



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



In the matter of:)
)
-----) ISCR Case No. 10-02236
)
Applicant for Security Clearance)

Appearances

For Government: Melvin A. Howry, Esquire, Department Counsel

For Applicant: *Pro se*

June 9, 2011

DECISION

ROSS, Wilford H., Administrative Judge:

Applicant submitted his Electronic Questionnaire for Investigations Processing (e-QIP), on October 5, 2009. (Government Exhibit 1.) On August 17, 2010, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guidelines F (Financial Considerations) and E (Personal Conduct) concerning Applicant. 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 answered the SOR in writing on September 9 and October 6, 2010, and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on December 7, 2010. This case was assigned to me on December 14, 2010. DOHA issued a notice of hearing on January 3, 2011. I convened the hearing as scheduled on January 19, 2011. The Government offered Government Exhibits 1 through 9, which were received without objection. Applicant testified on his

own behalf. Applicant asked that the record remain open for the receipt of additional documents. The Applicant submitted Applicant Exhibit A on February 4, 2011, and it was admitted without objection. DOHA received the transcript of the hearing on February 3, 2011. The record closed on February 4, 2011. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

Findings of Fact

Applicant is 44 and married to his second wife. There are five children currently living in the home. He is employed by a defense contractor and seeks to obtain a security clearance in connection with his employment.

Paragraph 1 (Guideline F, Financial Considerations)

The Government alleges in this paragraph that Applicant is ineligible for clearance because he is financially overextended and therefore at risk of having to engage in illegal acts to generate funds. Applicant admitted all the allegations in the SOR under this Paragraph. Those admissions are deemed to be findings of fact. He also submitted additional information to support his request for a continued security clearance.

1.a. Applicant admits that he is indebted to a creditor on a past due debt for a cellular phone in the amount of \$263. He has not paid this debt and has no plans to do so. (Tr. at 26.)

1.b. Applicant admits that he is indebted to a creditor on a past due debt for a cellular phone in the amount of \$42. He has not paid this debt and has no plans to do so. (Tr. at 28.)

1.c. Applicant admits that he is indebted to a creditor on a past due debt for a cellular phone in the amount of \$738. He has not paid this debt and has no plans to do so. Allegations 1.a., 1.b., 1.c., and 1.i. are all debts to the same cellular telephone company. Applicant alleges that these may all be duplicate debts. However, he has not disputed the accounts in writing, or in any other fashion. (Tr. at 29.)

1.d. Applicant admits that he is indebted for a repossessed automobile in the amount of \$16,066. This occurred because the Applicant changed jobs and could no longer afford the payments. He has not paid this debt and has no plans to do so. (Tr. at 29-30.)

1.e. Applicant admits that he is indebted to a utility company on a past due debt in the amount of \$162. He has not paid this debt and has no plans to do so. (Tr. at 30-31.)

1.f. Applicant admits that he owes a creditor \$67 on a past due debt. He does not know for sure what the debt is for, but he admits that he owes the money. He has not paid this debt and has no plans to do so. (Tr. at 31-32.)

1.g. Applicant admits that he is indebted to a creditor for a delinquent debt in the amount of \$33. Applicant has made no payments on this debt, and there is no evidence that he will do so. (Tr. at 32.)

1.h. Applicant admits that he is indebted to a creditor for a delinquent debt in the amount of \$1,480. Applicant has made no payments on this debt, and there is no evidence that he will do so. (Tr. at 33.)

1.i. Applicant admits that he is indebted to a creditor on a past due debt for a cellular phone in the amount of \$740. He has not paid this debt and has no plans to do so. As stated above, allegations 1.a., 1.b., 1.c., and 1.i. are all debts to the same cellular telephone company. Applicant alleges that these may all be duplicate debts. However, he has not disputed the accounts in writing, or in any other fashion. (Tr. at 33-34.)

1.j. Applicant admits that he was indebted to a creditor in the amount of \$458 on a past due credit card account. Applicant stated that he had successfully paid off this debt. While he did not provide any documentary evidence to support this contention, his testimony was credible on this point and this particular allegation is found for Applicant. (Tr. at 34-37.)

1.k. Applicant admits that he is indebted to a creditor on a past due debt for a student loan in the amount of \$2,637. He has not made any recent payments on this debt, and has no plans to do so. (Tr. at 37-39.)

1.l. Applicant admits that he owes a creditor \$193 on a past due debt. He does not know for sure what the debt is for, but he admits that he owes the money. He has not paid this debt and has no plans to do so. (Tr. at 39.)

1.m. Applicant admits that he owes a creditor \$382 on a past due debt. He does not know for sure what the debt is for, but he admits that he owes the money. He has not paid this debt and has no plans to do so. (Tr. at 39-40.)

Concerning his failure to pay the vast majority of his past due debts, even the smallest ones, Applicant states that he cannot make payments because, "I have a lot of kids at home. Just paying the bills, just barely getting by." (Tr. at 31.) Applicant also discussed the fact that his house burned down in 2004, during which time he was also hospitalized after a heart attack. While he stated these incidents had an impact on his financial situation, he did not present any supporting evidence showing how his finances were affected. (Tr. at 31-32, 49.) Applicant's knowledge of his current, or past, debt situation was very vague and incomplete. He was given an opportunity to submit a more accurate financial statement, which he did. The statement shows that Applicant has basically no financial margin for error. (Tr. at 40-48; Applicant Exhibit A at 5.)

Paragraph 2 (Guideline E - Personal Conduct)

The Government alleges under Guideline E that Applicant is ineligible for clearance because he has engaged in conduct which displays questionable judgment, dishonesty, or unwillingness to comply with rules and regulations. Applicant admits all of the allegations under this paragraph. Those admissions are deemed findings of fact.

Applicant admits being engaged in criminal activity on a fairly frequent basis between April 1986 and March 2000. (SOR allegations 2.d. through 2.m.) The earliest charges were for Receiving Stolen Property and Commercial Burglary, and the latest were two arrests for Possession of Less Than 28.5 Grams of Marijuana. (2.m., 2.l., 2.d., and 2.e.) Other charges were for such offenses as Inflict Corporal Injury on Spouse in June 1996; Forgery 1st Degree, Forgery 2nd Degree, Giving False Name to Law Enforcement and 2 counts of Felony Racketeering in June 1994; and Insufficient Funds, Grand Theft and Burglary in March 1992. (1.g., 1.i., and 1.k.) There were also traffic offenses April 1993, September 1996, and October 1996. (2.j., 2.h., and 2.f.) According to Applicant, most of his criminal offenses occurred because he was hanging out with the wrong crowd. He has grown older, matured, and wants to be a better role model for his children. (Tr. at 58, 64-65.)

Applicant filled out an official government questionnaire on October 5, 2009. (Government Exhibit 1.) Question 22.c. asks the Applicant, "Have you EVER been charged with any felony offense?" (Emphasis in original.) Applicant answered, "No." This was a false answer to a relevant question about his criminal history. In fact, Applicant had been charged with Forgery 1st Degree in June 1994. Regarding this answer, Applicant testified, "I'm thinking I might have misunderstood. I thought, for one, that it went back 10 years. And number 2, I thought it was convicted." (Tr. at 55.)

Question 22.e. of the same questionnaire asks the Applicant, "Have you EVER been charged with any offense(s) related to alcohol or drugs?" (Emphasis in original.) Applicant answered, "No." This was a false answer to a relevant question about his drug history. In fact, Applicant had been charged with Possession of Less Than 28.5 Grams of Marijuana in January 1999 and March 2000. Regarding this answer he testified, "Again, I thought it was convicted. I don't know what to say. I misinterpreted it." (Tr. at 56.)

Applicant was interviewed three times by an investigator from the Office of Personnel Management. In the second interview, on January 4, 2010, Applicant discussed his two drug charges and the Inflict Corporal Injury charge. He denied any other criminal activity. (Government Exhibit 3 at 4-6.) As discussed above, this was a false answer as Applicant had other criminal arrests, which he finally disclosed during his third interview on January 9, 2010. (Government Exhibit 3 at 6-8.)

Mitigation

Applicant maintains that his family size, several career and job changes, his heart attack, and his 2004 house fire made it impossible for his family to get ahead of his financial problems. (Transcript at 50-51.)

Applicant Exhibit A, in addition to the financial statement discussed above, also contained work-related documents concerning Applicant. The documents show Applicant has the ability to be a good to excellent performer. (Applicant Exhibit A at 2-4.)

Policies

Security clearance decisions are not made in a vacuum. 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 as appropriate 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 the adjudicative process. The administrative judge's over-arching 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. In addition, the administrative judge may also rely on his or her own common sense, as well as knowledge of the law, human nature, and the ways of the world, in making a reasoned 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. 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, 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 as to 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. Security clearance decisions include, by necessity, consideration of the possible risk that 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.

Finally, as emphasized in Section 7 of Executive Order 10865, “Any determination under this order . . . 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.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Paragraph 1 (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. The Applicant has approximately \$22,803 in past due debts, all of which have been due and owing for several years. The 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. Under AG ¶ 20(a), the disqualifying condition may be mitigated where “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.” Applicant’s financial difficulties arose in about 2004 and continue to date, with no end in sight. This mitigating condition does not have application in this case.

AG ¶ 20(b) states that the disqualifying conditions may be mitigated where “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.” Applicant testified that he had a heart attack and his house burned down in 2004. While these acts may have had an impact on his financial situation, seven years have passed with no tangible improvement in his financial situation. This mitigating condition has no application in this case.

The Applicant has not yet made a good-faith effort to pay off his creditors, with one exception. There is little to no track record of his making payments for a consistent period of time. Accordingly, AG ¶ 20(d) is not applicable. Finally, at the present time, I cannot find that “there are clear indications that the problem is being resolved or is under control,” as required by AG ¶ 20(c). Paragraph 1 is found against the Applicant.

Paragraph 2 (Guideline E, Personal Conduct)

The security concern relating to Personal Conduct is set out in AG ¶ 15:

Conduct involving questionable judgment, lack of candor, dishonesty or unwillingness to comply with rules or regulations can raise questions about an individual’s reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process

The Applicant’s conduct set forth under Paragraph 2, brings into play the following disqualifying conditions under Guideline E:

AG ¶ 16(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits and status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities;

AG ¶ 16(b) deliberately providing false or misleading information concerning relevant facts to an employer, investigator, security official, competent medical authority, or other official government representative; and

AG ¶ 16(c) credible adverse information in several adjudicative areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information.

The following mitigating conditions under Guideline E ¶ 17 may apply to his conduct:

AG ¶ 17(c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment, and

AG ¶ 17(d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that caused untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur.

I have considered Applicant's explanations for his false answers on the questionnaire and to a government representative, and find them lacking. Applicant knew the criminal acts he had committed. He had a responsibility to bring them to the attention of the government and did not do so. What is particularly egregious under the circumstances of this case is that it took three interviews for Applicant to be fully forthcoming about his criminal conduct. By definition AG ¶ 17(a) does not apply.

As for the criminal conduct itself, all of it is over ten years old, and the oldest incidents happened over 20 years ago. By themselves, they have no current security significance and subparagraphs 2.d. through 2.m. are found for Applicant. However, he was under a responsibility to inform the government of these acts, so that a knowing decision could be made of their importance.

Applicant's falsifications cannot be mitigated. Paragraph 2 is found against the Applicant.

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 the relevant circumstances. 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. The administrative judge must 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.

I considered the potentially disqualifying and mitigating conditions in light of all the relevant facts and circumstances surrounding this case. The discussion under Guidelines F and E, above, applies here as well. Applicant has had financial problems for several years, with no sign of improvement in the foreseeable future. I cannot find that his financial situation is under control. He was also not candid with the government on several occasions. Under AG ¶ 2(a)(3), his conduct is recent. I cannot find that there have been permanent behavioral changes under AG ¶ 2(a)(6). Accordingly, at the present time, I also cannot find that there is little to no potential for pressure, coercion, exploitation, or duress (AG ¶ 2(a)(8)); and that there is no likelihood of recurrence (AG ¶ 2(a)(9)).

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated the security concerns arising from his financial situation and personal conduct. Accordingly, the evidence supports denying his request for a security clearance.

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 THE APPLICANT |
|---------------------------|-----------------------|
| Subparagraph 1.a.: | Against the Applicant |
| Subparagraph 1.b.: | Against the Applicant |
| Subparagraph 1.c.: | Against the Applicant |
| Subparagraph 1.d.: | Against the Applicant |
| Subparagraph 1.e.: | Against the Applicant |
| Subparagraph 1.f.: | Against the Applicant |
| Subparagraph 1.g.: | Against the Applicant |
| Subparagraph 1.h.: | Against the Applicant |
| Subparagraph 1.i.: | Against the Applicant |
| Subparagraph 1.j.: | For the Applicant |
| Subparagraph 1.k.: | Against the Applicant |
| Subparagraph 1.l.: | Against the Applicant |
| Subparagraph 1.m.: | Against the Applicant |

Paragraph 2, Guideline E:

AGAINST THE APPLICANT

| | |
|--------------------|-----------------------|
| Subparagraph 2.a.: | Against the Applicant |
| Subparagraph 2.b.: | Against the Applicant |
| Subparagraph 2.c.: | Against the Applicant |
| Subparagraph 2.d.: | For the Applicant |
| Subparagraph 2.e.: | For the Applicant |
| Subparagraph 2.f.: | For the Applicant |
| Subparagraph 2.g.: | For the Applicant |
| Subparagraph 2.h.: | For the Applicant |
| Subparagraph 2.i.: | For the Applicant |
| Subparagraph 2.j.: | For the Applicant |
| Subparagraph 2.k.: | For the Applicant |
| Subparagraph 2.l.: | For the Applicant |
| Subparagraph 2.m.: | For the 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.

WILFORD H. ROSS
Administrative Judge