



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----, -----) ISCR Case No. 09-06306
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: D. Michael Lyles, Esquire, Department Counsel
For Applicant: *Pro se*

November 24, 2010

Decision

WHITE, David M., Administrative Judge:

Applicant incurred all of the SOR-listed delinquent debts, totaling about \$20,000, since 2004. In 2000, he tried to fraudulently avoid paying a substantial gambling debt. He resolved several of the smaller delinquencies when confronted with denial of his security clearance, but did not establish his willingness or ability to avoid similar issues in the future, and failed to mitigate the resulting security concerns. Based upon a review of the case file, pleadings, and exhibits, eligibility for access to classified information is denied.

Applicant submitted a security clearance application (SF 86) on April 3, 2009.¹ On April 13, 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).² 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*

¹Item 1.

²Item 2.

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 (AR) on May 24, 2010, and requested that his case be decided by an administrative judge on the written record without a hearing.³ Department Counsel submitted the Government's written case on July 12, 2010. On July 14, 2010, a complete copy of the File of Relevant Material (FORM)⁴ was mailed to Applicant, and he was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of his receipt of the FORM. Applicant did not return the signed document acknowledging receipt of his copy of the FORM, but submitted a written response, which is considered to be timely, on August 25, 2010. Applicant made no objection to consideration of any evidence submitted by Department Counsel, but did submit additional comments and evidence for consideration. Department Counsel had no objection to the admissibility of Applicant's response to the FORM (AFR). I received the case assignment on August 31, 2010.

Findings of Fact

Applicant is a 41-year-old employee of a defense contractor, where he was hired in December 2007. He retired from the Air Force in November 2007 as a technical sergeant (E-6), after 20 years of enlisted service. He held a security clearance during most of that time. He is married for the second time. He has a 15-year-old son who lives with his first wife, for whom he pays \$400 per month in child support. He also has two sons, ages eight and four, with his second wife, who also has a ten-year-old daughter who lives with them. He earned an associate's degree from a community college in 2004.⁵ In his response to the SOR, he admitted all of the factual allegations in SOR ¶¶ 1.a through 1.f, with some explanations.⁶ Applicant's admissions, including his responses to the SOR, to the FORM, and to DOHA interrogatories,⁷ are incorporated in the following findings.

Applicant admitted owing each of the five delinquent debts alleged in SOR ¶ 1.a through 1.e, totaling just under \$20,000.⁸ He said that his credit problems began around 2004 due to excessive credit card spending, and worsened when he and his wife had

³Item 4.

⁴The Government submitted ten Items in support of the SOR allegations.

⁵Items 1 and 4.

⁶Item 4.

⁷Items 5 and 6.

⁸Items 2 and 4.

their second child and his wife quit working to avoid large child-care expenses. During the summer of 2005, they had recently moved to Biloxi, Mississippi, and their on-base housing became uninhabitable after hurricane Katrina. Applicant began drawing a housing allowance to live off base. His wife and children went to live with relatives elsewhere, and Applicant moved back into government quarters. He failed to stop the housing allowance, however, and was overpaid about \$10,000 before the Air Force caught the erroneous payments. Thereafter, his pay was garnished around \$312 per month to recoup the improper payments. This garnishment continued after he retired, and was completed at the end of May 2010.⁹

In April 2007, Applicant received a \$15,000 gift from his grandfather to help pay his delinquent debts. Applicant used most of the funds for that purpose.¹⁰ By the time the SOR was issued, his delinquent debt was down to the accounts listed in the SOR. The \$55 medical debt listed in SOR ¶ 1.a arose in 2004. Applicant was apparently unaware of its existence until he received the SOR. His wife paid this debt by putting it on her credit card on April 23, 2010.¹¹ SOR ¶ 1.b alleged a \$404 delinquency on a military credit card. This figure was derived from Applicant's credit report dated February 24, 2010, which showed a total balance due of \$4,167.¹² His earlier credit reports reflected a total balance of \$4,641 with \$533 past due on December 10, 2009;¹³ and a \$6,518 balance with \$1,123 past due on April 17, 2009.¹⁴ By May 2010, the creditor had started garnishing Applicant's retirement pay, and he entered into an agreement to augment that amount with \$200 monthly payments. The most recent information on this account shows an account balance of \$3,345 with no overdue amount, as of August 11, 2010.¹⁵

The delinquent debt alleged in SOR ¶ 1.c is owed to a collection agency that acquired Applicant's automobile loan, under which he originally borrowed \$26,600, during October 2006. On February 24, 2010, his credit report reflected a \$10,657 balance, with \$6,103 past due. In response to DOHA interrogatories, Applicant reported that he had negotiated a settlement plan under which he would pay \$278 per month for 12 months, starting March 7, 2010, to fully settle the debt for a total of \$3,338. Applicant documented that he made those payments monthly from March through August 2010.¹⁶

⁹Item 4 at 11; Item 5 at 3.

¹⁰Item 5 at 3.

¹¹Item 4 at 1, 4.

¹²Item 7.

¹³Item 8.

¹⁴Item 9 at 7.

¹⁵Item 4 at 1, 5-7; AFR at 2, 4.

¹⁶Item 7 at 2; Item 6 at 5; Item 4 at 1, 8-9; AFR at 2, 5-6.

The debt alleged in SOR ¶ 1.d arose from the foreclosure on Applicant's home mortgage that he entered into in January 2003. Payments on the mortgage became delinquent in November 2003, and foreclosure proceedings were started in January 2005 when he was \$8,452 past due. Applicant provided little information concerning the circumstances under which this problem arose, but admitted the debt. He said he has been unable to contact the lender, and presumes that the home sold for more than the outstanding balance due since he was never contacted concerning a deficiency. He successfully disputed the listing of the debt on his credit report, which had not been updated since 2005, and had it removed from the report in May 2010.¹⁷

The debt listed in SOR ¶ 1.e was for a \$354 utility bill that went to collections in June 2007. Applicant submitted evidence that he settled with the original creditor on April 29, 2010, by paying them \$400 on a credit card.¹⁸

During May 2000, while separated pending divorce from his first wife, Applicant spent a lot of time gambling almost every day with bingo cards at a base morale welfare and recreation facility. One day he lost about \$500, and could not withdraw any more funds as a cash advance on his credit card. He falsified some of his losing cards to make them appear to be winners. He was caught, awarded non-judicial punishment of \$1,800 in forfeiture of pay, and made to repay the stolen \$500. In his response to the SOR, Applicant described this incident as "a lapse in judgment almost 10 years ago," but did not otherwise explain his subsequent gambling history.¹⁹

Applicant provided no evidence of financial counseling. The only budget information he provided, from which to determine his present or future solvency, consisted of undocumented estimates on a personal financial statement showing a monthly surplus of \$1,484, submitted with his interrogatory response dated February 17, 2010. This budget reflected \$1,250 in monthly income from Applicant's retirement pay, although his June earnings statement shows gross pay of \$1,250 but net pay after all deductions of only \$385. This correction results in a surplus closer to \$600 per month. Applicant provided no explanation for his delay in addressing the several relatively minor delinquent debts alleged in the SOR until denial of his clearance was proposed when he had such surplus income. Nor did he explain his absence of any savings when his income exceeds his listed expenses by that amount.²⁰

Applicant submitted no other evidence describing his character, trustworthiness, or work performance. I was unable to evaluate his credibility, demeanor, or character in person since he elected to have his case decided without a hearing.

¹⁷Item 9 at 9; Item 7 at 3; Item 4 at 1-2, 10; AFR at 2.

¹⁸Item 9 at 10; Item 4 at 2, 14; AFR at 2, 7, 8.

¹⁹Item 10; Item 4 at 2. Applicant did not address this allegation in his response to the FORM.

²⁰Item 4 at 11; Item 6 at 4.

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 (DCs) and mitigating conditions (MCs), 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, these guidelines are applied in conjunction with the factors listed in AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶¶ 2(a) and 2(c), the entire process is a conscientious scrutiny of applicable guidelines in the context 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 the 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, "[t]he 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 clearance decision." Section 7 of Executive Order 10865 provides: "[a]ny 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."

A person applying for access to classified information seeks to enter 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.

Analysis

Guideline F, Financial Considerations

The security concerns relating to the guideline for financial considerations are 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.

Department Counsel argued that the evidence established security concerns under four Guideline F DCs, as set forth in AG ¶ 19:

- (a) inability or unwillingness to satisfy debts;
- (b) indebtedness caused by frivolous or irresponsible spending and the absence of any evidence of willingness or intent to pay the debt or establish a realistic plan to pay the debt;
- (c) a history of not meeting financial obligations; and
- (e) consistent spending beyond one's means, which may be indicated by excessive indebtedness, significant negative cash flow, high debt-to-income ratio, and/or other financial analysis.²¹

Although not specifically identified by Department Counsel, the evidence and allegations in the SOR also raise additional security concerns under AG ¶ 19:

- (d) deceptive or illegal financial practices such as embezzlement, employee theft, check fraud, income tax evasion, expense account fraud, filing deceptive loan statements, and other intentional financial breaches of trust; and
- (f) financial problems that are linked to drug abuse, alcoholism, gambling problems, or other issues of security concern.

Applicant has been unable or unwilling to satisfy numerous debts over the past six years, including those alleged in SOR ¶¶ 1.a through 1.e. Whether this was through unwillingness or inability, or some combination of both, is not clear from the record evidence, but no other explanation was offered. DC 19(a) and (c) were accordingly

²¹FORM at 7.

established. There is no substantial evidence of frivolous or irresponsible spending, since all SOR-listed debts were apparently incurred for regular living expenses. Moreover, Applicant exhibited some willingness and intent to repay those creditors. Accordingly, security concerns under DC 19(b) were not raised. The level of indebtedness involved in this case does not, per se, support application of DC 19(e), nor did Department Counsel provide evidence or financial analysis or either negative cash flow or a high debt-to-income ratio. However, Applicant's admitted fraudulent attempt to liquidate \$500 in gambling debt by falsifying bingo cards in a base club is substantial evidence of a deceptive and illegal financial practice and breach of trust that was linked to his gambling problem. The evidence raises security concerns under DCs 19(a), (c), (d), and (f), thereby shifting the burden to Applicant to rebut, extenuate, or mitigate those concerns.

The guideline includes five conditions in AG ¶ 20 that could mitigate security concerns arising from Applicant's 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; 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's delinquent debts arose over the past six years, and continue in part despite his recent resolution of several of them. Applicant failed to demonstrate that such problems are unlikely to continue or recur, or that his reliability and trustworthiness have improved. His bingo fraud happened more than ten years ago, but his wrongful collection of about \$10,000 in unearned housing allowances, that were only repaid through a recently-concluded garnishment, precludes a mitigating finding that his lack of integrity was an isolated "lapse in judgment." The evidence does not support the application of MC 20(a).

Applicant was continuously employed throughout the period in question, and offered no evidence that would support mitigation under MC 20(b). He and his wife simply spent more than they earned on a regular basis. Applicant did not undergo financial counseling, and his last-minute efforts to address some of his delinquent debts were insufficient to establish clear indications that the problem is under control. MC 20(c) is therefore inapplicable.

Applicant did repay some of his overdue creditors, albeit only when his security clearance eligibility came under significant doubt, which calls into question the good-faith nature of the efforts. Those payments demonstrate a good start toward establishing potential clearance eligibility, but the evidence is insufficient to support a conclusion that such problems will not recur given the paucity of budget corroboration and the shifting of some debt to other credit cards. Some mitigation under MC 20(d) was proven, but its weight is not sufficient to overcome all the foregoing concerns. Finally, Applicant disputes the debt he admitted formerly owing on his delinquent mortgage loan. However, he offered only speculation that his former house may have sold for a sufficient price to cover the debt, without any evidence to corroborate that basis for dispute. Nor did he document any serious effort to contact the creditor, or obtain real estate records concerning the subsequent history of the property involved. He therefore failed to meet his burden of proof under MC 20(e).

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 relevant facts and circumstances surrounding this case. Applicant is a mature, educated, and experienced individual, who is responsible for his voluntary choices and conduct that underlie the security concerns expressed in the SOR. His financial irresponsibility spans the past ten years, and continues at present from all indications in

the record. He demonstrated some effort to resolve his debts since gaining his current employment three years ago, but primarily within the last six months while his clearance was in evident jeopardy. When confronted with significant gambling losses, he fraudulently altered his bingo cards in an attempt to wrongfully regain those funds. He collected more than \$10,000 in housing allowances to which he was not entitled, and would have continued doing so had the mistake not been discovered by the Government. He failed to offer good-character evidence that would establish his trustworthiness, responsibility, and good judgment in light of his financial history. He remains subject to coercion and duress from his financial obligations, and made an insufficient showing that such problems are unlikely to continue or recur.

Overall, the record evidence creates substantial doubt as to Applicant's present eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated the security concerns arising from his financial considerations.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	For Applicant
Subparagraph 1.f:	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the interests of national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

DAVID M. WHITE
Administrative Judge