



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



In the matter of:)
)
-----) ISCR Case No. 09-06990
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Alison O’Connell, Esq., Department Counsel
For Applicant: *Pro se*

June 25, 2010

Decision

MARSHALL, Jr., Arthur E., Administrative Judge:

Applicant signed a security clearance application on June 25, 2009. On March 3, 2010, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) enumerating security concerns arising 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 (AG).

In a response dated March 16, 2010, Applicant denied all four allegations raised under Guideline F and requested an administrative determination. On March 29, 2010, Department Counsel submitted a File of Relevant Material (FORM), which included nine attached items. Applicant received the FORM on April 6, 2010, and timely responded with additional information in an undated package received by DOHA on May 3, 2010. The case was assigned to me on May 19, 2010. Based on a review of the case file,

submissions, and exhibits, I find Applicant failed to meet his burden regarding the security concerns raised. Security clearance denied.

Findings of Fact

Applicant is a 29-year-old system engineer who has worked for his present employer, a government contractor, since December 2006. Before his present employment, he worked as an engineer/scientist from February 2004 through December 2006 for a different company. Applicant earned a bachelor's degree in 2002 and a master's degree in 2008. He is single and has no children. In requesting an administrative determination, Applicant offered scant facts regarding his personal life, family, and his financial situation.

After submitting his security clearance application, investigators reviewed Applicant's credit report. Four derogatory account entries were noted. These accounts ultimately formed the basis for SOR allegations ¶ 1.a (approximately \$22,473), ¶ 1.b (approximately \$12,306), ¶ 1.c (approximately \$11,760) and ¶ 1.d (approximately \$13,596). In sum, about \$60,000 in delinquent debt is alleged.

With regard to SOR allegations ¶¶ 1.a-1.c, Applicant denied responsibility for the debts at issue.¹ Rather, he stated that the debts are "tied" to his parents' financial difficulties and "occurred approximately four years ago."² Noting that his parents were not previously employed on a steady basis, and stressing that they were supporting his brother at the time, Applicant stated that the credit cards at issue were applied for on their behalf. His parents were to pay for any debts acquired on those credit cards. Applicant's parents, however, filed for bankruptcy and informed Applicant they could not pay the credit card balances they had accrued. In the absence of reimbursement from his parents, Applicant left the balances on his credit cards unpaid. He stated "base [sic] on the situation, I don't believe I am accountable for this debt and [the accounts] remain unpaid."³ Applicant introduced no evidence suggesting he was relieved from responsibility for the debts accumulated on the credit cards noted in SOR allegations ¶¶ 1.a-1.c.

Regarding SOR allegation ¶ 1.d, Applicant initially denied the allegation raised. In his March 16, 2010, response to the SOR, he stated: "I've initiated a good-faith effort [to] otherwise resolve this dispute. The matter is pending civil trial At the completion of the trial I will adhere to the courts [sic] decision and resolve this matter legally."⁴ In his response to the FORM, received on April 6, 2010, Applicant noted that

¹ See SOR Response, dated Mar. 16, 2010, and Response to FORM, received on Apr. 6, 2010.

² SOR Response, dated Mar. 16, 2010.

³ *Id.*

⁴ *Id.*

he had “resolved the dispute” with the creditor at issue.⁵ As evidence, he submitted a “stipulation without judgment” from litigation in which the creditor is the plaintiff and Applicant is the defendant. The signed stipulation states that Applicant “admits nothing” and “has agreed to pay the amount of \$4,000 with interest to accrue at the rate of 0.00%, in order to avoid the cost and risks of trial.” It further states that Applicant “shall make one payment in the amount of \$4,000 on or before May 13, 2010, to settle the account in full.”⁶ According to the stipulation, if Applicant fails to make the payment, the plaintiff/creditor “may move the court to enter judgment ex parte in the amount of \$4,000.”⁷ No evidence of actual payment, however, was submitted.⁸

Applicant stresses that he lives within his means, has no financial difficulties, and has no substance or gambling habits that would affect his finances. He currently has \$49,000 in personal savings, including stock assets. He has retirement accounts totaling approximately \$100,000. His current income is about \$84,000 per year. He further notes that his ability to save the sums of money he has saved in the past six years is attributable to his ability to live within his means. He concludes by stating that in his latest credit report “all [his] recent debts are in good standing [sic] never missing any payment.”⁹

Policies

When evaluating an applicant’s suitability for a security clearance, an 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. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, they are applied in conjunction with the factors listed in the adjudicative process. An administrative judge’s over-arching adjudicative goal is a fair, impartial, and commonsense decision. Under AG ¶ 2(c), this process is a conscientious scrutiny of a number of variables known as the “whole-person concept.” An 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

⁵ Applicant only noted in his response to the SOR that the debt set forth at SOR allegation ¶ 1.d “is not even in my credit records and is being disputed....” No information was provided to identify which credit records are referenced or what the dispute was.

⁶ Response to the FORM, received on Apr. 6, 2010, at 4.

⁷ *Id.*

⁸ Any response to the FORM was due by May 6, 2010. No evidence of payment was submitted.

⁹ SOR Response, dated Mar. 16, 2010.

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.

The United States Government (Government) must present evidence to establish controverted facts alleged in the SOR. 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. . . .”¹⁰ The burden of proof is something less than a preponderance of evidence. The ultimate burden of persuasion is on the applicant.¹¹

A person seeking access to classified information enters into a fiduciary relationship with the Government based on 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 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.”¹² “The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”¹³ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such information.¹⁴ A security clearance denial does not necessarily reflect badly on an applicant’s character. It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense established for issuing a clearance.

Analysis

In this case, Guideline F is the appropriate guideline for consideration. Under that guideline, “failure or an 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

¹⁰ See also ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

¹¹ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

¹² See also EO 12968, § 3.1(b) (listing multiple prerequisites for access to classified or sensitive information), and EO 10865 § 7.

¹³ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

¹⁴ *Id.*

reliability, trustworthiness and ability to protect classified information.”¹⁵ It also states that “an individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.”¹⁶ Here, Applicant denies responsibility for the four debts alleged. Although he admits that three of the debts were acquired by his parents in an arrangement under which they were to repay him for any debts incurred, he provided no evidence indicating he was relieved of his responsibility for the credit card balances reflected on his credit report due to his parents’ bankruptcy. Those balances are now at least four years old and remain unpaid. There is no evidence that Applicant has conveyed his interpretation of the situation to the creditors or the credit reporting bureaus. Moreover, Applicant stated he disputes the fourth account balance at issue, but failed to clearly identify the basis for that dispute. While he provided evidence of a stipulation extending an offer to settle the matter for \$4,000, there is no evidence that this sum was timely paid. Consequently, this fourth alleged debt remains unresolved. Therefore, Financial Considerations Disqualifying Condition (FC DC) AG ¶ 19(a) (inability or unwillingness to satisfy debts) and FC DC AG ¶ 19(c) (a history of not meeting financial obligations) apply. With such conditions raised, it is left to Applicant to overcome the case against him and mitigate security concerns.

Applicant’s delinquent debts remain delinquent, thus representing a continuing course of conduct. He failed to show this his delinquencies arose under such conditions that they are unlikely to recur. This is particularly true given the fact Applicant failed to discuss whether he is continuing to provide his parents, or would provide them in the future, any similar form of financial aid or access to his credit, and that there is no evidence his parents are now financially stable. Moreover, Applicant failed to explain why his parents’ bankruptcy should relieve him of all responsibility for charges they made on credit cards he provided them to help them during their period of financial difficulty.¹⁷ Consequently, Financial Considerations Mitigating Condition (FC MC) AG ¶ 20(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)

There is no evidence or suggestion that Applicant’s parents induced him to offer them credit cards for their use through fraudulent means. The scant facts presented indicate that Applicant freely provided them with credit cards for their use. He did so in full knowledge that his parents were facing financial difficulty. Given his parents’ financial difficulty and their ultimate move toward bankruptcy protection, it was foreseeable that his parents might not be able to reimburse Applicant for the debts they incurred on his credit cards. Therefore, despite Applicant’s demonstration of generosity to his parents, he remains responsible for the now delinquent balances on those credit cards. Such facts do not raise Financial Considerations Mitigating Condition AG ¶ 20(b)

¹⁵ AG ¶ 18.

¹⁶ *Id.*

¹⁷ There is insufficient information regarding the debt noted at ¶ 1.d to determine whether this mitigating condition applies to that allegation.

(the conditions that resulted in the behavior 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) applies.¹⁸

Applicant provided no evidence that he has received financial counseling, obviating application of FC MC AG ¶ 20(c) (the person has received or is receiving counseling for the problem and there are clear indications that the problem is being resolved or is under control).

The facts reveal no attempts by Applicant to correspond or negotiate with the creditors noted in SOR allegations ¶¶ 1.a-1.c. With regard to the debt noted at SOR allegation ¶ 1.d (approximately \$13,596), Applicant stated that he disputed the debt, although the basis for his dispute is unclear. He also provided a stipulation related to a civil action brought by the creditor against him in which he does not admit liability, but agreed to pay \$4,000 "in order to avoid the cost and risks of trial." Although he failed to provide evidence that this sum has been timely paid, his offer to settle the matter is sufficient to partially raise FC MC AG ¶ 20(d), (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts) with regard to SOR allegation ¶ 1.d.

In declining a hearing and relying on the written record, Applicant limited his ability to address the debts and issues raised in the SOR. The burden for such mitigation in these proceedings is placed squarely on Applicant. Lacking evidence of any effort to resolve the allegations set forth in SOR allegations ¶¶ 1.a-1.c, amounting to over \$46,000, he failed to mitigate financial considerations security concerns.

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 an applicant's conduct and all the 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.

¹⁸ *Id.*

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. As noted above, the ultimate burden of persuasion is on the applicant seeking a security clearance.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case, as well as the “whole-person” factors. Applicant is a mature and well-educated man who has accrued significant savings in approximately six years working in his chosen field. He demonstrated gracious generosity in trying to assist his parents when they faced financial difficulties in the mid 2000s. Although there is no indication he has received financial counseling, it appears he is thrifty and generally lives within his means.

What is troubling in this matter is two-fold. First, Applicant knowingly neglected the three delinquent accounts at issue in SOR allegations ¶¶ 1.a-1.c. Second, with regard to those credit cards he gave to his parents to ease their financial distress, he somehow feels absolved of any responsibility for the debts they accumulated on his credit cards. Applicant failed to provide any evidence or explanation as to how such fiscal absolution on his credit cards was extended to him simply by virtue of his parents’ bankruptcy. While the gesture was noble, the facts provide no basis to conclude anything except that the underlying liability for their debt remains squarely on Applicant. With those debts yet unaddressed, and with no evidence that his settlement on the fourth debt has been satisfied, financial considerations security concerns remain unmitigated. Clearance denied.

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
Subparagraphs 1.a – 1.d	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 access to classified information. Clearance denied.

ARTHUR E. MARSHALL, JR.
Administrative Judge