



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



In the matter of:)
)
) ISCR Case No. 10-02766
)
)
Applicant for Security Clearance)

Appearances

For Government: Braden M. Murphy, Esq., Department Counsel
For Applicant: *Pro se*

October 21, 2011

Decision

COACHER, Robert E., Administrative Judge:

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

Statement of the Case

On May 4, 2011, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, Financial Considerations. DOHA acted 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) effective within the Department of Defense on September 1, 2006.

Applicant answered the SOR on May 28, 2011, and requested a hearing before an administrative judge. The case was assigned to me on July 8, 2011. DOHA issued a notice of hearing on August 2, 2011, and the hearing was convened as scheduled on

August 25, 2011. The Government offered exhibits (GE) 1 through 6, which were admitted without objection. Department Counsel's exhibit index is marked as Hearing Exhibit (HE) I. Applicant testified and submitted exhibits (AE) A and B at the hearing. The exhibits were admitted into evidence without objection. DOHA received the hearing transcript (Tr.) on September 9, 2011.

Findings of Fact

Applicant admitted all the factual allegations in the SOR and those admissions are incorporated as findings of fact. After a review of the pleadings, testimony and admitted exhibits, I make the following findings of fact. Applicant is a 34-year-old employee of a defense contractor. He is single and has one minor child to whom he pays child support. In August 2010, he received an associate's degree in computer hardware installation. He began working for his current defense contractor employer two years ago. He installs networks for his company. He does not have any prior military service and has not deployed overseas for his company. He has not held a security clearance in the past.¹

The SOR alleges nine delinquent debts and a judgment totaling approximately \$20,400. The debts were listed on credit reports obtained on January 27, 2010, September 3, 2010, and March 2, 2011.²

From 2003 through 2005, Applicant experienced sporadic periods of unemployment. In 2007, he moved to a new city in a different state. He has been fully employed since about 2007 or 2008. In either 2009 or 2010, he began experiencing some heart discomfort. Consequently, he underwent medical examinations and testing to see if there was a serious issue with his heart. Nothing unusual was discovered and he has not had any other heart issues. He did not have medical insurance at the time he was undergoing these examinations and testing, and accumulated significant medical bills as a result. Additionally, he had an elective medical procedure performed in September 2009 incurred at a significant cost for which he did not have insurance. These medical debts contributed to his overall financial delinquencies listed in the SOR.³

The debts alleged in SOR ¶¶ 1.a, 1.d, 1.e, 1.g, 1.h, and 1.i are delinquent medical debts related to Applicant's heart examinations. The debt alleged in SOR ¶ 1.c is for a delinquent medical debt related to an elective procedure. The debt alleged in SOR ¶ 1.b is for his delinquent utility bill from a former address. The debt alleged in SOR ¶ 1.f is a delinquent on-line student loan debt. The debt alleged in SOR ¶ 1.j is a delinquent car loan he co-signed for on behalf of his ex-girlfriend.⁴

¹ Tr. at 5, 30-33; GE 1.

² GE 2, 3, 6.

³ Tr. at 33-34, 59-65; GE 4.

⁴ Tr. at 33-48; GE 4.

Applicant provided receipts showing payments made in June (payment of \$471) and August 2011 (payments of \$90 and \$41.49) to a collection agency that Applicant believes acquired the SOR debt ¶ 1.a. He is not really certain who currently holds his medical debts listed in SOR ¶ 1.a. No further payments were presented. He also provided a receipt showing one payment (\$300) made in July 2011 on the debt listed at SOR ¶ 1.c. According to Applicant, he was to make \$300 monthly payments on this debt, but only one is documented. He documented a payment towards the settlement of SOR ¶ 1.f (payment of \$71.31) in June 2011. However, the terms of the settlement agreement with the creditor called for him to make a second payment of the same amount in July, but that payment was not made. He also claims to have contacted the remaining creditors to work out payment arrangements. No documented payment plans were offered as evidence and no evidence of payments was made by Applicant on the remaining debts.⁵

Applicant's other financial obligations include his monthly child support payments of \$404. He is current on those payments. He also splits his current bills with his girlfriend. He has approximately \$18,000 in deferred student loans. He is unclear when his payments will start on this obligation. He thought he was already paying \$100 a month on this debt, but his bank statements do not support that belief because there are no entries for that amount to any student loan creditor. As of the date of the hearing, he had \$54 in the bank. He has not participated in any credit counseling to assist him with his debts.⁶

Applicant submitted a character letter from a former instructor. He describes Applicant as well organized and someone who would "implement proper work ethics and procedures."⁷

Policies

When evaluating an applicant's suitability for a security clearance, the 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 that 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

⁵ Tr. at 33-48; AE A; Applicant's Answer (Answer).

⁶ Tr. at 30, 49-50, 54-55, 71, 81.

⁷ AE B.

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 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 safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about 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* Executive Order 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 as follows:

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 satisfy his obligations. The evidence is sufficient to raise the above disqualifying conditions.

Several 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.

Although Applicant has made some payments, all the debts are still owed. They are not infrequent and there is no evidence to support the assertion that they will not recur. AG ¶ 20(a) is not applicable.

Applicant experienced periods of unemployment and sought uninsured medical care for a heart condition. These are conditions beyond his control. However, in order for this mitigating condition to fully apply, the Applicant must also act responsibly under the circumstances. Applicant's actions do not show responsible behavior. Although he made some initial inquiries with his creditors in an attempt to resolve his debts, he failed to reasonably follow up on these actions by making timely payments. AG ¶ 20(b) is partially applicable.

Applicant did not seek financial counseling to assist with his delinquent debts. He recently made payments on some of his medical debts, but he is not sure which creditors those payments cover and he has not followed up by making additional payments. His remaining debts remain unsettled and unresolved. Therefore, his

finances are not being resolved and are not under control. His attempts to reach settlements with his creditors are insufficient to support a finding that he has made a good-faith effort to pay or otherwise resolve his remaining debts. AG ¶¶ 20(c) and 20(d) are not applicable. He offered no documentary evidence to dispute any of the debts. AG ¶ 20(e) does not apply.

At this point, Applicant's finances remain a concern 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 relevant facts and circumstances surrounding this case. I have incorporated my comments under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

I considered the character letter of support for Applicant. I also considered his periods of unemployment and his uninsured medical costs. I also found Applicant to be honest and candid about his finances. However, he has done very little to resolve his debts. He only recently made some settlement payments and failed to follow through past the initial payments. His past financial track record reflects a troublesome financial history that causes me to question his ability to resolve his debts.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated the 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:

Paragraph 1, Guideline F: AGAINST APPLICANT

Subparagraphs 1.a - 1.j: 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.

Robert E. Coacher
Administrative Judge