



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 09-02910
)
Applicant for Security Clearance)

Appearances

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

For Applicant: *Pro se*

March 23, 2011

DECISION

ROSS, Wilford H., Administrative Judge:

Applicant submitted his Electronic Questionnaire for Investigations Processing (e-QIP), on December 10, 2008. (Government Exhibit 4.) On November 23, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guidelines F and E concerning 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 guidelines (AG) effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant submitted an Answer to the SOR on December 15, 2009, and requested a decision be made without a hearing. Department Counsel submitted a File or Relevant Material (FORM) to the Applicant on September 16, 2010. Applicant received the FORM on September 28, 2010, and was given 30 days to submit any additional information. Applicant elected not to submit any additional information. The case was assigned to me on December 1, 2010. Based upon a review of the case file, pleadings, and exhibits, eligibility for access to classified information is denied.

Findings of Fact

Applicant is 31 and single. He is employed by a defense contractor and seeks to obtain a security clearance in connection with his employment.

Paragraph 1 (Guideline F, Financial Considerations)

The Government alleges in this paragraph 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 admitted subparagraphs 1.a., 1.b., and 1.g. Those admissions are deemed findings of fact. He denied subparagraphs 1.c., 1.d., 1.e., 1.f., 1.h., and 1.i. He also submitted additional information to support his request for a continued security clearance.

1.a. Applicant admits that a judgement was filed against him in 2008 in the amount of \$3,704.59. Applicant states in his Answer, "I was working overseas in Korea when judgment was made. No summons mailed to me, saw it was on credit report." No other information was provided. The judgement has not been resolved.

1.b. Applicant admits that he is indebted to a creditor for a delinquent debt in the amount of \$3,871.00 for a repossessed automobile. There is no evidence that Applicant has paid this debt or intends to pay this debt. This debt is unresolved.

1.c. Applicant denies that he is indebted to a creditor in the amount of \$419.00. Applicant states in his Answer that the debt was paid in June 2009. Attached to his Answer he submitted a letter from the collection agent for this debt dated August 14, 2009, indicating that they could not find a file with his name and the account number. (Answer at 7.) This debt is in dispute.

1.d. Applicant denies that he is indebted to a utility in the amount of \$208.00. Applicant states in his Answer that the debt was paid in June 2009. A credit report dated July 24, 2010, confirms that a debt to this creditor was paid. However, the credit report also shows an additional unpaid debt for this amount under the Applicant's name. (Government Exhibit 7 at 2.) Applicant stated in a set of interrogatories, "\$208 was paid in full, corresponding conformation numbers and customers service rep's info was provided." (Government Exhibit 8 at 8.) Given the factual status of this case, I cannot determine the current status of this debt. This debt is in dispute.

1.e. Applicant denies that he owes a medical creditor \$530. He further stated that this medical bill was in relation to a vehicle accident he was involved in during the time he was on active duty with the United States military. As such, the medical bills were to be paid by Tricare. He stated in his Answer that Tricare has been in contact with the creditor and that the account has been removed from his credit report. This debt is not contained on Applicant's most current credit report. (Government Exhibit 7.) Given the factual status of this case, I cannot determine the current status of this debt. This debt is in dispute.

1.f. Applicant denies that he owes a medical creditor \$731. He further stated that this medical bill was in relation to a vehicle accident he was involved in during the time he was on active duty with the United States military. As such, the medical bills were to be paid by Tricare. He stated in his Answer that Tricare has been in contact with the creditor and that the account has been removed from his credit report. This debt is not contained on Applicant's most current credit report. (Government Exhibit 7.) Given the factual status of this case, I cannot determine the current status of this debt. This debt is in dispute.

1.g. Applicant admits that he is indebted to a creditor for a delinquent debt in the amount of \$970.00. Applicant has made no recent payments on this debt, and there is no evidence that he is going to make payments on this debt.

1.h. Applicant denies that he is indebted to a creditor in the amount of \$305.00. Applicant states in his Answer that the debt was paid in full. Attached to his Answer he submitted letters from the collection agent for this debt dated June 3, 2009, indicating that two accounts were paid in full. (Answer at 4-5.) This debt is resolved.

1.i. Applicant denies that he is indebted to a creditor in the amount of \$69.00. Applicant states in his Answer that the debt was paid in full. Attached to his Answer he submitted letters from the collection agent for this debt dated June 3, 2009, indicating that two accounts were paid in full. (Answer at 4-5.) This debt is resolved.

Applicant states in an interview with a Government investigator:

[Applicant's] credit problems began when he got out of the military. He was paying his bills via allotment. When he got out, it took awhile to find a job and he could not pay. He did not even receive his last pay check until 2 months after he got out. When he got out, he was on unemployment. He then got a job in 10/07. He went to work for [Company One] in Korea until 10/07 (*sic*). From 10/08 to present, he works for [Company Two]. Since he got back from Korea, he has been paying for hotels and storage. He is trying to get back on his feet. His son was also born while he was in Korea. (Government Exhibit 8 at 5.)

Paragraph 2 (Guideline E - Personal Conduct)

The Government alleges under Guideline E that Applicant is ineligible for clearance because he has engaged in conduct which displays questionable judgment, dishonesty, or unwillingness to comply with rules and regulations. Applicant admits all of the allegations under this paragraph. Those admissions are deemed findings of fact.

In November 2005, Applicant was arrested and charged for Driving Under the Influence of Alcohol. He used cocaine in December 2005, after being granted a security clearance in 1999. Because of his use of cocaine, he tested positive in a urinalysis taken in conjunction with his attending a military substance abuse program in December

2005. As a result of these activities, he received a General Discharge Under Honorable Conditions for Drug Rehabilitation Failure in July 2006.

Applicant states that he had personal issues in November and December 2005, which lead to this conduct. In the Additional Comments section of his Electronic Questionnaire for Investigations Processing (eQIP) dated December 10, 2008, he states:

The months following may 2005, I was unsure about living life. My close friend died while I was deployed in Iraq and I came home on R&R and my uncle and myself was (*sic*) involved in a accident that resulted in him dying in my arms. I self recommended myself to division mental health because I didn't know what to do. I made decisions in those months that resulted (*sic*) in a chain reaction of events that overwhelmed me. I was diagnosed with bereavment (*sic*)/ptsd. I have taken control of my situation and made the best possible attempt to continue to look forward. (Government Exhibit 4 at 36.) (See Government Exhibit 8 at 4-5.)

Applicant provided no evidence concerning the quality of his 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

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 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 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

Paragraph 1 (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. The Applicant, at the time the SOR was issued, had approximately \$11,907 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 in about 2006, when he left the military. The most recent credit report in the record indicates that Applicant pays his current bills in a timely manner. In addition, while he paid or disputes six of the debts in the SOR, and those subparagraphs are found for him, he has not shown any movement in paying his largest debts. This mitigating condition does not have application in 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., loss of employment. . .), and the individual acted responsibly under the circumstances.” Applicant was unemployed for a considerable period of time after leaving the military. Once he became employed and received notice of his debts, he has moved to pay some off and dispute others. This mitigating condition has some application in this case.

The Applicant has not yet made a good-faith effort to pay off his creditors. There is little to no track record of his making payments for a consistent period of time. Accordingly, AG ¶ 20(d) is not applicable. Finally, at the present time, I cannot find that “there are clear indications that the problem is being resolved or is under control,” as required by AG ¶ 20(c). Paragraph 1 is found against the Applicant.

Paragraph 2 (Guideline E, Personal Conduct)

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

Conduct involving questionable judgment, lack of candor, dishonesty or unwillingness to comply with rules or regulations can raise questions about an individual’s reliability, trustworthiness and ability to protect classified information.

The Applicant’s conduct set forth under Paragraph 2, brings into play disqualifying condition ¶ 16(c) under Guideline E:

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.

The following mitigating conditions under Guideline E ¶ 17 apply to his conduct:

AG ¶ 17(c) 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, and

AG ¶ 17(d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that caused untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur.

The Applicant's conduct in November and December 2005 was singular in nature, and there is no evidence of recurrence. It took place five years before the record closed and has no current security significance. Paragraph 2 is found for 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 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 relevant facts and circumstances surrounding this case. The discussion under Guidelines F and E, above, applies here as well. Applicant had financial problems when he got out of the military. He has begun to make strides in getting his financial situation under control. However, I cannot find that his financial situation is under control. Under AG ¶ 2(a)(3), I cannot find that there have been permanent behavioral changes under AG ¶ 2(a)(6). Accordingly, at the present time, I also cannot find that there is little to no

potential for pressure, coercion, exploitation, or duress (AG ¶ 2(a)(8)); and that there is no likelihood of recurrence (AG ¶ 2(a)(9)).

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 has not mitigated the security concerns arising from his financial situation. Accordingly, the evidence supports denying 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.:	Against the Applicant
Subparagraph 1.c.:	For the Applicant
Subparagraph 1.d.:	For the Applicant
Subparagraph 1.e.:	For the Applicant
Subparagraph 1.f.:	For the Applicant
Subparagraph 1.g.:	Against the Applicant
Subparagraph 1.h.:	For the Applicant
Subparagraph 1.i.:	For the Applicant

Paragraph 2, Guideline E:	FOR THE APPLICANT
Subparagraph 2.a.:	For the Applicant
Subparagraph 2.b.:	For the Applicant
Subparagraph 2.c.:	For the Applicant
Subparagraph 2.d.:	For the Applicant
Subparagraph 2.e.:	For 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

