



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ISCR Case No. 09-07938
)
)
Applicant for Security Clearance)

Appearances

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

June 29, 2011

Decision

WHITE, David M., Administrative Judge:

Applicant accrued more than \$122,000 in delinquent debt over the past four years, while he was employed in his current job. He made no showing of unusual circumstances giving rise to these debts, or of changes to prevent continued financial irresponsibility. Resulting security concerns were not mitigated. Based on a review of the pleadings and exhibits, eligibility for access to classified information is denied.

Applicant submitted a security clearance application on May 26, 2009.¹ On September 27, 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 Clearance Review Program* (January 2, 1992), as amended (Directive); and the

¹Item 4.

²Item 1.

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 writing on November 13, 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 December 14, 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 December 30, 2010, and returned it to DOHA. He provided no further response to the FORM within the 30-day period, did not request additional time to respond, and expressed no objection to my consideration of the evidence submitted by Department Counsel. I received the case assignment on February 14, 2011.

Findings of Fact

Applicant is a 33-year-old employee of a defense contractor, where he has worked as a communications analyst since September 2005. He was honorably discharged in April 2005 after six years and four months of active service. He held a secret security clearance throughout his enlistment. He is was married in December 2009, and has one stepchild.⁵ In his response to the SOR, he admitted the delinquent debts alleged in SOR ¶¶ 1.b through 1.m, 1.o, 1.p, 1.q, and 1.s, and that he had made no payments toward any of them. He denied the allegations in SOR ¶¶ 1.a, 1.n, and 1.r, for reasons discussed below.⁶ Applicant's admissions, including his responses to DOHA interrogatories,⁷ are incorporated in the following findings.

Applicant had about \$10,000 in savings when he left the service, and very little debt. He decided to relax, rather than work, for the next five months. He was able to meet all of his financial obligations during that period from his savings. He began accumulating debt, including a number of credit cards, after beginning his current job. He purchased a condominium in April 2007. Within the next year, his condo association dues rose from \$190 to \$300 per month, the association levied a special assessment of \$1,000 per unit for common repairs, and he had to replace his water heater after causing, and being billed for, about \$800 in water damage to the unit below his. At about the same time, he met and began supporting his wife and her daughter. His wife

³Item 3.

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

⁵Item 3; Item 4; Item 6.

⁶Item 3.

⁷Item 5; Item 6.

has not worked most of the time they have been together. She is pursuing an associate's degree and raising their daughter.⁸

In July 2009, shortly after his interview with an investigator from the Office of Personnel Management (OPM) to discuss his multiple delinquent debts, Applicant consulted a bankruptcy attorney who recommended filing for Chapter 7 relief. In order to pursue this option, he decided to resign from his job and go to school. He also followed the attorney's advice to stop paying old bills and save at least one month's income. Applicant stopped making mortgage payments in August 2009. On September 30, 2009, he resigned from his job and moved in to live with his wife. Within a month, his employer contacted him and asked him to resume working, with retained tenure, in another city. He accepted that offer, and rented a residence in the new location. He said that he was current on his rent, car payments, and present living expenses in November 2010. On August 26, 2010, he paid \$588.32 toward the debt alleged in SOR ¶ 1.a, leaving a balance due of \$155. In his response to the SOR, Applicant said that he planned to pay this remaining balance, and the minor debts alleged in SOR ¶¶ 1.b through 1.g between November 2010 and February 2011. As noted above, he offered no proof that he implemented these intentions when offered the opportunity to respond to the FORM. The 16 SOR-listed delinquent debts that Applicant admitted he owes in full total \$111,350, including the outstanding \$86,622 balance on his condo mortgage that is in foreclosure.⁹

Applicant denied the debt alleged in SOR ¶ 1.n because he said it was a duplicate listing by a different creditor of the debt alleged in SOR ¶ 1.k. Department Counsel disputed this assertion, but offered no evidence to support her position other than to note that the two creditors reported different account numbers to the credit bureau. My analysis of the information concerning these two accounts in the three record credit reports confirms Applicant's claim that the creditor alleged in SOR ¶ 1.n is the successor collection agency on the debt allegedly owed to the original creditor in SOR ¶ 1.k.¹⁰

Applicant also denied the \$10,608 credit card collection account alleged in SOR ¶ 1.r. In both his OPM interview and his response to the SOR, he said he had no record or recollection of dealing with the original creditor. During the June 2009 interview, he said he would contact the creditor to determine if it was a valid debt, in which case he would negotiate a repayment plan. His SOR response a year and a half later reflected no such actions, but stated that he reviewed all three credit reports and none of them listed the debt. The FORM Item 7 credit report contains an Experian listing of this debt reported in May 2009. The FORM Item 8 credit report contains an Equifax listing of the same debt reported in October 2009. The debt does not appear on the FORM Item 9 Equifax credit report, but that does not establish either satisfaction or successful dispute

⁸Item 3; Item 5.

⁹Item 3.

¹⁰FORM at 6; Item 3; Item 7; Item 8; Item 9.

of the debt absent additional evidence. I conclude that the weight of record evidence proves the allegation in SOR ¶ 1.r. This brings his total admitted and proven delinquent debt to \$122,113.¹¹

Applicant's personal financial statement, dated April 22, 2010, reflected \$4,583 in gross monthly salary, \$1,483 in deductions, and a net salary of \$3,100. Although his November 2010 response to the SOR indicated that his wife has not worked most of the time they have been together, his financial statement listed "Spouse's Salary" of \$1,200 per month. His monthly living expenses were \$3,560, and he listed a monthly debt payment of \$504 on a car loan for total monthly payments of \$4,064. With the \$1,200 of spouse income, this left a monthly surplus of \$236. Without that income, the deficit is \$964 per month. He said his condominium was "Pending Short Sale," although his May 2010 credit report shows it in foreclosure. Applicant submitted no evidence of financial counseling, except for his consultations with the bankruptcy attorney in July 2009.¹²

Applicant submitted an unsigned letter of recommendation dated September 30, 2009, from a Government employee for whose office he provided technical support before resigning to pursue bankruptcy. The letter described him as an outstanding asset to the office, whose dedication to customer service and professionalism were unparalleled. Other than this document, he provided no evidence concerning the quality of his professional performance, the level of responsibility his duties entail, or his history of handling sensitive information and observing security procedures. He submitted no other character references, or 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 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.

¹¹Item 3; Item 5; Item 7; Item 8; Item 9.

¹²Item 3; Item 6; Item 9.

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 under the guideline for financial considerations are set out in AG ¶ 18, which reads in pertinent part:

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. . . .

The record 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.

Applicant's financial problems began in 2007, and have worsened during the past four years during which he has been employed in his current position. His personal financial statement reflects a deficit of almost \$1,000 per month without income from his wife, who does not work outside their home. He demonstrated no ability to satisfy these debts or avoid incurring additional delinquencies. 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

(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 multiple delinquent debts arose over the past four years, and continue to date. They are both frequent and recent, and arose under circumstances that have not materially changed. Applicant failed to demonstrate that his reliability, trustworthiness, and judgment have improved, since he only addressed one of these debts in part when their security implications became apparent. The evidence does not establish mitigation under MC 20(a).

Applicant has been continuously employed since well before these debts became delinquent, and he offered no evidence to support mitigation under MC 20(b). None of the debts were shown to have arisen from conditions beyond his control. He offered no evidence of financial counseling, and his recent effort to partially repay one of his delinquent debts was insufficient to establish clear indications that the problem is being resolved or is under control. His one documented partial debt repayment is also

insufficient to establish a good-faith effort to repay his many overdue creditors. MC 20(c) and 20(d) are therefore inapplicable.

The record evidence supports Applicant's contention that the debt alleged in SOR ¶ 1.n is a duplicate listing of the debt alleged in SOR ¶ 1.k. This mitigates security concerns with respect to the former debt under MC 20(e). He failed to provide any proof to substantiate a basis to dispute the legitimacy of the debt alleged in SOR ¶ 1.r, for which the record credit reports provide substantial evidence. Accordingly, he failed to mitigate that allegation under MC 20(e). Other than the remaining balance on the debt alleged in SOR ¶ 1.a, he admitted owing all the other debts alleged in the SOR.

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 four years, and continues at present. It involves substantial delinquent debts totaling more than \$122,000, toward which he had paid \$588 at the close of the record. He has yet to sufficiently demonstrate a willingness to fulfill his legal obligations to the remaining creditors. He did not demonstrate that these debts arose under unusual circumstances, or that he initiated any changes to prevent additional financial difficulties. He offered no evidence of financial counseling, rehabilitation, or responsible conduct in other areas of his life. The potential for pressure, coercion, and duress remains 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
Subparagraphs 1.a through 1.m:	Against Applicant
Subparagraph 1.n:	For Applicant
Subparagraphs 1.o through 1.s:	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.

DAVID M. WHITE
Administrative Judge