



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



In the matter of:)
)
) ISCR Case No. 09-08219
)
)
Applicant for Security Clearance)

Appearances

For Government: Richard Stevens, Esquire, Department Counsel
For Applicant: *Pro se*

June 30, 2011

Decision

MASON, Paul J., Administrative Judge:

Applicant inherited \$68,000 in September or October 2010. After giving his foster sister a portion of his inheritance, he still had approximately \$54,000. Instead of using the balance on the delinquent debts listed in the Statement of Reasons, thereby demonstrating his desire to improve his financial health while enhancing his security suitability, Appellant did not make any documented attempts to satisfy the listed debts. Eligibility for access to a security clearance is denied.

Statement of the Case

Applicant completed and certified his Electronic Questionnaire for Investigations Processing (e-QIP)(GE 1) on July 28, 2009. He was interviewed by an investigator from the Office of Personnel Management (OPM) on October 3, 2009. A summary of his interview

appears in Applicant's interrogatory answers dated March 26, 2010. (GE 3) Under question 3 of the interrogatory questions (asking Applicant whether he agreed with the investigator's summary), Applicant checked "no." Under question 4 (requesting information that corrects the interview summary), Applicant wrote that he voluntarily returned the truck (SOR 1.e) to the bank. Then, Applicant wrote that the remaining information in the interview summary was correct. Under question 6 of the interrogatory questions, Applicant checked "yes," agreeing that the investigator's summary (with the modification) could be used at a DOHA hearing to determine Applicant's security clearance suitability. (*Id.*)

On August 6, 2010, DOHA issued a Statement of Reasons (SOR) detailing security concerns under financial considerations (Guideline F). 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) implemented by the Department of Defense on September 1, 2006.

Applicant submitted his answer to the SOR on August 28, 2010. DOHA issued a Notice of Hearing on February 16, 2011, for a hearing on March 15, 2011. The hearing was held as scheduled. At the hearing, five exhibits (GE 1 through 5) were admitted in evidence (without objection) in support of the Government's case. Applicant testified. He did not offer any exhibits. DOHA received the transcript (Tr.) on March 29, 2011. The record closed on March 29, 2011.

Findings of Fact

The SOR lists a dismissed Chapter 7 bankruptcy in July 2009, and four delinquent accounts under the financial considerations guideline. Applicant admitted he was fully responsible for SOR 1.b. He admitted the bankruptcy was dismissed, and acknowledged his full to partial responsibility for the delinquent accounts. Applicant noted in his answer to the SOR that his divorce decree in June 2010 reconfirmed his former wife's joint liability for the timeshare condominium (SOR 1.d) and the deficiency balance for the truck (SOR 1.e). He indicated he would soon be paying off the cellular phone account (SOR 1.b) and the child support (SOR 1.c) because he was receiving an inheritance from his father in October 2010.

Applicant is 46 years old and employed as a sheet metal mechanic by a defense contractor. Since April 2003, he has been employed in jobs as a sheet metal mechanic, a sheet metal fabricator, and an aircraft mechanic. (GE 1; Tr. 22)

Applicant's financial problems began in May 2008, when his wife left him for another man. (Tr. 23) Because Applicant, his former wife, and her new suitor, were employed at the

same work location, Applicant had to be moved to a different work location of his employer, causing him to lose his work leader position. In December 2008, he was laid off. Applicant's e-QIP shows that he began working for a new employer in July 2009. (GE 1) Applicant also filed a Chapter 7 bankruptcy petition in July 2009. (SOR 1.a) The petition was dismissed when he decided he could not afford the petition. No additional information was furnished to explain why he could not afford the petition.

The debts listed in the SOR total \$37,033. SOR 1.b (\$614) became delinquent in March 2009, SOR 1.c (\$9,071) - in July 2009, SOR 1.d (\$12,274) - in September 2008, and SOR 1.e (\$15,074) - in February 2009. Applicant did not satisfy SOR 1.b because he forgot to pay the debt. (Tr. 32) Applicant has been trying to negotiate a lump-sum child support settlement with his first wife, the mother of his two daughters. (SOR 1.c, Tr. 19) Though he has owed child support at least since July 2009, he provides whatever his daughters need or desire. (Tr. 45-48) After Applicant lost his job in December 2008, he could not afford to make payments to SOR 1.d and 1.e.

After his father's death in November 2009, Appellant received a \$68,000 inheritance in September or October 2010. He gave approximately \$14,000 to his foster sister who had never been legally adopted by his parents. (Tr. 45-46) He has approximately \$54,000 remaining in a savings account while he negotiates a reduction in interest on a \$2,000 fine with the Internal Revenue Service (IRS) for tax year 2007. (Tr. 48) Applicant has not made any payments on the listed debts.

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the AG. Each guideline lists potentially disqualifying conditions and mitigating conditions, which are required to be used to the extent they apply in evaluating an applicant's eligibility for access to classified information.

The administrative judge's ultimate goal is to reach a fair and impartial decision that is based on common sense. The decision should also include a careful, thorough evaluation of a number of variables known as the "whole-person concept" that brings together all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision. 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 about the potential, rather than actual, risk of compromise of classified information.

Under Directive ¶ E3.1.4., 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

Financial Considerations

The security concern for financial considerations is set forth 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 two disqualifying conditions under AG ¶ 19 that may apply are: AG ¶ 19(a) (*inability or unwillingness to satisfy debts*); and AG ¶ 19(c) (*a history of not meeting financial obligations*). Applicant's indebtedness to four listed creditors exceeds \$37,000. He has known about some of this debt since December 2008, but has not provided any documented efforts to satisfy or settle the debts. In view of the \$54,000 that he inherited and has had in the bank since September or October 2010, I conclude that he is unwilling, not unable to pay the delinquent accounts. Also, his failure to act on any of the accounts is aggravated by not addressing his child support after finding new employment in July 2009. AG ¶¶ 19(a) and 19(c) apply.

Four conditions under AG ¶ 20 could potentially mitigate Applicant's delinquent indebtedness: 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*); AG ¶ 20(b) (*the conditions that resulted in the financial problem were largely beyond the person's control, and the person acted responsibly under the circumstances*); AG ¶ 20(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 AG ¶ 20(d) (*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*).

AG ¶ 20(a) does not apply because Applicant's financial problems are recent. While there are only four delinquent accounts, they total more than \$33,000. Though the circumstances are unlikely to recur due to Applicant's divorce in June 2010, the fact that Applicant now has the resources to pay all the debts, but has not done so, continues to cast doubt on his current reliability, trustworthiness and good judgment.

Applicant's periodic unemployment, his separation in May 2008 and divorce in June 2010, entitle him to some mitigation under AG ¶ 20(b). However, Applicant was working in June 2010 and received his inheritance in September or October 2010. Yet, by not addressing the listed debts, Applicant did not act responsibly in taking care of his debts.

The lack of financial counseling and other financial strategies to bring his debts under control remove AG ¶¶ 20(c) and 20(d) from consideration. The Chapter 7 petition Applicant filed in July 2009 would be a financial avenue garnering Applicant credit under AG ¶ 20(d), but the petition lost its probative value when the petition was dismissed. The financial considerations guideline has not been mitigated.

Whole-Person Concept

In evaluating Applicant's security clearance worthiness, I have examined the evidence under the disqualifying and mitigating conditions of the financial guideline, found against Applicant. I have also weighed the circumstances within the context of nine variables known as the whole-person concept. In evaluating the relevance of an individual's conduct, the administrative judge should consider the following factors:

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 the participation was 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 is 46 years old and has been employed as a sheet metal mechanic since July 2009. He divorced his second wife in June 2010, and owes for listed debts related to that marriage. He also owes child support to his two daughters from his first marriage. While he has not paid child support in a while, he provides whatever his daughters want.

Following his separation from his wife in May 2008, Applicant's accounts started becoming delinquent in September 2008. He lost his job in December 2008. After a period of unemployment, he found new employment in July 2009.

In October 2009, March 2010, and August 2010, Applicant was placed on notice that the Government was concerned about his delinquent debts. In September or October 2010, Applicant received his inheritance. He merits congratulations for his gift to his foster sister. However, he also had financial obligations that could have been addressed by his inheritance. Though Applicant cannot be faulted for trying to resolve the IRS fine, he could

have paid off all the listed debts or worked out some kind of payment plan to address the debts. Instead, he has done nothing to address the listed debts. The lack of a plan to eliminate his debt when Applicant has had the resources to pay off the creditors, warrants a finding against him under the financial guideline.

Formal Findings

Paragraph 1 (Guideline F): AGAINST APPLICANT

Subparagraphs 1.a - 1.e: Against Applicant

Conclusion

In light of all 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. Eligibility for access to classified information is denied.

Paul J. Mason
Administrative Judge