



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ISCR Case No. 09-07784
)
)
Applicant for Security Clearance)

Appearances

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

May 13, 2011

Decision

WHITE, David M., Administrative Judge:

Applicant had three credit card accounts, totaling \$32,740, that became delinquent between October 2003 and May 2004. He offered no evidence of unusual circumstances or conditions beyond his control that caused this debt, although he was unemployed for almost two years after August 2005 due in part to Hurricane Katrina. He settled one of the three accounts and made two monthly payments toward another, but demonstrated no action toward resolving the largest one. Resulting security concerns were not mitigated. Based upon a review of the pleadings, and exhibits, eligibility for access to classified information is denied.

Applicant submitted a security clearance application on June 3, 2009.¹ On October 2, 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,

¹Item 5.

²Item 1.

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 promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant answered the SOR in an undated letter, 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 November 18, 2010. A complete copy of the File of Relevant Material (FORM)⁴ was provided 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 signed the document acknowledging receipt of his copy of the FORM on November 29, 2010, and returned it to DOHA. He provided his written response to the FORM (RSP) on December 20, 2010, and expressed no objection to my consideration of the evidence submitted by Department Counsel. He asked Department Counsel to request a delay in deciding his case to permit him to contact the creditor concerning settlement of his largest delinquent debt. On December 28, 2010, Department Counsel indicated that she had no objection to the admissibility of the evidence that Applicant provided in response to the FORM, but did object to granting him additional time to address his financial delinquencies. I received the case assignment on January 11, 2011, and did not grant a continuance.

Findings of Fact

Applicant is a 34-year-old employee of a defense contractor, where he was hired in October 2008 after working in the same location as a subcontractor employee since August 2007. He has never held a security clearance or served in the military. He is single with no children.⁵ In his response to the SOR, he admitted the allegations in SOR ¶¶ 1.a and 1.b, with explanations. He denied SOR ¶ 1.c, stating that he had made payment arrangements and settled that debt on September 28, 2010. He enclosed a letter from a collection agency, dated October 6, 2010, saying that the account had been satisfied and was closed.⁶ Applicant's admissions, including his responses to DOHA interrogatories,⁷ are incorporated in the following findings.

³Item 4.

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

⁵Item 5.

⁶Item 4.

⁷Item 6.

Applicant attended college from August 1998 to December 2001, when he earned his bachelor's degree. He worked part time jobs while in school, and obtained a co-op work-study position as an electrical engineer in April 2001. When he graduated, he was hired by the same employer in a full-time position. In July 2003, he was laid off by that employer and immediately moved to a small city along the coast of the Gulf of Mexico to help a friend start up a car audio installation business as a consultant/technician. In August 2005, the business was destroyed by Hurricane Katrina. He was then unemployed until obtaining his current position in August 2007.⁸

Applicant said that a woman with the same last name as his, but who is not otherwise identified as an immediate family member on his SF-86, was hospitalized during his two-year period of unemployment and he subsequently drove her to follow-up treatments three to five times a week. He also said that he lost his Naturalization Certificate and his Social Security card in Hurricane Katrina and therefore could not apply for a new job. In response to the Department Counsel's comment in the FORM that it was unclear why he did not simply apply for replacement documents, he submitted documents showing that he applied for a new Naturalization Certificate on March 8, 2007, and a new Social Security card on August 28, 2007. However, he did not explain why he waited so long to apply for them, or how they prevented his working since he began working again in August 2007 before obtaining his substitute Social Security card.⁹

The \$5,888 credit card debt alleged in SOR ¶ 1.a became delinquent in January 2004. In his April 16, 2010, response to DOHA interrogatories, Applicant submitted a letter from the creditor, dated April 9, 2010, indicating appreciation of his contact and willingness to pay the account. They further stated that payments would be applied to the balance, and the account would remain on their books until paid in full. That response also included a personal financial statement showing budgeted payments of \$200 per month toward this debt. In his undated response to the SOR, he included a letter from the creditor, dated October 22, 2010, confirming a telephonically agreed settlement of the debt with a current balance of \$5,888 for ten monthly payments, totaling \$2,944, from October 2010 to July 2011. In his response to the FORM, he included copies of two bank checks to this creditor, for \$300 each, dated October 21 and November 22, 2010. The checks did not indicate that they had been negotiated, but appear to have been drawn by the creditor from his account by agreement. Although the account number for this debt on the three record credit reports (which all match) differs from the account numbers on the two letters (which also do not match each other), the balance due and creditor are all identical, and only one such debt to this creditor appears on the credit reports.¹⁰

⁸Item 5.

⁹FORM at 5; RSP at 1, 4, 5.

¹⁰Item 4 at 2; Item 6 at 4, 6; Item 7 at 1; Item 8 at 1; Item 9 at 4; RSP at 1-3.

The \$21,399 credit card debt alleged in SOR ¶ 1.b became delinquent in May 2004. Appellant admitted owing this debt, and said it was “due to a combination of failed business investment and being unemployed for a period of a couple years around the 2004 time frame.”¹¹ He indicated his intention to make repayment arrangements with this creditor after the SOR ¶ 1.a debt was repaid. As of his December 20, 2010, response to the FORM, he had not yet contacted that creditor.¹²

The \$5,453 credit card debt alleged in SOR ¶ 1.c became delinquent in October 2003. In his April 16, 2010, response to DOHA interrogatories, Applicant submitted an April 9, 2010, letter from the collection agency holding this debt that confirmed a settlement agreement. The agency agreed to accept six monthly payments of \$300, starting April 26, 2010, until the agreed settlement amount of \$1,800 was paid. Applicant submitted a letter from the collection agency, dated October 6, 2010, with his SOR response that stated he had satisfied the settlement agreement and the account had been closed in their office.¹³

Appellant’s personal financial statement, dated April 16, 2010, reflected \$5,381 in gross monthly salary, \$2,475 in deductions, and a net salary of \$2,906. His monthly living expenses were \$880. He listed \$800 in monthly payments toward four debts, including the payments discussed above concerning debts listed in SOR ¶¶ 1.a and 1.b. This left him a net monthly remainder of \$1,226. He provided no explanation for where this surplus income went. He had no real estate or bank savings assets. He had \$28,122 in a 401K investment account, and a \$30,000 BMW automobile on which he had completed paying his purchase loan in February 2010. Appellant submitted no evidence of financial counseling.¹⁴

Applicant provided no evidence concerning the quality of his professional performance, the level of responsibility his duties entail, or his track record with respect to handling sensitive information and observation of security procedures. He submitted no character references or other evidence tending to establish good judgment, trustworthiness, or reliability. I was unable to evaluate his credibility, demeanor, or character in person since he elected to have his case decided without a hearing.

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

¹¹Item 4 at 1.

¹²Item 4 at 1; Item 6 at 4; Item 7 at 2; Item 8 at 2; Item 9 at 8; RSP at 1.

¹³Item 4 at 1, 3; Item 6 at 10; Item 8 at 1; Item 9 at 11.

¹⁴Item 4; Item 6 at 4; RSP.

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 two Guideline F DCs, as set forth in AG ¶ 19:

(a) inability or unwillingness to satisfy debts; and

(c) a history of not meeting financial obligations.¹⁵

The three SOR-listed delinquent debts, totaling \$32,740, became delinquent between October 2003 and May 2004. This was during the first ten months after Applicant was laid off from his first full-time job, and while he was working with a friend to start a car audio installation business. He began working in his present position, which generates substantial surplus monthly income, in August 2007. Nevertheless, he did not contact any of the SOR-listed creditors until April 2010, after receiving DOHA interrogatories indicating security concerns from his financial irresponsibility. Even then, he began payments toward only the smallest of the three debts, and has not yet begun resolution of the largest (\$21,399) debt, despite his monthly surplus income. This evidence raises substantial security concerns under DCs 19(a) and (c), 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

¹⁵FORM at 3.

(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 more than six years ago and two of them, totaling more than \$26,000 as of the close of the record, continue to date. Applicant failed to demonstrate that his reliability, trustworthiness, and judgment have improved since he only began to address these debts when their security implications became apparent. Even then he made minimal efforts to settle two of them for partial payments, and made no effort to address the largest one, despite having the means to do more. The evidence does not establish MC 20(a).

Applicant was continuously employed before these debts became delinquent, according to his security clearance application, and offered insufficient evidence to support mitigation under MC 20(b). For two years following Hurricane Katrina, he was unemployed. He attempted to justify this by the loss of his Naturalization Certificate and Social Security card in the hurricane, but waited two years to apply for replacements, and obtained his current employment almost immediately thereafter. Even if some period during his history of failing to meet financial obligations, and unwillingness or inability to do so, was caused by circumstances beyond his control, he did not act responsibly under the circumstances for these reasons.

Applicant offered no evidence of financial counseling, and his recent partial efforts to repay his delinquent debt were insufficient to establish clear indications that the problem is being resolved or is under control. MC 20(c) is therefore inapplicable.

Applicant worked in a relatively well-paying position for almost three years before addressing any of his SOR-listed delinquent debt, and only did so with relatively minimal efforts, compared to his current means, after receiving DOHA's financial interrogatories. More than 80% of the delinquent debt remains unresolved despite the availability of surplus monthly income to do so. Applicant established mitigation under MC 20(d) for the debt alleged in SOR ¶ 1.c, but it is too soon to reasonably apply MC 20(d) to the other two debts. Finally, Applicant did not dispute the validity of any SOR-listed debt, so MC 20(e) is inapplicable.

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 pertinent facts and circumstances surrounding this case. Applicant is an accountable adult, who is responsible for his voluntary choices and conduct that underlie the security concerns expressed in the SOR. His financial irresponsibility spans the past six years, and continues at present. It involves substantial debts totaling more than \$32,700, toward which he had paid \$2,400 at the close of the record. He successfully resolved the smallest of the three debts of concern, but has yet to sufficiently demonstrate a willingness to fulfill his legal obligations to the remaining creditors. He offered no evidence of rehabilitation or of responsible conduct in other areas of his life. The potential for pressure, coercion, and duress remains largely undiminished.

Overall, the record evidence leaves me with substantial doubt as to Applicant's present eligibility and suitability for a security clearance. He did not meet his burden to mitigate 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:	Against Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	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.

DAVID M. WHITE
Administrative Judge