



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



In the matter of:)
)
) ISCR Case No. 10-03656
)
)
Applicant for Security Clearance)

Appearances

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

October 6, 2010

Decision

GOLDSTEIN, Jennifer I., Administrative Judge:

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

Statement of the Case

On December 9, 2009, 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) effective for cases after September 1, 2006.

Applicant answered the SOR on April 4, 2010, and requested a hearing before an administrative judge. The case was assigned to another Judge on July 2, 2010, and then reassigned to me on July 19, 2010. DOHA issued a notice of hearing on July 23, 2010, and the hearing was convened as scheduled on August 18, 2010. The

Government offered Exhibit (GE) 1 through 5, which were admitted without objection. The Applicant offered Exhibit (AE) A through D and testified on his own behalf. The record was held open for Applicant to submit additional information until August 27, 2010. Applicant submitted AE E through J, which were admitted without objection, post hearing. DOHA received the transcript of the hearing (Tr.) on August 26, 2010.

Findings of Fact

Applicant admits all of the SOR allegations. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is a 45-year-old employee of a defense contractor. He is not married. He has an 11-year-old son that resides with him, and two sons, ages 17 and 14, that reside with their mother in Florida. He is a high-school graduate and has taken some college classes. (Tr. 42-45.)

Applicant is indebted to 15 creditors in the approximate total amount of \$55,032. He also has had his home foreclosed upon. He attributes his debts to a period from 2005 to October of 2009, when he has laid-off by his current employer. Applicant was unable to find another job in his field, so he started his own business in marine construction. He financed the business with his savings and credit cards. However, due to several hurricanes in the Gulf from 2006 to 2008, he lost all of his equipment and had to close the business. He was rehired with his current employer in October 2009, however, he is a temporary employee and has not been able to secure a full time position. Generally, he does not feel that he has the funds to make payments on his delinquent accounts. He earns approximately \$48,000 per year, with a disposable income of approximately \$30,000 a year. (GE 1; GE 2; GE 3; GE 4; GE 5; AE J; Tr. 32-40, 48, 65-69, 71.) His debts are as follows:

Allegation 1.a. alleges that Applicant is indebted on a doctor's bill in the approximate amount of \$1,589. He claims he is in the process of researching this debt to find out who the creditor is, but presented no evidence of any actions taken on this debt. (Tr. 45-47, 61-63.)

Allegation 1.b. alleges that Applicant is indebted to a collections agent for a telephone service provider in the approximate amount of \$696. The debt was incurred by his subcontractors who used the phone service when he had his own business. He has not been making payments on this account. (Tr. 47- 48, 63-64.)

Allegation 1.c. alleges that Applicant is indebted on a medical bill in the approximate amount of \$252. He is in the process of researching this debt to find out who the creditor is, but has made no payments to date. (Tr. 48, 64.)

Allegation 1.d. alleges that Applicant is indebted for a returned check in the approximate amount of \$48. Applicant claims that this debt is paid, but failed to provide documentation to support his claim. (Tr. 48-49.)

Allegation 1.e. alleges that Applicant is indebted on a credit card in the approximate amount of \$6,275. This was a card that he used to finance his business. He has not made arrangements to pay this debt. (Tr. 49, 64.)

Allegation 1.f. alleges that Applicant is indebted on his home mortgage in the approximate amount of \$11,000. The house was foreclosed upon in approximately 2008 and has been resold. Applicant claims the house was sold for more than the outstanding balance on his mortgage. However, he did not provide documentation to support his claim. (Tr. 49-50, 53-55.)

Allegation 1.g. alleges that Applicant is indebted to a creditor in the approximate amount of \$736. This debt was for a generator Applicant purchased for his business. This debt remains unpaid. (Tr. 50-52, 64.)

Allegation 1.h. alleges that Applicant is indebted on a credit card account in the approximate amount of \$623. Applicant used this credit card to purchase fuel for business equipment. It remains unpaid. (Tr. 52, 64.)

Allegation 1.i. alleges that Applicant is indebted to a bank for a credit card account in the approximate amount of \$16,000. This card was used to purchase material lost in a hurricane. It remains unpaid. (Tr. 52, 64.)

Allegation 1.j. alleges that Applicant is indebted to a bank for a charged off account in the approximate amount of \$500. Applicant incurred this debt when he closed his account with the bank. This debt remains unpaid. (Tr. 52-53, 64.)

Allegation 1.k. alleges that Applicant is indebted to a home owner's association in the approximate amount of \$900. Applicant believes that this debt was tied to his home that was foreclosed upon. He believes that the debt should have been settled when the home was resold. However, he offered no documentation to substantiate his claim. (Tr. 53.)

Allegation 1.l. alleges that Applicant is indebted to a collections agent for a cable company in the approximate amount of \$246. Applicant testified that this bill was incurred when he vacated the foreclosed home. He has not paid the debt, nor has he researched disputing the claim. (Tr. 56.)

Allegation 1.m. alleges that Applicant is indebted to a collections agent for an electric company in the approximate amount of \$140. Applicant claims this debt was never in his name. He has not taken any steps to dispute this claim. (Tr. 58.)

Allegation 1.n. alleges that Applicant is indebted on his child support obligation in the approximate amount of \$15,099. This debt is for the support of his two sons in Florida. He became behind on this obligation when his business began to fail. In 2009, his 2008 income tax refund was garnished and applied toward this debt. He set up a voluntary allotment of \$120 per week to satisfy his child support obligation. However,

the record was not clear as to whether this allotment was for back-child support, or if it was his current child support payment. (Tr. 58-560.)

Allegation 1.o. alleges that Applicant is indebted on a credit card account in the approximate amount of \$928. This debt was for his personal credit card. It remains unpaid. (Tr. 60.)

Allegation 1.p. alleges that in 2008, Applicant's mortgage holder foreclosed upon his home that was past due over 120 days. (Tr. 60.)

Applicant is well respected by his co-workers and supervisors. A site manager noted that "he is reliable, trustworthy, and a team player." (AE A; AE B; AE C; AE D; AE E; AE F; AE G; AE H; AE I.)

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.

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 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, 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 concern 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 15 delinquent debts and is unable or unwilling to pay these obligations. His delinquencies have been on-going for several years, without resolution. The evidence is sufficient to raise the above disqualifying conditions.

Five 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;

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

(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.

Applicant failed to present documentation that he has satisfied any of his delinquent debts listed on the SOR. His debt is current and on-going. Further, he gave little indication that his financial situation is likely to improve. His inability to address these debts casts doubt on his current reliability, trustworthiness, and good judgment. AG ¶ 20(a) is not applicable.

Applicant's financial difficulties were caused by his lay-off and the failure of his business. These qualify as conditions that were outside of his control. However, to be fully applicable, AG ¶ 20(b) also requires that the individual act responsibly under the circumstances. Applicant has not shown he made any attempt to responsibly address his remaining debts. He has not contacted creditors since the accounts became delinquent. He has not presented documentation to establish payments under any agreement on his consumer debt. AG ¶ 20(b) is not applicable.

Applicant has not sought financial counseling. He failed to provide proof that AG ¶ 20(c) applies.

Applicant has presented documentation that he made payments on his debt alleged in 1.n. However, he failed to show whether the payments were for current or delinquent child support. Further, he has not proven he made payments to any of his other creditors. There is no showing he has initiated a good-faith effort to repay his overdue creditors or otherwise resolve debts. AG ¶ 20(d) is not applicable.

Finally, he failed to introduce documented proof to substantiate the basis of any disputes with his creditors or provide evidence of actions he has taken to resolve the issue with his creditors. AG ¶ 20(e) is not mitigating.

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. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

Applicant's letters of support show he is a valued employee. However, he has been unable to make ends meet and satisfy his past due accounts. His choices, with respect to his debts, do not demonstrate the judgment, reliability, or trustworthiness needed to hold a security clearance. There are significant unresolved concerns about Applicant's finances and judgment.

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 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
Subparagraph 1.a.:	Against Applicant
Subparagraph 1.b.:	Against Applicant
Subparagraph 1.c.:	Against Applicant
Subparagraph 1.d.:	Against Applicant
Subparagraph 1.e.:	Against Applicant
Subparagraph 1.f.:	Against Applicant
Subparagraph 1.g.:	Against Applicant
Subparagraph 1.h.:	Against Applicant
Subparagraph 1.i.:	Against Applicant

Subparagraph 1.j.:	Against Applicant
Subparagraph 1.k.:	Against Applicant
Subparagraph 1.l.:	Against Applicant
Subparagraph 1.m.:	Against Applicant
Subparagraph 1.n.:	Against Applicant
Subparagraph 1.o.:	Against Applicant
Subparagraph 1.p.:	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.

Jennifer I. Goldstein
Administrative Judge