



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



In the matter of:)
)
) ISCR Case No. 09-04500
 SSN:)
)
 Applicant for Security Clearance)

Appearances

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

August 30, 2010

Decision

GOLDSTEIN, Jennifer I., Administrative Judge:

Applicant has not mitigated Financial Considerations security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On March 24, 2010, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, Financial Considerations. The action was taken under Executive Order (EO) 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 for cases after September 1, 2006.

Applicant answered the SOR on May 17, 2010, and requested a hearing before an administrative judge. The case was assigned to me on June 17, 2010. DOHA issued a notice of hearing on July 1, 2010, and the hearing was convened as scheduled on July 28, 2010. The Government offered Exhibits (GE) 1 through 8, which were admitted

without objection. Applicant testified on his own behalf and presented Applicant exhibits (AE) A through E, which were admitted without objection. DOHA received the transcript of the hearing (Tr.) on August 9, 2010.

Findings of Fact

Applicant is a 28-year-old employee of a defense contractor. He has worked for his current employer since December 2007. He is single and has no children. He has done volunteer work for a charity that rebuilds homes in a foreign country. Applicant presented no letters of recommendation, performance evaluations, or other character evidence. (GE 1; Tr. 26-28, 59.)

The SOR alleges ten delinquent debts totaling \$58,326, as listed on credit reports obtained in 2009 and 2010. In addition, it is alleged that Applicant failed to file his Federal income taxes for tax years 2004, 2005, and 2006. Applicant admits the allegations contained in subparagraphs 1.a.-1.g., 1.i., 1.j., but denies 1.h., and 1.k.-1.m. He attributes his financial delinquencies to living beyond his means. He admitted to making purchases when he did not have sufficient income to pay off the debts. He also admitted that he has not used the best judgment in failing to contact the majority of his creditors. (Answer; GE 2; GE 3; GE 4; GE 5; GE 6; GE 7; GE 8; Tr. 29-30, 38.) Applicant's debts are as follows:

Subparagraph 1.a. alleges that Applicant is indebted on a credit card in the approximate amount of \$19,343. This debt remains unpaid. Applicant attempted to contact this creditor through a letter in August 2009, but has not had subsequent contact to arrange payments. (GE 3; Tr. 31-32.)

Subparagraph 1.b. alleges that Applicant is indebted on a credit card in the approximate amount of \$4,163. This debt remains unpaid. Applicant has not had contact with this creditor in the past four years. (Tr. 33.)

Subparagraph 1.c. alleges that Applicant is indebted on a delinquent account in the approximate amount of \$2,057. Applicant claims he attempted to contact this creditor through a certified letter, but he failed to provide documentation to substantiate this claim. This debt remains unpaid. (Tr. 34.)

Subparagraph 1.d. alleges that Applicant is indebted on a delinquent account in the approximate amount of \$4,163. This debt remains unpaid. Applicant has not had contact with this creditor in the past four years. (Tr. 35.)

Subparagraph 1.e. alleges that Applicant is indebted on a delinquent account in the approximate amount of \$208. This debt remains unpaid. Applicant has not had contact with this creditor in the past four years. (Tr. 36.)

Subparagraph 1.f. alleges that Applicant is indebted on a delinquent account in the approximate amount of \$7,687. This debt remains unpaid. Applicant has not had contact with this creditor in the past four years. (Tr. 38.)

Subparagraph 1.g. alleges that Applicant is indebted on a delinquent account in the approximate amount of \$8,141. This debt remains unpaid. (Tr. 38-39.)

Subparagraph 1.h. alleges that Applicant is indebted on a delinquent account in the approximate amount of \$10,422. This creditor filed a law suit against Applicant. Prior to judgment, Applicant negotiated a payment agreement with this creditor. Beginning in June 2007, he started making payments of \$286 per month. He presented evidence showing two payments of \$364 per month in June and July 2010. (AE A; AE E; Tr. 39-41, 55.)

Subparagraph 1.i. alleges that Applicant is indebted on a delinquent account in the approximate amount of \$1,217. This debt remains unpaid. Applicant has not had contact with this creditor in the past four years. (Tr. 41.)

Subparagraph 1.j. alleges that Applicant is indebted on a delinquent account in the approximate amount of \$925. This debt remains unpaid. Applicant has not had contact with this creditor in the past four years. (Tr. 41.)

In 2008, Applicant spoke to a credit counseling service to create a debt management plan. However, he decided he could not afford the payments and did not hire the service to assist him with his debts. (GE 3; Tr. 52.)

Subparagraphs 1.k.-1.m. address Applicant's failure to file his 2004, 2005, and 2006 Federal Income tax returns. At hearing, he admitted he did not file his Federal income tax returns for tax years 2004-2008, in a timely manner. He claimed that he did not have to file because he did not have the money to pay his taxes for these years. However, he claims that in March of 2010, he filed all of his delinquent tax returns He did establish, through a monthly statement from the IRS, that he has a payment agreement with the IRS to pay \$285 per month on a debt of approximately \$19,317.78. He presented proof of three payments under this agreement. (AE B; AE E; Tr. 41-46.)

In addition to his Federal tax debt, Applicant also divulged that he has a state tax debt for tax years 2004-2007. He estimated that he owes approximately \$2,000 in state taxes. He provided documentation to show he is making payments on his state tax debt. (AE C; AE D; Tr. 47.)

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 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, administrative judges apply the guidelines 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.

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 the applicant or proven by Department Counsel.” The applicant has the ultimate burden of persuasion to obtain 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 as to potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that adverse 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, as follows:

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. Three are potentially applicable in this case:

- (a) inability or unwillingness to satisfy debts;
- (c) a history of not meeting financial obligations; and
- (g) failure to file Federal, state, or local income tax returns as required or the fraudulent filing of the same.

Applicant accumulated \$58,326 in delinquent debts and is unable or unwilling to pay his obligations. He has failed to address the majority of his debts for a number of years. In addition, he failed to file his Federal income tax returns for 2004-2008. The evidence is sufficient to raise the above disqualifying conditions.

Five Financial Considerations Mitigating Conditions under AG ¶ 20 are potentially applicable:

- (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; and
- (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.

Applicant is making payments to the creditor alleged in subparagraph 1.h. because he was facing a judgment against him if he did not begin to satisfy this debt. He is also making payments to the IRS and on his state tax debt. While he did not provide copies of his 2004-2008 state and Federal tax return filings, the documentation from each appear to reflect that he is taking action on these delinquent accounts. However, the majority of his debts are still delinquent. His debt is current and on-going. He gave little indication that he is working to improve his financial situation. His

unwillingness to address these debts casts doubt on his current reliability, trustworthiness, and good judgment. AG ¶ 20(a) is not applicable.

Applicant gave no indication that the debts were due to factors beyond his control. He takes full responsibility for spending beyond his means. Further, he has not acted responsibly with respect to his delinquent debts. AG ¶ 20(b) does not apply.

Applicant has not sought financial counseling. While he may have spoken to a credit counseling service in 2008, he did not follow through and use their service. He failed to provide proof that AG ¶ 20(c) applies.

Applicant has made payment arrangements with only two of his creditors alleged in the SOR (the state tax delinquency was not alleged). There is no showing he has initiated a good-faith effort to repay his other overdue creditors or otherwise resolve debts. AG ¶ 20(d) does not apply.

Finally, Applicant has not contested any of his outstanding debts. AG ¶ 20(e) is not mitigating.

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 facts and circumstances surrounding this case. I have incorporated my comments under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

Applicant presented no evidence of his character. He has been unable to make ends meet and satisfy his past due accounts, despite being employed and having no dependents. His choices, with respect to his debts, do not demonstrate the judgment,

reliability, or trustworthiness need to hold a security clearance. There are significant unresolved concerns about Applicant's finances.

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 Financial Considerations security concerns.

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
Subparagraph 1.a.:	Against Applicant
Subparagraph 1.b.:	Against Applicant
Subparagraph 1.c.:	Against Applicant
Subparagraph 1.d.:	Against Applicant
Subparagraph 1.e.:	Against Applicant
Subparagraph 1.f.:	Against Applicant
Subparagraph 1.g.:	Against Applicant
Subparagraph 1.h.:	For Applicant
Subparagraph 1.i.:	Against Applicant
Subparagraph 1.j.:	Against Applicant
Subparagraph 1.k.:	For Applicant
Subparagraph 1.l.:	For Applicant
Subparagraph 1.m.:	For 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.

Jennifer I. Goldstein
Administrative Judge