



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 09-02732
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Jeff Nagel, Esquire, Department Counsel
For Applicant: *Pro se*

December 30, 2010

Decision

ROSS, Wilford H., Administrative Judge:

Applicant submitted his Electronic Questionnaires for Investigations Processing (e-QIP), on October 9, 2008. (Government Exhibit 1.) On October 29, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guidelines F (Financial Considerations) and E (Personal Conduct) about Applicant. 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 answered the SOR in writing on November 11, 2009, and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on January 6, 2010. This case was assigned to me on January 11, 2010. DOHA issued a notice of hearing on February 4, 2010, and I convened the hearing as scheduled on March 19, 2010. The Government offered Government Exhibits 1 through 10, which

were received without objection. Applicant testified and submitted Applicant Exhibits A through I, which were also received without objection. The record was left open to allow Applicant to submit additional information. On April 7, 2010, Applicant submitted Applicant Exhibit J, which was received without objection. DOHA received the transcript of the hearing on March 24, 2010. The record closed on April 7, 2010. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

Findings of Fact

Applicant is 46 and married. He is honorably retired after a career in the United States Navy as an enlisted man. During his career he received several awards and decorations. (Transcript at 53-54.) He is employed by a defense contractor and seeks to obtain a security clearance in connection with his employment in the defense industry.

Paragraph 1 (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 allegations 1.a. through 1.gg. and 2.a. in the SOR. Those admissions are deemed findings of fact. He denied allegation 2.b. He also submitted additional statements supporting his request for a security clearance.

The SOR alleges, Applicant admits, and Government exhibits substantiate 33 delinquent debts totaling approximately \$65,423. Some of these debts have been due and owing since 2003. (Government Exhibits 7, 8, 9 and 10.) Applicant testified that his financial problems were primarily caused by a period of unemployment in 2003 and 2004, after his retirement from the Navy. (Transcript at 28, 57.) As further shown below, several of his debts have been paid. He estimates that he can resolve his debt situation within one or two years. (Transcript at 67.)

As of the day the record closed, the status of the Applicant's debts was as follows:

1.a. Applicant admits this past due debt to a collection agent of a credit union in the amount of \$12,783. This debt has not been paid and the Applicant has no current plans to pay this debt. (Transcript at 40-42, 59.)

1.b. Applicant admits that he owed this debt to the collection agent of a telephone company in the amount of \$1,664. Evidence was submitted showing this debt to be paid. (Government Exhibit 10; Applicant Exhibit A; Transcript at 59-60.)

1.c. Applicant admits this past due debt to a collection agent of a creditor in the amount of \$76. This debt has not been paid and the Applicant has no current plans to

pay this debt. He further stated that he has been unable to contact this creditor using the contact information found in his credit report. (Transcript at 60-61.)

1.d. Applicant admits this past due debt in the amount of \$8,519. This debt has not been paid and the Applicant has no current plans to pay this debt. (Transcript at 42, 61.)

1.e. Applicant admits that he owed this debt in the amount of \$568. Evidence was submitted showing this debt to be paid. (Applicant Exhibit F; Transcript at 61.)

1.f. Applicant admits that he owed this debt to the collection agent of a telephone company in the amount of \$4,318. Evidence was submitted showing this debt to be paid. (Government Exhibit 10; Applicant Exhibit A; Transcript at 42-45, 61.)

During 2003 and 2004 Applicant bounced a considerable number of checks to a military exchange. The SOR alleges, and the Applicant admits, bouncing approximately 100 checks. At first he stated, "I might have made a mistake or two." He later stated that he was not sure how many checks he bounced. Applicant also stated that he knew each time he bounced a check that he had no money in his bank account to cover the check. Finally, he testified, "But I - - in the back of my mind, I was planning to pay it back when I could afford to pay it back." (Transcript at 28-30.) (See Transcript at 64-66.)

The Government has been attaching \$122.57 from the Applicant's retirement pay and using that amount to pay his bounced checks. He does not know how long the Government has been doing that. He is not making independent payments on these debts. (Applicant Exhibits D and J; Transcript at 50, 66.)

The following bounced checks have been repaid, according to the most recent credit report of the Applicant in the record. (Government Exhibit 10.) (See Applicant Exhibits A and G.) Allegations 1.g., 1.h., 1.i., 1.j., 1.k., 1.m., 1.s., 1.t., 1.u., 1.v., 1.w., 1.cc., 1.dd., 1.ee., and 1.gg. These checks total \$2,362. Two checks were for \$425 each.

The Applicant submitted documentation from the Government showing that he has now paid the debt for the bounced checks in full, including the following checks: 1.l. for \$108, 1.x. for \$163, and 1.ff. for \$86. (Applicant Exhibit J.)

1.n. Applicant admits this past due debt in the amount of \$3,090. This debt has not been paid and the Applicant has no current plans to pay this debt. (Transcript at 45.)

1.o. Applicant admits this past due debt to a collection agent of a telephone company in the amount of \$97. This debt has not been paid and the Applicant has no current plans to pay this debt. He further stated that he has been unable to contact this creditor using the contact information found in his credit report. (Transcript at 62.)

1.p. Applicant admits that he owed this debt to the collection agent of a telephone company in the amount of \$4,776. Evidence was submitted showing this debt to be paid. (Government Exhibit 8; Applicant Exhibits C and H; Transcript at 45-49.)

1.q. Applicant admits this past due debt in the amount of \$11,630. This debt has not been paid and the Applicant has no current plans to pay this debt. (Transcript at 49, 62-63.)

1.r. Applicant admits that he owed this debt in the amount of \$1,891. Evidence was submitted showing this debt to be paid. (Government Exhibit 10; Transcript at 63.)

1.y. Applicant admits this past due debt in the amount of \$11,824. This debt has not been paid and the Applicant has no current plans to pay this debt. Applicant testified, "It [the debt] might have dropped off my radar." (Transcript at 49-50.)

1.z. Applicant admits that he owed this debt in the amount of \$1,025 as the result of a judgment against him. Evidence was submitted showing this debt to be paid. (Government Exhibit 10; Applicant Exhibits A and B; Transcript at 63-64.)

1.aa. Applicant admits that he owed this debt in the amount of \$303. Evidence was submitted showing this debt to be paid. (Applicant Exhibit E; Transcript at 64.)

1.bb. Applicant admits that he owed this debt in the amount of \$140. Evidence was submitted showing this debt to be paid. (Applicant Exhibits A, C and I; Transcript at 58.)

Paragraph 2 (Guideline E, Personal Conduct)

2.a. As stated above, the Applicant admits bouncing approximately 100 checks at a military exchange in 2003 and 2004. The total amount of money he obtained was \$3,861.94. It appears that this indebtedness has been repaid by the Government taking money out of the Applicant's retirement pay.

2.b. Applicant denied that he had been barred from a military installation due to his conduct in bouncing checks. During his testimony he recollected that an incident occurred on base where his identification card was confiscated and he was escorted off base. (Transcript at 51-52, 65.) There is no evidence as to the year in which this incident occurred.

Policies

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 mitigating conditions, which must 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 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 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, "Any 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, and 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. 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 about potential, rather than actual, risk of compromise of classified information.

Finally, as emphasized by President Eisenhower in Section 7 of Executive Order 10865, "Any 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." See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

It is the Government's responsibility to present substantial evidence to support the finding of a nexus, or rational connection, between the Applicant's conduct and the continued holding of a security clearance. If such a case has been established, the burden then shifts to the Applicant to go forward with evidence in rebuttal, explanation or mitigation which is sufficient to overcome or outweigh the Government's case. The applicant bears the ultimate burden of persuasion in proving that it is clearly consistent with the national interest to grant him or her a security clearance.

In this case the Government has met its initial burden of proving by substantial evidence that the Applicant has financial difficulties which may affect his ability to safeguard classified information. Applicant, on the other hand, has not successfully mitigated the Government's case, except in part. As set forth above, subparagraphs 1.b., 1.e., 1.f. through 1.m., 1.p., 1.r. through 1.x., 1.z. through 1.gg. are found for the Applicant as those particular debts have been repaid. Subparagraphs 1.c. and 1.o. are found for Applicant as he has behaved reasonably with regards to contacting those particular creditors.

Paragraph 1 (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 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, and supported by the evidence, continues to have over \$47,000 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 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 in about 2003 and 2004, and continue to the present. He submitted evidence that he resolved several debts, and those subparagraphs are found for him. However, he did not submit evidence concerning a budget, or how he planned to pay

his still substantial indebtedness. It is also a fact to be considered that his repayment to the Government for a substantial number of bounced checks was made through involuntary withdrawals from his retirement pay.

I have considered all these facts, but find there is a lack of consistent forward movement. A mere statement of intent to pay or resolve his debts in the future is insufficient evidence to conclude that he has acted responsibly towards his debts. It is Applicant's burden to submit evidence showing that his financial situation has improved. He has not done so.

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., 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 financial situation was impacted by his lack of employment after retirement from the Navy. However, his conduct in bouncing a considerable number of checks cannot be viewed as acting responsibly. This mitigating condition has limited application.

Applicant has initiated a good-faith effort to pay off his creditors. However, there is only a limited track record of his voluntarily making payments. Accordingly, AG ¶ 20(d) has only limited applicability. Finally, given the fact that he remains \$47,000 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). Guideline F is found against the Applicant.

Paragraph 2 (Guideline E, Personal Conduct)

The security concern relating to the guideline for Personal Conduct is set out in AG ¶ 15:

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.

Applicant, after his retirement from the Navy, engaged in a course of conduct where he repeatedly bounced checks at a military exchange. As a former Sailor, he knew that such conduct was not appropriate and, arguably, criminal in nature. He persisted in doing it because he felt it was necessary for him to do so. His testimony did not show any remorse or understanding of the impact of what he did on fellow servicemembers. While the actions occurred in 2003 and 2004, under the particular facts of this case they continue to have security significance, as does his being barred from a military installation.

The following Disqualifying Conditions apply to the facts of this case:

16.(c) credible adverse information in several adjudicative areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information;

16.(d) credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information. This includes but is not limited to consideration of:

(3) a pattern of dishonesty or rule violations; and

16.(e) personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress, such as (1) engaging in activities which, if known, may affect the person's personal, professional, or community standing.

None of the Mitigating Conditions have application. As described above, under the particular circumstances of this case, Mitigating Condition 17.(c) is not applicable. "The offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment." Guideline E is found against the Applicant.

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 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 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. I have also considered his conduct in bouncing a considerable number of checks at a military exchange.

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 and Personal Conduct.

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.

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.:	For 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.:	For the Applicant
Subparagraph 1.h.:	For the Applicant
Subparagraph 1.i.:	For the Applicant
Subparagraph 1.j.:	For the Applicant

Subparagraph 1.k.:	For the Applicant
Subparagraph 1.l.:	For the Applicant
Subparagraph 1.m.:	For the Applicant
Subparagraph 1.n.:	Against the Applicant
Subparagraph 1.o.:	For the Applicant
Subparagraph 1.p.:	For the Applicant
Subparagraph 1.q.:	Against the Applicant
Subparagraph 1.r.:	For the Applicant
Subparagraph 1.s.:	For the Applicant
Subparagraph 1.t.:	For the Applicant
Subparagraph 1.u.:	For the Applicant
Subparagraph 1.v.:	For the Applicant
Subparagraph 1.w.:	For the Applicant
Subparagraph 1.x.:	For the Applicant
Subparagraph 1.y.:	Against the Applicant
Subparagraph 1.z.:	For the Applicant
Subparagraph 1.aa.:	For the Applicant
Subparagraph 1.bb.:	For the Applicant
Subparagraph 1.cc.:	For the Applicant
Subparagraph 1.dd.:	For the Applicant
Subparagraph 1.ee.:	For the Applicant
Subparagraph 1.ff.:	For the Applicant
Subparagraph 1.gg.:	For the Applicant

Paragraph 2, Guideline E:	AGAINST THE APPLICANT
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Subparagraph 2.a.:	Against the Applicant
Subparagraph 2.b.:	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