



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ISCR Case No. 09-06150
)
)
Applicant for Security Clearance)

For Government: Gregg A. Cervi, Esquire, Department Counsel
For Applicant: *Pro se*

June 29, 2010

Decision

DAM, Shari, Administrative Judge:

Based upon a review of the record evidence as a whole, eligibility for access to classified information is denied.

On June 11, 2009, Applicant submitted a Questionnaire for National Security Positions (e-QIP). On December 16, 2009, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F (Financial Considerations). 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 effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant answered the SOR in writing on January 11, 2010, and requested a hearing before an administrative judge. On March 15, 2010, DOHA assigned the case to me. On March 24, 2010, DOHA issued a Notice of Hearing, setting the case for April

27, 2010. The case was heard as scheduled. Department Counsel offered Government Exhibits (GE) 1 through 4 into evidence without objection. Applicant testified. He offered Applicant Exhibits (AE) A through E into evidence without objection. DOHA received the hearing transcript on May 5, 2010.

Findings of Fact

In his Answer to the SOR, Applicant admitted the allegations contained in ¶¶ 1.a. through 1.s, and 1.u. He denied the allegations contained in ¶ 1.t, and offered an explanation.

Applicant is 44 years old and divorced. He was married from 1996 until 1998. He does not have children. In 1996, he earned a college degree in computer science and then started working as a computer programmer for his current employer, a defense contractor. He has worked steadily for this employer, except for three months in 2007 when he received disability compensation after being involved in a motorcycle accident. (Tr. 20.) He held a Secret security clearance from the time of his initial employment until it was recently revoked pending this proceeding.

Applicant started accumulating significant credit card debt in 2007 when he began accepting credit card promotions to transfer balances from one card to another for lower interest rates. Instead of reducing his debt, the transfers resulted in an increase of his debt, as he continued using the cards. (Tr. 22, 37; GE 2 at 178.) During that year, he also incurred medical bills from the motorcycle accident. (Tr. 27.)

Late in 2007, Applicant hired a debt consolidation company to help manage his debt. He initially paid the company \$1,600 and anticipated making monthly payments of \$200. However, the company wanted him to pay \$400 per month on the debts and to put \$400 into savings. (Tr. 25-26.) He was unable to afford that and discontinued working with the company at the end of 2008. He then contacted a bankruptcy attorney about filing a Chapter 13 bankruptcy. The attorney advised him that he could not initiate the bankruptcy until Applicant filed his federal income tax returns for 2006, 2007, and 2008. (Tr. 24.) Applicant had no explanation for not timely filing his tax returns, other than he is "terrible with paperwork." (Tr. 37, 31.) He has not obtained financial counseling. (Tr. 25.)

On April 13, 2010, Applicant filed his federal tax returns for 2006, 2007, and 2008. (AE C, D, E.) On that same day, the Internal Revenue Service (IRS) issued a Release of Levy for his unpaid taxes for 2005. The IRS had previously garnished his wages for a \$6,700 outstanding tax liability for 2005. Applicant is currently paying \$300 per month on a \$2,000 outstanding tax liability for 2004. (Tr. 23.) He accumulated the unpaid taxes because he did not change his federal deduction status after he divorced in 1998. (Tr. 38.) (¶¶ 1.t and 1.u.)

Based on a credit bureau report (CBR) dated November 5, 2009, the SOR alleged that Applicant accumulated 19 delinquent debts between 2004 and 2009, which total \$138,267. Applicant admitted that all of the debts are unpaid, as he intends to file a Chapter 13 bankruptcy to resolve them. (Tr. 24.)

1. Eleven debts are owed to credit card companies, three of them are judgments. They are alleged in ¶¶ 1.a, 1.b, 1.d, 1.k, 1.l, 1.m, 1.n, 1.o, 1.p, 1.r, and 1.s. They total \$129,083.
2. Six debts are owed for medical services; one of them is a judgment. They are alleged in ¶¶ 1.c, 1.e, 1.f, 1.g, 1.h, and 1.i. They total \$ 6,803.
3. The debt alleged in ¶ 1.q for \$1,740 is owed to a department store.
4. The debt alleged in ¶ 1.j for \$639 is owed to a cellular company.

Applicant submitted a budget. He earns \$65,000 annually and has a net monthly income of \$2,657. After paying monthly expenses and a \$300 payment on the 2004 tax liability, he has \$137 remaining. (Tr. 42; GE 2 at 160.) He no longer uses credit cards. (Tr. 28)

Three witnesses testified for Applicant: his supervisor and two colleagues. All of them have worked with Applicant for several years and do not believe that he is a security risk.

Applicant was candid about his financial situation. He acknowledged that he has not properly handled his finances and provided no excuses for failing to address them sooner. He was remorseful and embarrassed by the situation.

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 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.

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 applicant or proven by Department Counsel and has the ultimate burden of persuasion 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 an 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.”

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.

AG ¶ 19 describes three conditions that could raise a security concern and may be disqualifying in this case:

- (a) inability or unwillingness to satisfy debts;

(c) a history of not meeting financial obligations; and

(g) failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same.

Applicant accumulated a significant amount of delinquent credit card debt that began accruing in 2007, which he has been unwilling to diligently manage. He also accrued tax liability for 2004 and 2005, resulting from his failure to responsibly monitor his tax exemption status until recently. He willingly failed to timely file his 2006, 2007, and 2008 federal tax returns. The evidence is sufficient to raise these disqualifying conditions.

After the Government produced substantial evidence of those potential disqualifications, the burden shifted to Applicant to produce evidence to rebut and prove mitigation. AG ¶ 20 provides conditions that could potentially mitigate the above security concerns:

(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.

Applicant's financial irresponsibility is recent, involves numerous creditors, and continues to date. He remains substantially in debt, and he provided no evidence (other than his intention to file a Chapter 13 bankruptcy) that would support a finding that the indebtedness is unlikely to recur. The evidence does not support the application of AG ¶ 20(a).

Applicant did not provide sufficient evidence to indicate that his delinquent debts arose from circumstances outside of his control. In fact, the evidence is to the contrary, the situation was within his control. Other than a three month period of time in 2007, he has been gainfully employed for the past 15 years and earning a decent salary. He was married for two years, more than ten years ago, but has no ongoing obligations as a consequence of that marriage. AG ¶ 20(b) cannot be applied.

In April 2010, Applicant filed his 2006, 2007, and 2008 federal tax returns, warranting the application of AG ¶ 20(c) to SOR ¶ 1.u, but not to any of the 19 other delinquent debts. He has not received counseling for the problem or presented evidence that there are clear indications that the problem is being resolved or under control. All debts are unresolved. Similarly, AG ¶ 20(d) does not apply to those 19 debts because he has not made a good-faith effort to pay or address them. He paid his tax liability for 2005 and is paying his 2004 tax liability. AG ¶ 20(d) applies to SOR ¶ 1.t. There is no evidence to support the application of AG ¶ 20(e) and AG ¶ 20(f).

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). They include the following:

- (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 include 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 is a mature and educated individual, who is responsible for his voluntary choices and conduct that underlie the security concerns alleged in the SOR. He failed to demonstrate financial rehabilitation or evidence of an implemented plan to resolve his obligations. In 2008, he sought advice from a lawyer regarding a Chapter 13 bankruptcy and learned that before filing the bankruptcy, he would be required to file all outstanding tax returns. He waited another two years to do that. He testified candidly and does not excuse his procrastinating behavior. Although his colleagues asserted that he is trustworthy, his financial record exhibits a pattern of significant poor judgment and a lack of reliability.

Overall, the record evidence creates substantial doubt 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 financial considerations.

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:

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|--------------------------------|-------------------|
| Paragraph 1, Guideline F: | AGAINST APPLICANT |
| Subparagraphs 1.a through 1.s: | Against Applicant |
| Subparagraphs 1.t and 1.u: | 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.

SHARI DAM
Administrative Judge