debt. He has not contacted the credit union about repaying the loan or even to determine the nature of the debt. This debt is unresolved. (Tr. 37, 38; Exhibits 2-5)
- f. Applicant owes another credit union \$731 (subparagraph 1.f) for a returned check and insufficient funds fees from 2007. Applicant has not contacted the credit union about repaying this debt. This debt is unresolved. (Tr. 39; Exhibits 2-5)
- g. Applicant owes a bank on two loans in the amounts of \$2,344 and \$6,275, respectively, obtained as part of the refinancing on his former home (subparagraphs 1.g and 1.h). He used the money to renovate the house. He has not repaid the loans nor has he contacted the creditor about the loans. These debts remain unresolved. (Tr. 40, 41; Exhibits 2-5)
- h. Applicant owes an auto manufacturer's financing subsidiary \$4,703 on an auto lease (subparagraph 1.i). He could not continue to make the payments on the auto lease and arranged for the car to be repossessed in 2007. He has not repaid this debt and it is unresolved. (Tr. 42-44; Exhibits 2-5)

- i. Applicant owes a creditor \$75 (subparagraph 1.j) for a debt he does not remember or recognize. He has not tried to contact the creditor to repay the debt. This debt is unresolved. (Tr. 44, 45; Exhibits 2-5)
- j. The final debt listed in the SOR owed by Applicant is one for \$244 (subparagraph 1.k) to his previous auto insurance company. Applicant changed his auto insurance carrier and thinks this amount is the balance owed at the termination of the contract. Applicant changed insurance carriers when he purchased a car to replace his previous auto damaged in an accident that was not his fault. He has not done anything to resolve this debt with the creditor. (Tr. 45-50; Exhibits 2-5)

Applicant owes \$3,000 annually for various fees on a vacation property he owns by a lake. In 2009, he was able to pay the arrearages on these fees with the financial help of his family. He owes them \$4,000 for that help. He will owe another \$900 in January 2010 on that property. He will try to sell the property and two jet skis located there in the spring. He bought the property when his income was higher in 2006. (Tr. 60-62)

Applicant earned \$48,500 annually in 2007. When his wife worked for a U.S. Government agency in 2007 and had 28 years of service, she earned about \$42,000 annually. She quit that job and they returned to their former city of residence and had to take lower paying jobs. Applicant now earns about \$39,500 and his wife earns \$16,500 annually. Their monthly net income is about \$3,884, based on their testimony at the hearing. Their monthly expenses, including rent, gasoline, telephones, insurance, food, and utilities, total \$1,725. They would seem to have a net discretionary income of about \$2,000 monthly but claim to have no savings or spare money. They do have three dogs which they admit "are a little bit expensive." One of the dogs needs a \$3,000 hip replacement operation and Applicant is saving money for that procedure. (Tr. 23, 51-60, 71-78)

Applicant has no credit cards. He uses a debit card or cash for his purchases. Applicant's wife has been ill since 2004. She has \$5,000 in medical debts. She is trying to repay \$25 monthly to her physician because that amount is all she can afford now. The medical debts are only in her name. (Tr. 55, 59, 60, 83, 86)

Applicant signed his e-QIP on December 17, 2008. He did not disclose his automobile repossession in 2007 in response to Section 27 (b) ("In the last 7 years, have you had your wages garnished or had any property repossessed for any reason?"). Applicant did not disclose any of his financial delinquencies in answer to Sections 28 (a) ("In the last 7 years, have you been over 180 days delinquent on any debt(s)?") and (b) ("Are you currently over 90 days delinquent on any debt(s)?"). Applicant explained that never having completed such a government form as the e-QIP previously, and not remembering his debts, he asked his supervisor for guidance. Applicant stated he

followed his supervisor's advice which was that if the debts are not "blatant" that Applicant could not think of them immediately, then he should answer the questions with a negative response. Applicant claims he learned of 90% of his delinquent debts when he was interviewed by the government investigator. Applicant did not disclose any debts to the investigator. (Tr. 63-66, 89)

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.

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 overarching 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.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, 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, and has the ultimate burden of persuasion as to obtaining a favorable clearance 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. 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* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline F, Financial Considerations

The security concern 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 under AG ¶ 19 contains nine disqualifying conditions that could raise security concerns. There are two disqualifying conditions that apply:

- (a) an inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant accumulated 11 delinquent debts totaling \$25,217. These debts have existed since at least 2006. Applicant has not expended any effort to contact the creditors and arrange repayment plans. None of the debts are resolved.

The AG ¶ 20 guideline contains six mitigating conditions. One of these mitigating conditions could apply:

(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.

Applicant's wife resigned her government job in 2007 for a variety of reasons, and they returned to the city in which they formerly lived. When that action occurred, she cut her income in half. Applicant decreased his income by nearly \$10,000 with that move. However, before they moved initially they were financially overextended with their jewelry debt, the mortgage refinancing, two credit union loans, a leased car, and the other debts listed in the SOR. Applicant purchased lake-front property which now costs him \$3,000 annually that he cannot afford. His spending priorities are incorrect.

The change of employment was a voluntary act by Applicant and his wife. His wife's medical problems were not shown by Applicant to have affected his ability to repay debts he incurred after treatment started. Applicant did not show that he acted responsibly under the circumstances. Instead, he showed he spent money he could not repay. Applicant demonstrated he used money he should not have spent on his lake-front property and his pets that should have been used to pay his debts. This mitigating condition is not applicable.

Guideline E, Personal Conduct

AG ¶ 15 expresses the security concern pertaining to Personal Conduct:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

The following will normally result in an unfavorable clearance action or administrative termination of further processing for clearance eligibility:

(a) refusal, or failure without reasonable cause, to undergo or cooperate with security processing, including but not limited to meeting with a security investigator for subject interview, completing security forms or releases, and cooperation with medical or psychological evaluation; and

(b) refusal to provide full, frank and truthful answers to lawful questions of investigators, security officials, or other official representatives in connection with a personnel security or trustworthiness determination.

AG ¶ 16 describes seven conditions that could raise a security concern and may be disqualifying. One condition applies:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities.

Applicant did not disclose on his e-QIP his 11 delinquent debts that are listed in the SOR. Applicant knew he had debts, just not the precise creditors and amounts. Yet, he deliberately did not disclose them anywhere in the e-QIP.

AG ¶ 17 provides seven conditions that could mitigate security concerns. One mitigating condition may have some applicability:

(b) the refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by improper or inadequate advice of authorized personnel or legal counsel advising or instructing the individual specifically concerning the security clearance process. Upon being made aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully.

Applicant explained his deliberate failure to disclose his delinquent debts on the e-QIP as based on the advice he received from his supervisor. He did not produce the supervisor or a statement from that person supporting his assertion. Therefore, Applicant's credibility is in question on his assertion.

The mitigating condition only applies if his supervisor is an "authorized personnel or legal counsel." His private company supervisor is not a person authorized to advise Applicant on the security clearance process, as a government adjudicator or security manager would be. Applicant did not show his supervisor had any experience, power, or color of authority to instruct him specifically concerning the security clearance application process. The supervisor is empowered only in the assignment and management of work duties. Therefore, this mitigating condition does not apply.

Applicant admitted he falsified his answers to Section 28 on the e-QIP in his answer to the SOR. He offered no further explanation to rebut his own admission. His admission cannot overcome his unpersuasive explanation of his supervisor's role in the answering of the e-QIP questions.

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 an applicant's conduct and all the 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.

AG ¶ 2(c) requires each case must be judged on its own merits. 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 facts and circumstances surrounding this case. Applicant is an adult who borrowed money and could not repay it. He has made no effort to repay it. When asked by the U.S. Government on the e-QIP about any delinquent finances or repossessions in the past seven years, Applicant deliberately failed to disclose any such information. Applicant's actions on both issues are frequent and recent. His actions were voluntary. There is no rehabilitation or behavioral changes shown by Applicant. The potential for coercion, duress, pressure, and exploitation exist because of the magnitude of the debts and Applicant's willful failure to disclose them. Finally, Applicant's financial situation has existed for at least three years and his testimony showed it will continue in the future until he pays his debts by increasing his income, cutting his expenses, or resolving them in some legal manner. Applicant has done nothing to date to resolve any of the debts.

Overall, the record evidence leaves me with questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant did not mitigate the security concerns arising from his Financial Considerations and Personal Conduct. I conclude the "whole-person" concept against Applicant.

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 to 1.k:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a:	Against 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.

PHILIP S. HOWE
Administrative Judge