



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



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| In the matter of: |) | |
| |) | |
| SSN: |) | ISCR Case No. 10-00141 |
| |) | |
| Applicant for Security Clearance |) | |

Appearances

For Government: Melvin A. Howry, Esq., Department Counsel
For Applicant: *Pro se*

December 30, 2010

Decision

LOUGHRAN, Edward W., Administrative Judge:

Applicant has not mitigated Financial Considerations security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On August 25, 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. The action was taken under Executive Order (EO) 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 answered the SOR on September 22, 2010, and elected to have the case decided on the written record in lieu of a hearing. Department Counsel submitted the Government's written case on October 26, 2010. A complete copy of the file of

relevant material (FORM) was provided to Applicant, who was afforded an opportunity to file objections and submit material to refute, extenuate, or mitigate the security concerns. Applicant received a copy of the FORM on November 7, 2010. As of December 13, 2010, he had not responded. The Government Exhibits (GE) included in the FORM are admitted. The documents attached to Applicant's response to the SOR are also admitted. The case was assigned to me on December 23, 2010.

Findings of Fact

Applicant is a 29-year-old employee of a defense contractor. He is applying for a security clearance for the first time. He has worked for his current employer since February 2009. He has attended college since 1999, but he has not obtained a degree. He married in 2007 and divorced in 2009. He does not have children.¹

The SOR alleges 12 delinquent debts with balances totaling about \$32,000. Applicant admitted owing all the debts alleged in the SOR. He also submitted additional evidence in support of his application for a security clearance.

Applicant had gastric bypass surgery in 2007. The surgery cost about \$22,000 to \$23,000 and was not covered by medical insurance. Applicant was on disability for about five to six months following the surgery, and his income was substantially reduced. He was unable to pay all his bills. It appears that he had high balances on a number of accounts, but they only became delinquent after the surgery. He paid the majority of the medical bills from the surgery, but several of the bills have not yet been paid. Seven of the debts listed in the SOR, totaling \$3,246, are medical debts.²

Applicant admitted SOR ¶ 1.a, which alleged that he owed \$9,948 to a credit card company. The amount was based upon a September 2009 credit report. Applicant was interviewed for his background investigation in October 2009. He discussed his surgery, his delinquent debts, and the steps he was taking to resolve his financial problems. He told the investigator that he was served with court papers by the creditor from SOR ¶ 1.a. He stated that they settled the lawsuit with his agreement to pay \$150 in October 2009, followed by monthly payments of \$500. When he responded to DOHA interrogatories in June 2010, he submitted a December 2009 letter from the credit card company reflecting a \$500 payment in December 2009 and a balance of \$8,300. Applicant also submitted a February 2010 letter he wrote to the credit card company requesting validation of the debt. The credit card company responded in March 2010. There is no evidence of any additional payments. Credit reports from May, June, and October 2010 report a balance of \$8,300 on the debt.³

¹ GE 4.

² GE 7.

³ GE 3-8.

Applicant entered into an agreement with a collection company to settle a \$6,359 debt originally owed to a bank, with four monthly payments of \$761. This debt was alleged in SOR ¶ 1.f. The first payment was due on September 30, 2010, after Applicant responded to the SOR. He did not respond to the FORM, so it is unclear if he made the required payments.⁴

In addition to the medical bills from his surgery, Applicant paid or settled several debts that were not listed on the SOR, including two debts totaling more than \$8,000. Applicant stated that he has learned from his mistakes. He is living within his means, not accumulating additional debt, and has funds left over to pay his delinquent debts. He stated that he intends to systematically pay all the debts in the SOR. He plans to purchase a home after he has resolved his debts. He pays cash for his purchases and does not intend to get in over his head with credit card debt again. There is no evidence that he has received financial counseling.⁵

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 and mitigating conditions, 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, administrative judges apply the 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 the applicant or proven by Department Counsel." The applicant has the ultimate burden of persuasion to obtain a favorable security decision.

⁴ GE 3.

⁵ GE 3-8.

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 safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that adverse 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 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. Two are potentially applicable in this case:

(a) inability or unwillingness to satisfy debts; and

(c) a history of not meeting financial obligations.

Applicant accumulated a number of delinquent debts and was unable or unwilling to pay his obligations for a period. The evidence is sufficient to raise the above disqualifying conditions.

Four Financial Considerations Mitigating Conditions under AG ¶ 20 are potentially applicable:

(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; and

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

Applicant has not resolved any of the debts alleged in the SOR. His financial issues are recent and ongoing. AG ¶ 20(a) is not applicable.

Applicant had gastric bypass surgery in 2007. The surgery cost about \$22,000 to \$23,000 and was not covered by medical insurance. Applicant was on disability for about five to six months following the surgery, and he lost most of his income. Applicant's surgery may not have been covered by insurance, but it should not be viewed in the same category as cosmetic surgery. It provides a viable means to address a potentially life-threatening health issue. I find that the costs associated with Applicant's surgery and his period on disability resulted from events that were largely beyond his control. To be fully applicable, AG ¶ 20(b) also requires that the individual act responsibly under the circumstances. Applicant had high balances on his accounts before the surgery, but they did not become delinquent until after the surgery. He paid most of the medical expenses from the surgery, and he paid several debts that were not alleged in the SOR. He stated that he intends to pay all the debts in the SOR. He stated that he settled a lawsuit brought by one creditor with an agreement to pay \$500 each month. He established that he paid \$500 in December 2009, and he may have made additional payments before then. There is no evidence that he made any payments after December 2009. He has a settlement agreement to pay another debt, but there is no evidence that he made the required payments. I find that Applicant warrants credit for some mitigation under 20(b), 20(c), and 20(d). However, other than the \$500 payment made in December 2009, Applicant has not submitted proof of payments on any of the debts in the SOR. After considering Applicant's financial history as well as the amount of debts yet to be resolved, there is insufficient evidence for a determination that Applicant's financial problems are sufficiently in order to alleviate security concerns. In sum, I conclude that financial concerns remain despite the presence of some mitigation.

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 the facts and circumstances surrounding this case. I have incorporated my comments under Guideline F in my whole-person analysis. The limited information in the record has not convinced me that Applicant's finances are sufficiently in order to warrant a security clearance.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. I conclude Applicant has not mitigated Financial Considerations security concerns.

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:

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| Paragraph 1, Guideline F: | AGAINST APPLICANT |
| Subparagraphs 1.a-1.i: | 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.

Edward W. Loughran
Administrative Judge