



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



In the matter of:)
)
) ISCR Case: 09-06538
)
)
Applicant for Security Clearance)

Appearances

For Government: Allison O'Connell, Esquire, Department Counsel
For Applicant: *Pro se*

February 17, 2011

Decision

DAM, Shari, Administrative Judge:

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

On December 12, 2008, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP). On June 28, 2010, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F (Financial Considerations) and Guideline E (Personal Conduct). 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 on August 10, 2010, and requested that the case be decided on the written record in lieu of a hearing. On October 19, 2010, Department Counsel prepared a File of Relevant Material (FORM) containing ten Items and mailed

Applicant a complete copy on October 20, 2010. Applicant received the FORM on October 26, 2010, and had 30 days from its receipt to file objections to the FORM and submit additional information. He did not submit any additional documentation. On December 14, 2010, DOHA assigned the case to me.

Findings of Fact

In his response, Applicant admitted all allegations contained in Paragraph 1 of the SOR. He denied the allegation contained in Paragraph 2.a and admitted the allegation contained in Paragraph 2.b. His admissions are accepted as factual findings.

Applicant is 28 years old and married. He and his wife have three children, ages 5, 7, and 9. He graduated from high school in May 2000. He attended college from January 2003 to December 2005. (Item 5.)

After finishing high school, Applicant began working for a department store in July 2000. He worked there until he and a co-worker were terminated in August 2001 for theft. He admitted that he stole approximately \$1,500 of property from the store. He pleaded guilty to felony theft and was given a Deferred Adjudication and placed on four years of community supervision that he completed. He was 19 years old at the time. (Item 6.)

From December 2001 to April 2003, Applicant worked as a laborer for a landscaping company. From April 2003 to October 2005, he was a property manager for an apartment complex. In October 2005, he obtained another property management position. He worked there until March 2008 when he was terminated for insubordination and failing to follow instructions. His employer noted in Applicant's Employee Termination Report that on two occasions Applicant was also involved in two conflict of interest situations: (1) he entered into a landscaping contract on behalf of management with his father-in-law that increased the monthly payment by \$200 per month; and (2) he gave unauthorized concessions to his brother, who was a resident at the complex. Applicant asserted he was fired because of a personality conflict between him and his supervisor and he made no mention of the incidents involving his family. (Items 4, 6.)

From March 2008 to July 2008, Applicant was self-employed. He then worked as a clerk for one month. He was unemployed for a month. In September 2008, he started his present position as a lab assistant for a defense contractor.

In January 2009, Applicant met with a government investigator to discuss his job terminations and delinquent accounts. During that interview, he indicated that he began falling behind in paying his bills in 2003, because he stopped working when he and his wife began having children. He agreed to contact his creditors to begin resolving the debts. (Item 6 at 57.) In December 2009, he wrote letters to many of his creditors requesting settlement options. (Item 6.) According to his December 2009 budget, he and his wife had a net monthly income of \$4,051 and expenses of \$2,030. After making

payments on three debts, including his student loan, he had \$1,548 remaining at the end of the month. (Item 6 at 62.)

Based on credit bureau reports (CBR) dated December 2008, May 2010, June 2010, and September 2010, the SOR alleged 14 delinquent debts totaling \$9,110 that began accruing in 2006. Three of those debts are delinquent medical bills and total \$1,186. Ten of the debts consist of credit card bills, a cell phone, and an automobile finance bill. His student loan has an outstanding balance of \$629 on a \$17,023 balance. In his Answer to the SOR, Applicant stated that he would “continue to make all attempts to satisfy my debts with what my current job’s finances allow.” (Item 4.)

Applicant did not provide documentation that any of the debts are paid or resolved. He did not submit any evidence that he has participated in credit counseling or budget education. He provided no information concerning the quality of his job performance. He submitted no character references or other evidence tending to establish good judgment, trustworthiness, or reliability.

Policies

When evaluating an applicant’s suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines (AG) 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, 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.

Directive ¶ E3.1.14 requires the Government to 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 clearance decision.” 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.”

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.

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 notes two disqualifying conditions that could potentially raise security concerns in this case:

- (a) inability or unwillingness to satisfy debts; and

- (c) a history of not meeting financial obligations.

Based on four CBRs and his admissions, Applicant has been unable or unwilling to satisfy his delinquent debts that began accruing in 2003 and continue into the present. The evidence is sufficient to raise these two disqualifying conditions.

After the Government produced substantial evidence of those two disqualifications, the burden shifted to Applicant to produce evidence and prove a mitigating condition. AG ¶ 20 set forth conditions that could mitigate financial considerations 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.

According to Applicant's statements, his financial delinquencies began accruing in 2003 and remain unpaid or unresolved. Because the problems are ongoing and not isolated, there is insufficient evidence to support a finding that the indebtedness is unlikely to recur or continue. Hence, AG ¶ 20(a) does not apply. He did not present credible evidence that the accumulation of \$9,117 of delinquent debt was due to conditions beyond his control or that he attempted to responsibly manage the debts once they accrued, as required under AG ¶ 20(b).

Applicant established no mitigation under AG ¶ 20(c) or AG ¶ 20(d). He did not submit evidence that he received financial counseling or that he paid or resolved any of the 14 debts, which would indicate that the situation is under control. Nor, did he present evidence that he made a good-faith effort to pay or resolve the debts, including his student loan. Despite his statement in January 2009 that he would begin addressing the delinquent debts, Applicant did not provide sufficient documentation that he did so. There is no evidence in the record verifying that he formally disputed or investigated any debts, which is necessary to trigger the application of AG ¶ 20(e). There is no evidence to support the application of AG ¶ 20(f).

Guideline E, Personal Conduct

AG ¶ 15 expresses the security concern pertaining to personal conduct:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions

about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

AG ¶ 16 describes a condition that could raise a security concern and may be disqualifying:

(c) credible adverse information in several adjudicative issue 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.

In 2001, Applicant was fired from his employment for stealing property. He was criminally prosecuted and placed on community supervision for four years. Although that conduct was not raised as a security concern under the criminal conduct guideline, it does raise questions about Applicant's current judgment and trustworthiness, when coupled with his employment termination in 2008 for failure to follow directions and engaging in inappropriate situations involving his position and his family. The evidence is sufficient to raise said disqualifying condition.

AG ¶ 17 includes three conditions that could mitigate security concerns arising under this guideline:

(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;

(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; and

(e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress.

AG ¶ 17(c) does not apply because the 2001 incident is not minor. It was prosecuted as a felony and it involved Applicant abusing his position as a trusted employee. The 2008 incident is sufficiently recent and continues to cast doubt on his current good judgment, trustworthiness, and reliability. Applicant did not provide any evidence to trigger the application of AG ¶ 17 (d) or AG ¶ 17(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). 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 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. Applicant is a mature individual, who has worked for a defense contractor since September 2008. In January 2009, he learned of the Government's concerns relating to his financial delinquencies, and indicated his willingness to resolve the matters. He also was notified of the personal conduct concerns regarding his employment history. In June 2010, DOHA filed a SOR and in October 2010, the Government filed the FORM. For more than a year, Applicant has been on notice that his delinquent debts were creating security concerns and potentially affecting his employment. Despite that knowledge, he did not provide proof that he has taken steps to address any of the delinquent debts, including paying the smaller debts listed in SOR ¶ 1.b for \$200 or SOR ¶ 1.c for \$189. Nor did he document the current status of his student loans. Applicant failed to demonstrate financial rehabilitation, which would tend to indicate that the continuance of these unaddressed obligations is unlikely. The record contains insufficient evidence about his character, trustworthiness, or reliability, which could potentially mitigate the personal conduct concerns or make their recurrence less likely.

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 did not mitigate the security concerns arising from his financial considerations and personal conduct.

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
Subparagraphs 1.a through 1.n:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraphs 2.a and 2.b:	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.

SHARI DAM
Administrative Judge