



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
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-----) ISCR Case No. 10-03637
)
)
Applicant for Security Clearance)

Appearances

For Government: Caroline H. Jeffreys, Esquire, Department Counsel
For Applicant: *Pro se*

12/19/2011

Decision

HOWE, Philip S., Administrative Judge:

On January 14, 2010, Applicant submitted his Security Clearance Application (SF 86). On May 19, 2011, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing 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 on September 1, 2006.

Applicant acknowledged receipt of the SOR on June 1, 2011. He answered the SOR in writing through counsel on June 29, 2011, and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on August 18, 2011, and I received the case assignment on August 29, 2011. DOHA issued a Notice of Hearing on September 21, 2011, and I convened the hearing as scheduled on

October 12, 2011. Applicant's attorney withdrew before the hearing. Applicant represented himself at the hearing.

The Government offered Exhibits 1 through 7, which were received without objection. Applicant testified and submitted Exhibits A through M, without objection. DOHA received the transcript of the hearing (Tr.) on October 17, 2011. I granted Applicant's request to keep the record open until November 11, 2011, to submit additional documents. On November 9, 2011, he submitted copies of several form letters sent to collection companies. The Government had no objection to them. I marked them as Group Exhibit N. Applicant requested additional time to submit a credit report he had dated January 28, 2010, showing the debt listed in Subparagraph 1.bb was paid. That credit report was to be marked as Exhibit O but was never submitted. (Tr. 48) The record closed on November 11, 2011. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

Procedural and Evidentiary Rulings

Motion to Amend SOR

Department Counsel moved to amend the SOR by deleting ¶ 1.ii as a duplicate of ¶ 1.e. (Tr. 9) Applicant did not object to the motion. Therefore, I granted the deletion motion. Department Counsel also moved to amend the reference to the March 31, 2001 credit report in ¶¶ 1. c-f, i-o, q, s-v and x to refer to the correct year as "2011." Applicant also had no objection to this amendment and I granted the motion.

Findings of Fact

In his Answer to the SOR, Applicant admitted the factual allegations in ¶¶ 1.b, to 1.o, q-v, x, cc-ee, gg-jj of the SOR, with explanations. He denied the factual allegations in ¶¶ 1.a, p, w, y, z, aa, bb, ff, kk-mm. of the SOR. He also provided additional information to support his request for eligibility for a security clearance.

Applicant is 51 years old and has a high school degree. He has practical experience in the construction industry. Applicant has six children from two marriages. He has four children with his present wife, who reside at home. (Tr. 50, 62; Exhibit 1)

Applicant has been unemployed since June 2011. His previous periods of unemployment were February 2009 to May 2010, and December 2007 to January 2008. Applicant draws unemployment compensation of \$378 weekly. His wife is unemployed. Applicant's rent is \$1,200 monthly, utilities are \$300, cable television is \$30 monthly, a cell phone is \$200, car insurance is \$120 monthly, car payments are \$500 and \$164 for two cars, and his food bill is \$664 with the SNAP card. His children now qualify for Medicare. Applicant does not have any credit cards. His family helps him financially and has given him about \$3,000 to date. His monthly bills are paid with the family support while he looks for employment. (Tr. 51-63)

Applicant worked overseas for his previous employer. He worked from May 2010 until June 2011 when he was laid off for lack of work. Applicant's net income for that period was about \$6,000 per month. He received weekly a \$350 per diem from his wife. The remainder of his income was deposited in a bank account in their home town. Applicant's wife was to use the money to support the family and pay the bills. Applicant does not know where some of the money was spent, although it was not spent on a number of debts that are listed in the SOR. (Tr. 50, 51, 62-65)

The SOR lists 38 delinquent debts (subtracting the duplicate listing in ¶ 1.ii), which total \$53,570. Applicant has tried to arrange installment payment plans with some creditors, but their demands for payments are more than he can afford. Applicant had a number of federal tax liens filed against him from 1986 to 1999 for business and personal income taxes. Applicant was self-employed for several years and did not make the correct tax payments even though he hired an accountant to take care of those matters. Those tax debts were satisfied and the documents included as exhibits. The tax debt of \$2,295 listed in ¶ 1.a is not listed separately in any of the exhibits. Applicant asserted it is paid, but has no document to prove payment. Applicant received federal tax refunds of about \$4,000 to \$6,000 in the past two tax years, which Applicant believes demonstrate his federal tax debts are paid. The SOR lists three state tax liens, two vehicle repossession debts, five judgments, 21 medical debts, and seven accounts placed for collection. Applicant has not resolved any of these accounts. Applicant submitted documents showing he satisfied several judgments during the past 10 years, but he did not match these cases to the judgments listed in the SOR. (Tr. 31-50, 67, 68; Exhibits 2-7, A-I)

Applicant stated his financial problems started in 1997 when his second child was born with various medical problems. Then in 2001, his wife was diagnosed with cancer while pregnant with their fourth child. Applicant did not have medical insurance for several years, including while employed in 2001. He did not have medical insurance from February 2009 to May 2010. At present he does not have medical insurance. (Tr. 32, 33, 35)

Applicant submitted three personal character letters from former co-workers. They all attest to his fine character and hard work. (Exhibits J-L)

Applicant submitted email messages from July and August 2011 showing he attempted to work with a debt management agency to repay his debts. Applicant contends that agency will help him resolve his debts, but did not have proof that any debt has been paid to date. Applicant does not want to file bankruptcy but pay his debts. (Tr. 28, 66; Exhibit M)

Applicant submitted five letters sent in October 2011 to collection agencies. He asked for information on the debts these agencies are trying to collect. He has not received a reply to any of them by November 11, 2011, when the record closed. (Exhibit N)

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 useful 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 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. 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, an "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, and has the ultimate burden of persuasion as to obtaining a favorable clearance 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 at AG ¶ 19 contains nine disqualifying conditions that could raise security concerns. Two conditions are applicable to the facts in this case:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant accumulated \$53,570 in delinquent debt from 1997 to the present time that remains unpaid. Applicant has 38 delinquent debts listed in the SOR. Twenty-one debts are medical collection accounts. The others are judgments, tax liens, and two car repossessions.

The guideline in AG ¶ 20 contains six conditions that could mitigate security concerns arising from financial difficulties. Two conditions may be 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;
- (d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts;

(e) 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; and,

(f) the affluence resulted from a legal source of income.

Applicant contends ¶ 20 (a) applies because his debts are old. But the debts are so many and incurred over the course of a decade that they do reflect on his current reliability, trustworthiness, or good judgment. The pattern of action removes this mitigating condition from consideration.

Applicant experienced periods of unemployment since 2001 to date, which have lasted up to one year in duration. He has not had medical insurance on occasion. His wife and child had major medical issues which were beyond his control. However, the tax liens arose from his inability to properly and timely file tax forms and make the required payments during his period of self-employment. For mitigating condition AG ¶ 20 (b) to apply, Applicant must have acted responsibly under the circumstances. Applicant earned about \$6,000 monthly for a year, but cannot account for the expenditure of those funds. These funds were sent home and were in the control of his wife who was to pay the family bills. Portions of that money could have been used to pay several of the SOR-listed debts. Applicant continued to incur debt while employed during the past several years. Applicant's lack of medical insurance during several years and his 21 medical debts has a limited mitigating applicability. Applicant did not meet his burden of proof that this mitigating condition should apply totally to his 38 delinquent debts because of the absence of responsible action on his part of controlling his debt.

Applicant contacted a debt management agency in July 2011. He did not present any documents that he received financial counseling from this, or any other, agency . He did not show his debt problem is being resolved or under control. AG ¶ 20 (c) does not apply.

Applicant is not paying his debts in an orderly manner currently. AG ¶ 20 (d) has no application.

AG ¶ ¶ 20 (e) and (f) do not apply on the basis of the evidence presented.

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 an applicant's conduct and all relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

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.

PHILIP S. HOWE
Administrative Judge