



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ISCR Case No. 10-05595
)
Applicant for Security Clearance)

Appearances

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

04/09/2012

Decision

DUFFY, James F., Administrative Judge:

Applicant failed to mitigate the security concerns arising under Guideline F, Financial Considerations. Eligibility for access to classified information is denied.

Statement of the Case

On November 14, 2011, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F. 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) implemented on September 1, 2006.

On December 9, 2011, Applicant answered the SOR and requested a hearing. The case was assigned to me on January 23, 2012. DOHA issued a notice of hearing on January 26, 2012, and the hearing was convened as scheduled on February 16, 2012. At the hearing, Department Counsel offered Government Exhibits (GE) 1 through 5 that were admitted into evidence without objection. Applicant testified, but did not call

any witnesses or offer any exhibits. The record was left open until February 23, 2012, to provide Applicant an opportunity to submit additional matters. He submitted one document that was marked as Applicant Exhibit (AE) A, and admitted into evidence without objection. Department Counsel's forwarding memorandum reflecting that she had no objection to that document was marked as Hearing Exhibit (HE) 1. In another memorandum dated April 2, 2012 and marked as HE 2, Department Counsel withdrew ¶ 1.a of the SOR. DOHA received the hearing transcript (Tr.) on March 6, 2012.

Findings of Fact

Applicant is a 36-year-old employee of a defense contractor. He has worked for his current employer since August 2009. He graduated from high school in 1993. He served on active duty in the U.S. Marine Corps from January 1998 to June 2003 and received an honorable discharge. He served in the Marine Corps Reserve from January 2006 to January 2008. He has been married twice. His first marriage was from April 1999 to September 2001. He married his current wife in September 2005. He has four children, ages three, five, seven, and eight. He currently holds a security clearance.¹

The SOR alleged that Applicant had 22 delinquent debts totaling about \$36,926. In his answer, Applicant admitted each of the alleged debts. His admissions are incorporated as findings of fact. Department Counsel pointed out that the SOR alleged two sets of duplicated debts. Specifically, SOR ¶¶ 1.a and 1.s are duplicates, as are ¶¶ 1.g and 1.v. Excluding the two duplicate debts and the withdrawn allegation, the remaining alleged indebtedness is \$33,561.²

Applicant attributes his delinquent debts to periods of unemployment and financial strains arising from multiple moves to obtain employment. He was unemployed from July 2003 to August 2003 and from October 2005 to April 2006. He also indicated he was a car salesman at a dealership from about August 2004 to October 2005 and stated managers took credit for many car sales that he initiated, which resulted in a reduction of his sales commissions. Since his discharge from the Marine Corps, Applicant and his wife have moved thirteen times. Some of those moves were in the local area, but at least five were long-distance moves of hundreds of miles or more. Those long-distance moves were made to obtain employment. Additionally, his youngest son was born prematurely and his lungs did not develop fully. His son has asthma and is susceptible to respiratory infections. However, Applicant has always had medical insurance since his youngest son was born.³

SOR ¶ 1.f alleged that Applicant had a student loan of \$12,000 that was placed for collection. He obtained student loans between 1993 and 1995 while he attended college for two and a half years. They became delinquent in about 2000. At the hearing,

¹ Tr. at 5-6, 18, 22-24, 27-28, 30; GE 1.

² Tr. at 13, 38-39, 46, 63; Applicant's Answer to the SOR; GE 1-5; AE A.

³ Tr. at 18-36, 64-67; GE 2.

he testified that he recently made payment arrangements for this student loan. In his post-hearing submission, he provided a letter dated January 1, 2012, from the creditor. It indicated that his loan was placed in forbearance for three months while the creditor waited for him to submit his adjusted gross income information. While in forbearance, he was to make interest-only payments of \$60 per month. Once the creditor received the adjusted gross income information, it would calculate his revised monthly payment amount. He did not provide documentation showing that he made the interest-only payment that was due on February 14, 2012. He also indicated that his tax refund for 2010 was withheld and applied to the student loan.⁴

The date of first delinquency/date of last activity for the delinquent debts spans from April 2007 to January 2010. Applicant provided no proof of payments towards the delinquent debts. He testified that he has not made any payments on the alleged debts in the last year. Except for the debt alleged in SOR ¶ 1.g (the student loan), he has not contacted any of the creditors in the past year. He indicated that he was waiting to reach a settlement agreement on the student loan before contacting the other creditors. He also indicated that he failed to file his federal and state income tax returns on time for tax years 2007 through 2009. In 2010, he filed all his late federal income tax returns and his 2009 state tax return. However, he has not yet filed his state income tax returns for 2007 through 2009, which must be filed in other states.⁵

Applicant's wife has worked in the past, but is not currently working. She is attending cosmetology school in the evenings. He expects that she will graduate in May 2013. He anticipates she will obtain a good job soon after graduating.⁶

Applicant stated that he spoke to an attorney about filing for bankruptcy, but has not obtained other financial counseling. His Personal Financial Statement (PFS) dated July 28, 2011, indicated that his net monthly income was \$3,066, that his total monthly expenses were \$2,975, and that his total monthly debt payments were \$460, which left him a negative net monthly remainder. Due to vehicle problems he was experiencing, he purchased a used vehicle for \$19,000 in August 2011. His monthly payments on this vehicle are \$437. Because he purchased this vehicle after he submitted the PFS, the monthly payments for that vehicle are not reflected in the PFS. At the hearing, he testified that he is just breaking even financially at the end of each month. He stated that he was current on his rent and utilities payments, but was a month behind on his car payment.⁷

⁴ Tr. at 9-10, 34-36, 41-46, 62-64; GE 2; AE A.

⁵ Tr. at 36-53, 62-67; GE 1, 2. The date of first delinquency/date of last activity for the debt alleged in SOR ¶ 1.h was April 2007, while the date for the debt in SOR ¶ 1.j was January 2010. See GE 4 and 5.

⁶ Tr. at 21, 25-36, 33-34, 60-61; GE 3.

⁷ Tr. at 18-21, 53-62; GE 2, 3. In his PFS, Applicant did not include his monthly debt payments in computing his net monthly remainder. He indicated his net monthly remainder was \$91, when it was actually a negative figure, *i.e.*, -\$389. See GE 3.

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 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 delinquent debts that he was unable or unwilling to satisfy over a number of years. This 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;
- (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 has multiple delinquent debts totaling over \$33,000 that remain unresolved. His financial problems are ongoing, significant, and cast doubt on his current reliability, trustworthiness, and good judgment. AG ¶ 20(a) is not applicable.

Applicant experienced periods of unemployment and underemployment. For the past five years, however, he has been gainfully employed. Despite his steady employment, he took no meaningful steps to address his past-due obligations. While his periods of unemployment were conditions outside his control, he failed to show that he acted responsibly in the intervening period to address his debts. AG ¶ 20(b) is not applicable.

Applicant provided no proof of payments on the alleged debts. He talked with an attorney about filing for bankruptcy, but has not obtained other financial counseling. With the exception of the debt alleged in SOR ¶ 1.g, he has not attempted to contact the creditors in the past year. In short, he has not taken meaningful steps to resolve his delinquent debts or bring them under control. AG ¶¶ 20(c) and 20(d) are not applicable.

Department Counsel indicated two of the alleged debts were duplicates. A review of the credit reports supports her contention. AG ¶ 20(e) applies to SOR ¶¶ 1.s and 1.v.

Applicant has failed to mitigate the alleged delinquent debts. His financial problems remain a security concern.

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 Applicant's military service and his years of service in the defense industry. His debts arose from periods of unemployment and multiple moves to obtain employment. He is barely meeting his current financial obligations. He failed to present any plan for resolving the alleged delinquent 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 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:	Withdrawn
Subparagraphs 1.b – 1.r:	Against Applicant
Subparagraph 1.s:	For Applicant
Subparagraphs 1.t – 1.u:	Against Applicant
Subparagraphs 1.v:	For 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.

James F. Duffy
Administrative Judge