



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



In the matter of:)
)
) ISCR Case No. 10-00458
)
)
Applicant for Security Clearance)

Appearances

For Government: Gregg A. Cervi, Esquire, Department Counsel
For Applicant: *Pro se*

October 15, 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. His eligibility for a security clearance is denied.

On August 24, 2009, Applicant completed and certified an Electronic Questionnaire for Investigations Processing (e-QIP). On May 14, 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. 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.

Applicant provided a notarized answer to the SOR, dated June 14, 2010, and requested that his case be determined on the record in lieu of a hearing. The Government compiled its File of Relevant Material (FORM) on August 12, 2010. The

FORM contained documents identified as Items 1 through 9. By letter dated August 16, 2010, DOHA forwarded a copy of the FORM to Applicant, with instructions to submit any additional information or objections within 30 days of receipt. Applicant received the file on September 9, 2010. His response was due on October 8, 2010. Applicant filed additional information within the required time period. On September 27, 2010, the case was assigned to me for a decision.

Findings of Fact

The SOR contains two allegations of disqualifying conduct under AG F, Financial Considerations (SOR ¶¶ 1.a. and 1.b.). In his Answer to the SOR, Applicant admitted both allegations. Applicant's admissions are admitted as findings of fact. (Item 1; Item 4.)

The facts in this case are established by the record provided by the Government and by information provided by Applicant in response to the FORM. The record evidence includes Applicant's August 2009 e-QIP; official investigation and agency records; Applicant's responses to DOHA interrogatories;¹ and Applicant's credit reports of December 30, 2009 and September 2, 2009.² (See Items 5 through 9; Applicant's response to the FORM.)

Applicant is 27 years old, unmarried, and has no dependents. He is employed by a federal contractor as an aircraft mechanic. He has worked for his present employer since March 2009. He seeks a security clearance for the first time. (Item 5.)

From July 2007 until February 2009, Applicant attended college and pursued a course in aircraft mechanics. He was unemployed during some of his studies. However, he worked full-time at night for a hotel from February 2008 until he finished his studies. In about June 2008, Applicant's employer began to cut his hours, and he subsequently worked only about 20 hours a week. Consequently, Applicant earned only enough money to pay his rent and basic living expenses, and he lacked sufficient funds to pay his credit card accounts. (Item 5; Item 6.)

On October 7, 2009, Applicant was interviewed by an authorized investigator from the Office of Personnel Management (OPM). Applicant reported that he opened two credit card accounts in 2005. These two accounts became delinquent in 2008, during Applicant's underemployment. The first of these accounts, a charged off debt of \$4,997 to a credit card company, is alleged at SOR ¶ 1.a. The second account, a charged off debt of \$10,991 to a credit card company, is alleged at SOR ¶ 1.b. (Item 6.)

¹On March 1, 2010, in response to DOHA interrogatories, Applicant signed a notarized statement affirming that he had read the summary of his interview with the OPM investigator and found it to be true and correct. He made no changes, corrections, or revisions to the investigator's summaries. (Item 6.)

² In response to DOHA interrogatories, Applicant provided three pages showing account histories from his March 1, 2010, credit report. (Item 7 at 7-9.)

Applicant told the investigator that both debts were unresolved. He also told the investigator that in July 2009, he contracted with a debt management firm to consolidate and pay his delinquent debts. He stated that he paid the debt management firm \$230 a month to pay his creditors, and he estimated that it would take three to five years to pay off all of his delinquent debt. (Item 6.)

On March 1, 2010, in response to DOHA interrogatories, Applicant provided a personal financial statement. On the personal financial statement, Applicant reported a net monthly income of \$2,680 and fixed monthly living expenses of \$1,195. He listed five debts, two of which were the debts alleged at SOR ¶¶ 1.a. and 1.b. He listed no monthly payments for the debts alleged at SOR ¶¶ 1.a. and 1.b. However, he listed a monthly payment of \$50 on a credit card debt of \$950 and a monthly payment of \$100 on a credit card debt of \$715. He also listed a monthly payment of \$230 to the debt management firm.³ His net monthly remainder was \$1,105. (Item 7 at 3.)

Applicant provided documentation establishing that in December 2009 and January 2010, the credit management firm had settled on his behalf a credit card debt of \$1,950, in collection status, for \$974. This debt was not alleged on the SOR.⁴ (Item 7 at 4-7.)

Applicant also provided documentation establishing that in late 2009 or early 2010, he settled for an unspecified lesser amount a credit card debt of approximately \$1,800. This debt was not alleged on the SOR. (Item 7 at 9.)

In response to the FORM, Applicant provided a revised personal financial statement. He reported a net monthly income of \$2,028 and fixed monthly living expenses of \$1,090. He identified \$38,991 in student loan debt, with monthly payments of \$451. He reported that he paid \$30 a month on a \$970 credit card debt and \$137 a month on an automobile loan of \$2,500. He identified the debt alleged at SOR ¶ 1.b. as "Delinquent" and indicated that it was being paid from the \$230 paid each month to the debt management firm. He reported a monthly net remainder of \$88. (Applicant's response to FORM at 1.)

In his response to the FORM, Applicant also provided a settlement offer, dated August 25, 2010, from the creditor holding the account identified at SOR ¶ 1.a. The creditor offered to settle the \$4,997 debt for \$1,100, provided payment was made in full on August 27, 2010. The record does not reflect that Applicant accepted the settlement offer and paid the debt. It is also unclear from the record that Applicant has received financial credit counseling. (Applicant's response to FORM at 2.)

³ Applicant did not provide documentation to corroborate his contract with the debt management firm and the debts the firm agreed to pay on his behalf.

⁴ I have not considered debts not alleged on the SOR for disqualifying purposes, but, under the whole-person concept, I will consider Applicant's satisfaction of debts not alleged on the SOR when I assess his financial stability and good-faith efforts to resolve his debts.

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.

When evaluating an applicant’s suitability for a security clearance, an administrative judge must consider the adjudicative guidelines. 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 seeking to obtain 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 in this case. 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.

Applicant obtained two credit cards in 2005. In 2008, he went through a period of underemployment and found he lacked sufficient funds to pay his credit card debts. The debts, totaling approximately \$15,000, became delinquent. This evidence is sufficient to raise security concerns under AG ¶¶ 19(a) and 19(c).

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 initiated a good faith effort to repay overdue creditors or otherwise resolve debts.” (AG ¶ 20 (d)). Finally, security concerns related to financial delinquencies might be mitigated 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 actions to resolve the issue.” (AG ¶ 20 (e)).

Applicant has a history of financial delinquencies that dates to at least 2008. He provided some credible evidence to corroborate his claim the delinquent debt alleged at SOR ¶ 1.b. was being paid from the \$230 he paid each month to the credit management firm he hired. Accordingly, allegation 1.b. is concluded for Applicant. However, he failed to provide documentation to show that the debt alleged at SOR ¶ 1.a. had been paid or settled. Additionally, his low net monthly remainder suggests that he would likely have few resources available if a financial emergency arose, suggesting that financial delinquencies could recur.

While Applicant experienced a period of underemployment in 2008, he has been steadily employed with his current employer since March 2009. The record does not support a conclusion that his failure to satisfy his creditors is the result of circumstances beyond his control. The record does not reflect that Applicant has had financial counseling.

Applicant failed to provide credible documentation that he had made good-faith efforts to satisfy the creditor identified in SOR ¶ 1.a. In determining an individual's security worthiness, the Government cannot rely on the possibility that an applicant might resolve his or her outstanding debts at some future date. ISCR Case No. 98-0614 at 5 (App. Bd. Jul. 12, 1999). I conclude that none of the financial considerations mitigating conditions fully applies to SOR allegation 1.a.

Whole-Person Concept

Under the whole-person concept, an administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of an 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. Applicant is a young person who worked hard to acquire an education. He was underemployed for a period of time and unable to pay his credit card debts. He asserted that he had contracted with a debt management firm to pay his delinquent debts. He provided documentation to establish that he had settled two debts not alleged on the SOR, suggesting he had acted in good faith to satisfy some of his creditors. However, he failed to provide documentation to establish that the debt management firm he hired was addressing the debt alleged at SOR ¶ 1.a. Moreover, it was not clear from the documentation provided by Applicant that the debt alleged at SOR ¶ 1. a. had been settled or otherwise resolved.

If he wishes, and if his employer concurs, Applicant can reapply for a security clearance one year after the date that this decision becomes final. At that time, he can produce new evidence that addresses the Government's current security concerns.

Overall, the record evidence at this time leaves me with doubts about Applicant's eligibility and suitability for a security clearance. I conclude 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
Subparagraph 1.a.:	Against Applicant
Subparagraph 1.b.:	For 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.

Joan Caton Anthony
Administrative Judge