



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



In the matter of: ----- SSN: ----- Applicant for Security Clearance)))))))	ISCR Case No. 09-07841
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Appearances

For Government: Gina L. Marine, Esquire, Department Counsel
For Applicant: *Pro se*

August 17, 2010

Decision

CURRY, Marc E., Administrative Judge:

Applicant failed to mitigate the security concern raised under Guideline F, financial considerations. Clearance is denied.

Statement of the Case

On January 12, 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. DOHA acted 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).

Applicant answered the SOR on February 23, 2010, admitted all of the allegations and requested an administrative determination instead of a hearing. On March 1, 2010, Department Counsel prepared a File of Relevant Material (FORM).

Applicant received it on March 2, 2010, and was instructed to file any objections or provide any supplementary information by April 9, 2010. Applicant did not file any additional information and the case was assigned to me on May 6, 2010.

Findings of Fact

Applicant is a 61-year-old married man with two adult children. A previous marriage ended in divorce in 1982. He has been married to his current wife since 2003. Applicant has a junior high school education. He served in the United States (U.S.) Army from 1966 to 1969, and was honorably discharged.

Since 1998, Applicant has worked as a cable technician. For the past four years, he has worked for a federal government contractor installing video surveillance cameras in metro transit stations across the eastern U.S.

During the past ten years, Applicant has accrued approximately \$23,500 of delinquent debt including two delinquent credit card accounts (SOR subparagraphs 1.a and 1.d), an IRS tax lien (SOR subparagraph 1.b), and the deficiency from a car that the creditor repossessed (SOR subparagraph 1.c).

Applicant's financial problems began in 2000 when a woman whom he was dating made multiple purchases on his credit card without his knowledge. (Item 3 at 2) After the relationship ended in 2001, Applicant moved in with his daughter where he lived rent-free for approximately two and a half years through December 2003. (Item 5 at 4; Item 4 at 13) Later, Applicant was unemployed for six months between October 2005 and April 2006. (Item 5 at 4)

Applicant's delinquent credit card accounts total approximately \$11,000. In 2009, he unsuccessfully attempted to negotiate a settlement with the creditor listed in SOR subparagraph 1.d. (Item 5 at 8)

Applicant purchased the car, listed in SOR subparagraph 1.c, in January 2003. (Item 5 at 6) A few months later, the transmission failed, and Applicant did not have enough money to repair it and make the car payments. (Item 5 at 6) In October 2003, he arranged for the car to be voluntarily repossessed.

The federal tax lien totals approximately \$6,100. Applicant contends he has reduced the delinquency to \$3,000 through \$268 monthly payments. (Item 3 at 2-3) He provided no supporting documentation.

Applicant has not begun satisfying any of the other delinquencies, nor has he attended any credit counseling. (Item 5 at 8) He intends to begin repaying the other delinquencies once he satisfies the tax lien. He anticipates that his delinquencies will be satisfied in five years. (*Id.*)

Policies

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 together with the factors listed in the adjudicative process. According to AG ¶ 2(c), the entire process is a 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. Under Directive ¶ E3.1.14, the government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . .” The applicant has the ultimate burden of persuasion for obtaining a favorable security decision.

Analysis

Guideline F, Financial Considerations

Under this guideline, “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” (AG ¶ 18). Moreover, “an individual who is financially overextended is at risk of having to engage in illegal acts to generate funds” (*Id.*). Applicant’s financial delinquencies trigger the application of AG ¶¶ 19(a), “inability or unwillingness to satisfy debts,” and 19(c), “a history of not meeting financial obligations.” The following mitigating conditions under AG ¶ 20 are potentially applicable:

(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, and

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant's financial problems were caused in part by a spendthrift ex-girlfriend in 2000, and a six-month period of unemployment between October 2005 and April 2006. However, Applicant has neither provided any documentary evidence of steps to address his delinquencies, nor attended any financial counseling. Absent any concrete evidence of rehabilitation, the cause of Applicant's financial difficulties has minimal probative value. Moreover, Applicant failed to adequately explain why his financial problems lingered when he was living with his daughter rent-free. I conclude none of the mitigating conditions apply.

Whole-Person Concept

Under the whole-person concept, the administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a). They are as follows:

(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.

Applicant promised to eliminate his delinquencies within the next five years. Such promises absent any demonstrated track record of financial reform have limited probative value. Upon considering this case in light of the whole-person concept, I conclude Applicant has failed to mitigate the security concern.

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 eligibility for a security clearance. Eligibility for access to classified information is denied.

MARC E. CURRY
Administrative Judge