



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ISCR Case No. 10-03942
)
)
Applicant for Security Clearance)

Appearances

For Government: Fahryn E. Hoffman, Esquire, Department Counsel
For Applicant: *Pro se*

June 14, 2011

Decision

WHITE, David M., Administrative Judge:

Applicant has taken no action to resolve about \$17,000 in delinquent debts owed to 20 creditors alleged in the Statement of Reasons, and about \$23,000 in other delinquencies. Some of the debt arose from long-term medical conditions, however he failed to demonstrate either a plan to resolve his obligations or the resources to do so. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

Applicant submitted a security clearance application (SF 86) on January 27, 2010. On October 20, 2010, 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 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 for Determining Eligibility for Access to Classified Information* effective within the Department of Defense on September 1, 2006.

Applicant answered the SOR in writing (AR) on November 21, 2010, and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on December 3, 2010, and the case was assigned to me on December 14, 2010. DOHA issued a Notice of Hearing on December 21, 2010, and I convened the hearing as scheduled on January 28, 2011. The Government offered exhibits (GE) 1 through 5, which were admitted without objection. Applicant offered no documentary evidence during the hearing, and testified on his own behalf. I granted Applicant's request to leave the record open until February 14, 2011, for submission of additional evidence. DOHA received the transcript of the hearing (Tr.) on February 7, 2011. On February 13, 2011, Applicant submitted two documents that were marked exhibits (AE) A and B, admitted without objection, and the record was closed as scheduled.

Findings of Fact

Applicant is a 55-year-old employee of a defense contractor, where he has worked since April 2009. He has no military service, and this is his first application for a security clearance. He is a high school graduate. He is divorced, and has had custody of his 23-year-old special-needs daughter since she was 7.¹ In his response to the SOR, Applicant admitted all of the factual allegations in SOR ¶¶ 1.a through 1.t.² Applicant's admissions, including his statements in response to DOHA interrogatories,³ are incorporated in the following findings.

Approximately 25 years ago, Applicant badly injured both legs in a skiing accident. He has since had both knees replaced, and will need to have at least one of the artificial knees replaced again in the near future. He has suffered several other injuries in the meantime. As a result, he has undergone more than 55 major surgeries involving hospitalization and recovery periods of various lengths. He has held a variety of jobs over this period, with varying degrees of health insurance coverage. In addition, he has raised his daughter without any child support from his former wife. She suffers from psychological and physical disabilities that have resulted in additional medical debt. His only reported period of unemployment since May 1995 occurred from November 2008 to January 2009, when he was between jobs. He worked as an electronics systems field technician throughout this period.⁴

Applicant admitted owing all 20 of the delinquent debts listed in the SOR, ranging from \$75 to \$3,494, and totaling \$16,696. On February 23, 2010, he was interviewed by an investigator from the Office of Personnel Management (OPM) concerning his financial delinquencies. He said that he was using his monthly income to meet current living expenses, and was trying to devise a plan to pay off his debt. He acknowledged

¹GE 1; Tr. 27-30, 34-36.

²AR.

³GE 2; GE 3.

⁴AR; GE1; GE 2; GE 3; Tr. 18-19, 29-30, 34-38, 74.

never having attended financial counseling or used a debt consolidation service. He said he was not unwilling to pay his debts, but was unable to do so because he had insufficient money and lived paycheck to paycheck.⁵

In addition to the delinquent debts listed on the SOR, which are confirmed by the credit bureau reports in evidence and Applicant's admissions, he owes about \$17,000 in medical debt to a local hospital. This debt arose from an uninsured hospital stay shortly before he started his current job in April 2009. He had suffered some chest pains, and was admitted for a couple days of testing. He has not made any payments toward this debt. He also owes about \$6,000 in delinquent federal income taxes, with associated interest and fees, on which he recently entered a repayment agreement with the Internal Revenue Service (IRS). Under the agreement, he pays \$150 per month, beginning in December 2010.⁶

On September 20, 2010, Applicant responded to financial interrogatories from DOHA. He said that he was scheduled to meet with legal counsel to discuss filing for bankruptcy on September 23, 2010. He attended that meeting, at which the attorney explained his options, but Applicant took no further action. He also spoke with another attorney by telephone concerning bankruptcy options. In his November 21, 2010, response to the SOR he said that he was working on filing bankruptcy to clear his financial record. About a month before the hearing, he sent his financial information to his father, who is a financial consultant. About two weeks later, they discussed whether bankruptcy would be his best option, but reached no conclusions. Applicant said he was waiting to hear from his father before deciding how to proceed, and had done nothing during the weeks leading up to his hearing. Except for his IRS debt, and despite having received several settlement offers from creditors, he said he had not made payments toward his debts because his father advised him not to show favoritism toward any creditors until they decided what to do about the bankruptcy situation. Another concern was Applicant's inability to afford the legal fees necessary to file bankruptcy. Applicant said he wanted to submit a statement from his father after the hearing concerning the situation, but did not do so. His post-hearing submission, dated February 12, 2010, merely stated that he needed to wait until April 1 to qualify for Chapter 7 status.⁷

Applicant has no formal budget, and still has not obtained financial counseling. He still lives paycheck to paycheck, with no money left at the end of the month for savings. He characterized his recent financial management as "just kind of trying to put out fires as they come up."⁸

⁵AR; GE 3 at 3.

⁶GE 1 at 44-46; GE 2 at 4; Tr. 40-41, 55-57, 74-75.

⁷GE 2 at 3; AR; AE A; Tr. 39-50, 72-73.

⁸Tr. 65-68.

Applicant offered a letter from the owner of his company, which describes him as an honest and hard-working employee, who has been open about the state of his finances, and has a sincere desire to serve others and do the right thing. The owner further stated that Applicant follows all safety and personnel standards, and conducts himself with integrity, respect, and honesty.⁹ His demeanor during the hearing was pleasant, open, sincere, and straightforward.¹⁰

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 (DCs) and mitigating conditions (MCs), 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, these guidelines are applied in conjunction with the factors listed in AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶¶ 2(a) and 2(c), the entire process is a conscientious scrutiny of applicable guidelines in the context 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 the 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, "[t]he 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." Section 7 of Executive Order 10865 provides: "[a]ny determination under this order adverse to an applicant 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."

A person applying for access to classified information seeks to enter into a fiduciary relationship with the Government predicated upon trust and confidence. This

⁹AE B.

¹⁰Tr. 80-81.

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.

Analysis

Guideline F, Financial Considerations

The security concerns relating to the guideline for financial considerations are 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 evidence raised security concerns under two Guideline F DCs, as set forth in AG ¶ 19(a) "inability or unwillingness to satisfy debts"; and ¶ 19(c) "a history of not meeting financial obligations." Applicant's history of financial problems dates back more than 25 years, and was exacerbated over the past 16 years by having the sole support responsibilities for his special-needs daughter. He has worked steadily in his field, except for one brief period of unemployment, but his obligations exceed his income to the point that he owes 20 different creditors almost \$17,000 in delinquent debt as alleged in the SOR. He does not have the resources to repay these debts, especially while facing another \$17,000 in recent medical debt and \$6,000 in delinquent IRS debt. The evidence clearly establishes Applicant's inability to satisfy his debts, and his history of not meeting financial obligations, thereby shifting the burden to him to prove mitigation.

The guideline includes four conditions in AG ¶ 20 that could mitigate security concerns arising from Applicant's financial problems:

- (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.

Applicant admitted the SOR-alleged debts, and has no unexplained affluence, so the remaining MCs are not pertinent.

Applicant has a large number, and significant total amount, of delinquent debts that continue unresolved at present. Applicant failed to demonstrate that his current financial situation makes this behavior unlikely to recur, or that it does not cast doubt on his current trustworthiness and judgment. The evidence does not establish mitigation under AG ¶ 20(a).

Mitigation under AG ¶ 20(b) was not established. Applicant has incurred significant medical expenses over the past 25 years, but failed to show that a substantial portion of them were unexpected. A number of his delinquencies are medical accounts, but a large number are credit cards and other consumer debts. Nor did Applicant's divorce cause his financial problems, since his former wife was not subsequently in a position to contribute financially to their daughter's support and maintenance. His ex-wife's absence resulted in one fewer people depending on Applicant for financial support. Finally, Applicant failed to demonstrate that he has acted responsibly under the circumstances. He admitted that he has taken no action at all to improve his financial responsibility, beyond talking to a few people about it.

Applicant has not received financial counseling. He made a very recent arrangement with the IRS to repay \$6,000 in past-due tax obligations over the next three years, but neither made nor intends to make any payments to his SOR-listed creditors or toward \$17,000 in other medical delinquencies that did not appear on the SOR. Thus, no mitigation was established under AG ¶¶ 20(c) or (d).

As the Appeal Board has ruled concerning the successful mitigation of security concerns arising from financial considerations, "[a]n applicant is not required to show that [he] has completely paid off [his] indebtedness, only that [he] has established a reasonable plan to resolve [his] debts and has 'taken significant actions to implement that plan.'"¹¹ This applicant admittedly has neither a plan, nor the means or intention to implement one.

¹¹ISCR Case No. 06-12930 at 2 (App. Bd. Mar. 17, 2008) (quoting ISCR Case No. 04-09684 at 2-3 (App. Bd. Jul. 6, 2006)).

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 pertinent facts and circumstances surrounding this case. Applicant is a hard-working and dedicated employee. He has suffered a large number of medical problems, and has incurred many additional medical expenses as the sole caretaker for his special-needs daughter. He was open and honest about his situation and intentions, as well as his lack of any effective action toward resolution of the delinquent debts listed in the SOR.

However, Applicant currently has about \$40,000 in delinquent debts that he accrued over many years, and he does not have the financial means to resolve them in the foreseeable future. He has made preliminary inquiries with several people concerning bankruptcy, but is also unable to afford or save toward paying the necessary legal fees. He did not demonstrate any behavioral changes despite considerable notice about the security concerns raised by his financial situation.

Applicant is a mature and experienced individual, who is fully accountable for his situation and knows he will continue to incur medical expenses he will be unable to pay. The potential for pressure, coercion, exploitation, or duress remains largely undiminished, and he did not begin to demonstrate a sufficient pattern of financial responsibility to show that the financial concerns are unlikely to continue or recur.

Overall, the record evidence creates substantial doubt as to Applicant's present eligibility and suitability for a security clearance. He failed to meet his burden to mitigate the security concerns arising from his financial considerations.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:

AGAINST APPLICANT

Subparagraphs 1.a through 1.t:

Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the interests of national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

DAVID M. WHITE
Administrative Judge