



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



In the matter of:)
)
-----) ISCR Case No. 09-05085
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Richard A. Stevens, Esquire, Department Counsel
For Applicant: *Pro Se*

August 3, 2010

Decision

HOWE, Philip S., Administrative Judge:

On February 23, 2006, Applicant submitted his electronic version of the Security Clearance Application (SF 86) (e-QIP). On January 26, 2010, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F. 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 revised adjudicative guidelines (AG).

Applicant answered the SOR in writing. Applicant requested his case be decided on the written record in lieu of a hearing.

On April 14, 2010, Department Counsel submitted the Department's written case. A complete copy of the file of relevant material (FORM) was provided to the Applicant on April 22, 2010, when he received the file. He was given the opportunity to file

objections and submit material in refutation, extenuation, or mitigation. Applicant did not file a Response to the FORM within the 30 day time allowed that would have expired on May 22, 2010. I received the case assignment on July 7, 2010. Based upon a review of the complete case file, pleadings, and exhibits, eligibility for access to classified information is denied.

Findings of Fact

Applicant admitted all the allegations. He also provided additional information to support his request for eligibility for a security clearance. (Item 4)

Applicant is 41 years old and married to his second wife. He was hired by a defense contractor in February 2006. (Items 4-6)

The SOR lists 18 delinquent debts. The debts total \$44,664. The debts and their current status are as follows: (Items 6-10)

1. A judgment for \$4,620 owed to a financial institution since 2004. This debt is unpaid. (Subparagraph 1.a)
2. A judgment for \$1,021 that remains unpaid since 2008. (Subparagraph 1.b)
3. A medical debt for \$1,330 unpaid since October 2009. (Subparagraph 1.c)
4. Another medical debt in the amount of \$539 unpaid since 2009. (Subparagraph 1.d)
5. A third medical account for \$250 delinquent and unpaid since 2009. (Subparagraph 1.e)
6. A debt owed to a collector for \$915 since 2007. (Subparagraph 1.f)
7. A debt owed to a collector for \$1,957 that is unpaid since 2009. (Subparagraph 1.g)
8. A debt owed to a collector on credit card purchases in the amount of \$1,743 since 2009. (Subparagraph 1.h)
9. A debt owed to a collector on a credit card account in the amount of \$785 since 2004. (Subparagraph 1.i)
10. A debt owed to a bank in the amount of \$1,808 owed since 2004 and remaining unpaid. (Subparagraph 1.j)
11. A debt owed on a cable television bill in the amount of \$92. It remains unpaid. (Subparagraph 1.k)
12. A debt owed to a bank in the amount of \$409 remains unpaid. It originated in 2004. (Subparagraph 1.l)
13. A \$3,515 debt owed to a bank on an auto loan delinquent since 2005. The car was repossessed. (Subparagraph 1.m)

14. A debt owed on a credit card in the amount of \$1,677 since 2009. (Subparagraph 1.n)
15. A debt owed to a bank in the amount of \$557 since 2009. This debt remains unpaid. (Subparagraph 1.o)
16. A debt for a telephone account owed to a collector in the amount of \$74. This debt remains unpaid. (Subparagraph 1.p)
17. A debt owed on a credit card in the amount \$586 since 2009. (Subparagraph 1.q)
18. Applicant's wages were garnished in the amount of \$22,783 to repay education loans owed to the U.S. Department of Education from October 2008 to the present. The loans started in 2002 and continued to 2006. The garnishment order remains in effect, taking \$560 monthly from Applicant's income. (Subparagraph 1.r)

Applicant claims in his Answer that he has not incurred any new delinquent debt since 2006 when he completed the e-QIP. He also asserts the car loan was "resolved," but did not submit any documentary evidence showing the date or amount of resolution. Finally, he states the garnishment has reduced his student loan balance to about \$11,000. He did not submit any evidence to support any of these statements. (Items 4, 6)

Applicant has no savings amount. He has less than \$1,000 in a retirement account. His income is \$4,625 monthly as of October 2009, when he completed the DOHA interrogatories. His net monthly income after the garnishment was \$2,600. His monthly expenses are about \$2,435. His house and car are fully paid. His wife obtained \$140,000 several years ago in settlement of a lawsuit. Applicant and his wife spent the money on repaying family loans and paying off his mortgage and other debts. Applicant has not sought or obtained financial counseling. (Item 6)

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, the administrative judge applies 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.

According to 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 the 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 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 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 at AG ¶ 19 contains nine disqualifying conditions that could raise security concerns. From these nine conditions, two conditions are applicable to the facts found in this case:

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

Applicant accumulated \$44,664 in delinquent debt from 2002 to the present time that remains unpaid. Applicant has 18 delinquent debts, including education loans and an unpaid debt on a repossessed car.

The guideline in AG ¶ 20 contains conditions that could mitigate security concerns arising from financial difficulties.

(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.

Of these six conditions, none are applicable. Applicant did not present any evidence of a good-faith effort to repay or resolve in some manner his delinquent debts. Applicant has not repaid any of the delinquent debts listed in the SOR voluntarily. His delinquent debt problem has continued for several years. He has not obtained any counseling. Applicant has not asserted any basis to dispute the debts. Nor has he

presented any evidence that a divorce or unemployment, or other outside factors, caused him to fall into debt and kept him from repaying it.

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 facts and circumstances surrounding this case. Applicant was an adult when he incurred the debts. He has not taken any action to resolve his delinquent debts. This inaction leaves him vulnerable to pressure, coercion, exploitation, or duress based on the magnitude of his financial obligation. His lack of action continues to this day, and is obviously voluntary. His inaction will continue based on his past performance. Applicant displayed a lack of good judgment incurring the debts. Next, he exhibited a continued lack of appropriate judgment by failing to make payments on any of his delinquent debts during the past four years of his current employment, at least.

Overall, the record evidence leaves me with questions or substantial 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 under the guideline for Financial Considerations. 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

Subparagraph 1.a to 1.r: 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