



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



In the matter of:)
)
) ISCR Case No. 09-08142
)
)
Applicant for Security Clearance)

Appearances

For Government: James F. Duffy, Esquire, Department Counsel

For Applicant: *Pro se*

May 13, 2010

Decision

ANTHONY, Joan Caton, Administrative Judge:

After a thorough review of the case file, pleadings, and exhibits, I conclude that Applicant failed to rebut or mitigate the Government's security concerns under Guideline F, Financial Considerations, and the whole-person analysis. His eligibility for a security clearance is denied.

Applicant executed and signed a security clearance application (SF-86) on March 26, 2009. On February 1, 2010, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing the 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 (AG) effective within the Department of Defense for SORs issued after September 1, 2006.

On February 23, 2010, Applicant answered the SOR in writing and requested a hearing before an administrative judge. The case was assigned to me on March 12, 2010. I convened a hearing on April 14, 2010, to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. The Government called no witnesses and introduced four exhibits, which were marked Ex. 1 through 4 and admitted to the record without objection. Applicant testified on his own behalf and called no witnesses. He introduced five exhibits, which were identified and marked as Applicant's Ex. A through E-1. At the conclusion of the hearing, I left the record open for one calendar week, until April 21, 2010, so that Applicant could, if he wished, submit additional documentation. Applicant timely filed nine additional documents, which were marked as Ex. E-2 and Exs. F through M. All of Applicant's supplementary exhibits were admitted without objection. DOHA received the transcript (Tr.) of the hearing on April 23, 2010.

Findings of Fact

The SOR contained 16 allegations of disqualifying conduct under AG F, Financial Considerations (SOR ¶¶ 1.a. through 1.p.) and three allegations of disqualifying conduct under AG E, Personal Conduct (SOR ¶¶ 2.a. through 2.c.). In his Answer to the SOR, Applicant admitted ten Guideline F allegations, denied six Guideline F allegations, and denied the three Guideline E allegations. At the hearing, the Government withdrew the three Guideline E allegations in the SOR. The 16 delinquent debts alleged on the SOR total approximately \$29,290. (SOR; Answer to SOR; Tr. 8, 11.)

Applicant is 44 years old and a high school graduate. He is widowed and the father of an adult daughter. Since March of 2009, he has been employed as a mail room supervisor by a government contractor at an annual salary of \$44,000. He seeks a security clearance as a defense contractor for the first time. (Ex. 1; Tr. 50-56; 84-85.)

Applicant's wife died when his daughter, now 22 years old, was born.¹ Applicant raised his daughter as a single parent, and he continues to provide support to his daughter, who is pursuing higher education. At his hearing, Applicant represented that his daughter was a medical student at a private university in another state. In response to questions from Department Counsel, he acknowledged that his daughter was not in medical school but was working and a part-time student taking undergraduate courses in English and general studies. (Ex. 1; Tr. 51-54.)

In June 2004, Applicant was injured at work. He filed a workers' compensation claim. On February 28, 2008, the Workers' Compensation Commission awarded "permanent partial disability benefits of 15% industrial loss of use of the body as a result of the injury to the low back (10% due to the injury and 5% due to preexisting conditions)." Applicant received \$5,700, and all of his medical bills for the treatment of

¹ On his SF-86, Applicant indicated his marital status as "never married," and he did not list his daughter as a relative. (Ex. 1 at 10-11; Tr. 51-52.)

the back injury were paid by the workers' compensation insurance carrier. (Ex. A at 1; Ex. B; Tr. 27-28.)

In August 2005, Applicant was seriously injured when a truck collided with his car at a gas station. He testified that he was hospitalized for six months² and was unable to work full-time again until April 2006. During this time, he supported himself with his savings, and a friend also gave him \$3,000 to help with his living expenses. Applicant is suing the other driver in the accident, and he hopes to collect \$250,000 in damages. Applicant also suffers from diabetes, high blood pressure, and sleep apnea. In September 2009, he had surgery to correct a nasal blockage problem. (Ex. 2 at 4, 8; Ex. A; Tr. 29-31, 63.)

Applicant's employment history includes other periods of unemployment. In 2003, he was fired from a job for reasons that he did not consider to be his fault. In September 2003, he found another job, which was interrupted by the automobile accident in August 2005. He was then steadily employed from May 2006 until June 2008, when he was fired from another job. From June 2008 until March 2009, he was unemployed and received \$375 a week in unemployment compensation. (Ex. 1; Tr. 81-85.)

The SOR alleged at ¶ 1.a. that Applicant owed \$1,796 to a creditor on a judgment filed against him in January 2008, and, as of February 1, 2010, the judgment had not been satisfied. Applicant denied the delinquent debt, which he said was the responsibility of his niece. Applicant stated that he accompanied his underage niece to his bank, requested that the bank provide the niece with a checking account, and became a responsible party on the account. The niece then wrote bad checks on the account, and the bank turned to Applicant for restitution. (Tr. 24-25, 59.)

The SOR alleged at ¶ 1.b. that Applicant owed a creditor \$696 on a delinquent cell phone debt, which remained unsatisfied as of February 1, 2010. Applicant denied the debt. At his hearing, he held up his cell phone, which he said was working, and stated that it would not work if he owed a delinquent bill to the cell phone company. He failed to provide documentation to establish that he did not owe the debt. (Tr. 25-27.)

The SOR alleged at ¶ 1.c. that Applicant owed a \$3,392 debt, in collection status, for unpaid rent. In his answer to the SOR, Applicant denied the debt. At his hearing, he acknowledged the debt and stated that it arose when he was unemployed, failed to pay his rent, and was evicted from an apartment. The debt has not been satisfied. (Answer to SOR; Tr. 34-35.)

Applicant admitted the medical debts alleged at SOR ¶¶ 1.d. (\$108), 1.e. (\$745), 1.f. (\$184), 1.g. (\$49), and 1.h. (\$206). He further stated that the debts had not been paid. (Tr. 40-42.)

² On his SF-86, Applicant stated that his period of hospitalization after the accident was "about two months." (Ex. 1 at 6.)

The SOR alleged at SOR ¶ 1.i. that Applicant owed a \$5,279 delinquent debt on an automobile that had been repossessed. He admitted the debt but said it belonged to one of his nieces. He admitted he co-signed the niece's contract with the creditor for an automobile loan. He asserted he was not responsible for the debt and stated he would provide documentation to show that the debt was the responsibility of his niece. However, he failed to provide documentation to establish that the debt was not his. (Tr. 60-61.)

The SOR alleged at ¶ 1.j. that Applicant owed \$2,005 to a judgment creditor, and, as of February 1, 2010, the debt had not been paid. Applicant admitted the debt, acknowledged that it had not been paid, and provided documentation that he had been served with a garnishment summons. The garnishment summons listed the total balance due as approximately \$4,492. If the garnishment occurs, Applicant will not have sufficient funds to meet his regular living expenses. (Ex. C; Tr. 42-43, 65-66.)

The SOR alleged at ¶ 1.k. that Applicant owed \$517 on an account, in collection status, that was unpaid as of February 1, 2010. Applicant admitted the debt and stated that it was owed to a company that stored his belongings after he was evicted from an apartment for failure to pay his rent. The debt remains unpaid. (Tr. 43-45.)

The SOR alleged at ¶ 1.l. that Applicant owed \$12,777 on an automobile loan that had been placed for collection and which had not been paid as of February 1, 2010. Applicant acquired the loan to purchase the automobile later damaged in the August 2005 automobile accident which seriously injured him. This debt remains unpaid. (Tr. 60-62.)

The SOR alleged at ¶ 1.m. that Applicant owed a communications company \$267 on a delinquent account that had not been paid as of February 1, 2010. Applicant denied the debt, but at his hearing he acknowledged that the debt arose when he did not return two cable boxes to the creditor when he moved and discontinued cable service. (Answer to SOR; Tr. 45-46.)

Applicant also denied the debts alleged at SOR ¶¶ 1.n. and 1.o. The \$180 delinquent debt alleged at ¶ 1.n. was owed to a communications company, as was the \$982 delinquent debt alleged at ¶ 1.o. He failed to provide documentation to establish that he did not owe the debts. (Tr. 46.)

Applicant admitted the medical debt for \$107, which was alleged at SOR ¶ 1.p. This debt also has not been paid. (Tr. 47.)

Applicant discussed his financial delinquencies with a friend who is a financial counselor and with his attorney, who advised him to pay as many of the smaller debts as he could and, if necessary, to obtain a loan to pay the judgment creditor who seeks to garnish his wages. Additionally, his attorney has contacted his creditors to request forbearance until the resolution of his litigation involving his injuries from the automobile accident of August 2005. If he is the successful party, Applicant intends to pay all of the

delinquent debts alleged on the SOR with proceeds from the litigation. (Ex. H; Tr. 41, 62-67.)

Applicant's net monthly income is \$2,575.94. His monthly rent is \$1,250. In addition, he has the following monthly fixed expenses: electricity: \$200; transportation: \$288; medication: \$120; cable: \$69; telephone: \$200; support of daughter at college: \$400; food: \$150; medical bills for surgery in September 2009: \$75; and household products: \$50. His monthly expenses total \$2,802, establishing that he spends approximately \$226 more than he earns each month. He has about \$300 in his checking account. He has no money set aside for savings. (Ex. G; Tr. 68-73.)

Applicant was delinquent in paying his federal taxes for tax year 2008. The delinquency was satisfied when the Internal Revenue Service confiscated his 2009 tax refund to satisfy the delinquency. (Tr. 74-75.)

Another federal contractor has offered Applicant a position as a project analyst and coordinator, with an annual salary of \$70,000. The position requires a security clearance. (Ex. D; Tr. 85-87.)

Applicant provided a letter of character reference from the military command that supervises his work. The letter praised Applicant as "an outstanding mail services manager" who was innovative, dedicated, and highly professional. (Ex. E-1; Ex. E-2.)

Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security, and it has emphasized that "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information." *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant Applicant's eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.

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, which are 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, the administrative judge applies these guidelines 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.

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 in obtaining a favorable security decision.

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.

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.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive 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.

The guideline notes several conditions that could raise security concerns. Under AG ¶ 19(a), an “inability or unwillingness to satisfy debts” is potentially disqualifying. Similarly under AG ¶ 19(c), “a history of not meeting financial obligations” may raise security concerns. Additionally, under AG ¶ 19(e), “consistent spending beyond one’s means, which may be indicated by excessive indebtedness, significant negative cash flow, high debt-to- income ratio, and/or other financial analysis” can also raise concerns about an applicant’s financial stability and ability to protect classified information. Applicant accumulated substantial delinquent debt and was unable or unwilling to pay his creditors. His budget shows he spends approximately \$226 more each month than he earns. This evidence is sufficient to raise these potentially disqualifying conditions.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Several Guideline F mitigating conditions could apply to the security concerns raised by Applicant’s financial delinquencies. Unresolved financial delinquency might be mitigated if it “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.” (AG ¶ 20(a)) Additionally, unresolved financial delinquency might be mitigated if “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.” (AG ¶ 20(b)) Still other mitigating circumstances that might be applicable include evidence that “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” (AG ¶ 20(c)) or “the individual has initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.” (AG ¶ 20(d)) Finally, if “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 options to resolve the issue,” then AG ¶ 20(e) might apply.

Applicant’s financial difficulties date at least to 2003, when he was fired from a job. He suffered a work-related back injury in 2004. In August 2005, he was seriously injured when a truck hit his vehicle at a gas station. The unfortunate events which resulted in his physical injuries were beyond Applicant’s control.

Applicant required medical treatment for his injuries. His medical expenses for the on-the-job injury were compensated by the workers’ compensation insurance carrier in 2008. He is actively involved in litigation against the driver of the truck that hit his car in August 2005. To date, the litigation is unresolved. Applicant stated that if the litigation is resolved in his favor, he intends to pay all of the debts alleged on the SOR with proceeds awarded to him.

Applicant’s substantial indebtedness began in 2004 and continues to the present time. While Applicant was directly affected by the on-the-job injury and the 2005 vehicle accident and was subject to events beyond his control, he also elected not to pay his creditors until the lawsuit has been decided or settled. Several of Applicant’s unpaid

delinquent debts are for small amounts of money. He has been employed by his present employer since March 2009. While his lawyer has contacted his creditors and requested forbearance, Applicant has elected not to pay even small debts to his creditors. Applicant's current living expenses and financial obligations exceed his income each month by approximately \$226. He has no money set aside to satisfy his creditors in the event he is not the prevailing party in the lawsuit or if he is not awarded the monetary compensation he seeks.

Applicant's current monthly expenses exceed his income, and he has few resources available to pay them at this time. He hopes to pay his creditors in the future, but his current financial situation casts doubt on his ability to plan realistically for the future. Moreover, Applicant has received financial counseling, but it is not clear at this time that his financial problems are being resolved or are under control. While he has, through counsel, contacted his creditors to request forbearance, he has not initiated good-faith efforts to repay his overdue creditors or to otherwise resolve his debts.

While Applicant admitted his financial delinquencies, it was not clear that he understood his financial problems or how to resolve them. Aside from prevailing in the lawsuit, he has no plan in place to systematically resolve his substantial delinquent debt and prepare for future contingencies. I conclude that while AG ¶ 20(b) applies in part to Applicant's case, AG ¶¶ 20(a), 20(c), 20(d), and 20(e) do not apply to the facts of his case.³

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.

³ AG ¶ 20(f) does not apply in this case.

I considered the potentially disqualifying and mitigating conditions in light of all the relevant facts and circumstances surrounding this case. Applicant is a mature adult of 44 years. His skills and abilities are appreciated by his employer. He has suffered hardships beyond his control. However, he is financially overextended, has insufficient funds to meet his monthly expenses, and is responsible for over \$29,000 in unresolved financial delinquencies. Applicant's current financial situation raises concerns about his judgment and potential financial vulnerability.

Overall, the record evidence leaves me with questions and doubts at the present time as to Applicant's eligibility and suitability for a security clearance. Accordingly, I conclude, after a careful review of the facts of his case, the financial considerations adjudicative guideline, and the whole person analysis, that Applicant failed to mitigate the security concerns arising from his financial delinquencies.

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. through 1.p.: Against Applicant

Paragraph 2, Guideline E: WITHDRAWN

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.

Joan Caton Anthony
Administrative Judge