



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ISCR Case No. 10-06740
)
)
Applicant for Security Clearance)

Appearances

For Government: Gregg A. Cervi, Esq., Department Counsel
For Applicant: *Pro se*

December 30, 2011

Decision

WHITE, David M., Administrative Judge:

Applicant accrued more than \$15,400 in delinquent debt, with no progress toward resolution during the two years he has been employed in his current job. He voluntarily incurred these debts, and demonstrated no effort to repay them. He offered no evidence of an effective plan to resolve these debts, or of changes to prevent continued financial irresponsibility. Resulting security concerns were not mitigated. Based on a review of the pleadings and exhibits, eligibility for access to classified information is denied.

Applicant submitted a security clearance application (SF 86) on May 5, 2010.¹ On February 14, 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).² 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*

¹Item 5.

²Item 1.

Clearance Review Program (January 2, 1992), as amended (Directive); and the adjudicative guidelines promulgated by the President on December 29, 2005, and effective within the Department of Defense after September 1, 2006.

Applicant answered the SOR in writing on March 4, 2011, and requested that his case be decided by an administrative judge on the written record without a hearing.³ Department Counsel submitted the Government's written case on April 14, 2011. A complete copy of the File of Relevant Material (FORM)⁴ was provided to Applicant, and he was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of his receipt of the FORM.

Applicant signed the document acknowledging receipt of his copy of the FORM on April 21, 2011, and returned it to DOHA. He provided no further response to the FORM within the 30-day period, did not request additional time to respond, and expressed no objection to my consideration of the evidence submitted by Department Counsel. I received the case assignment on October 31, 2011.

Findings of Fact

Applicant is a 56-year-old employee of a defense contractor, where he started work as an aircraft mechanic in August 2009. Since April 1997 he has been regularly employed as an aircraft mechanic for three different companies, except during a three-month period of unemployment in 2000, according to his SF 86. He told an investigator from the Office of Personnel Management in May 2010 that he had been laid off by his previous employer in 2007, but his SF 86 states that this layoff occurred in July 2009 immediately preceding his current job.⁵ He left high school and received a GED in 1973. He is married, with one adult stepchild age 33. He served in the Army for 22 months before receiving a General discharge in July 1975. This is his first application for a security clearance.⁶

In his response to the SOR, Applicant admitted the truth of the factual allegations in SOR ¶¶ 1.a through 1.e. The total due on these five delinquent debts is \$15,421.⁷ Applicant's admissions, including those made in response to DOHA interrogatories,⁸ are incorporated into the following findings of fact.

³Item 4.

⁴The Government submitted nine Items in support of the SOR allegations.

⁵Items 5 and 7.

⁶Item 5.

⁷Item 4. The delinquent amounts are confirmed in Items 8 and 9.

⁸Items 6 and 7.

Applicant acknowledged owing the \$275 and \$54 medical bills, alleged in SOR ¶¶ 1.a and 1.c, in his October 2010 response to DOHA interrogatories and said he would promptly pay them. He admitted that they both remained unpaid in his March 2011 response to the SOR, and submitted no further evidence of resolution.⁹

The \$6,797 collection account alleged in SOR ¶ 1.b resulted from Applicant's acting as a co-signer on an apartment lease for his nephew during 2007. The nephew moved out prematurely, without paying the rent, and Applicant was unable to make the remaining payments. He asserted that the landlord re-rented the apartment immediately and suffered no loss. He provided no documentation to support this claim, or of any effort to dispute or otherwise resolve this debt.¹⁰

The \$7,061 collection account alleged in SOR ¶ 1.d arose from a loan for a car Applicant purchased in 2004. He said that he was unaware that the loan's interest rate was so high, and he still owed the original purchase price after making payments for three years. After the car was totaled in an accident, the insurance company paid its market value to the lender. Applicant feels that the creditor received more than fair value from him and the insurance company, and would not continue making payments on a car he could no longer drive. He offered no documentation to substantiate these claims, or of any attempt to resolve the outstanding debt through dispute or otherwise. He admitted owing the debt in his response to the SOR.¹¹

Applicant also admitted owing the \$1,234 debt to a tax service as alleged in SOR ¶ 1.e. He claimed to have made an \$860 payment toward this debt that was erroneously applied toward his taxes for the next year. That misallocation, if true, would not change the total debt owed since he would owe the additional \$860 for the subsequent year toward which it was credited. In either event, he offered no documentation to substantiate the status of this debt or any partial payment toward its resolution.¹²

Applicant told the investigator from the Office of Personnel Management that his financial problems were exacerbated by a period during which he was laid off in 2007, but there is no other record evidence that this took place. He said that knee surgery worsened the situation, but subsequently reported that his medical insurance covered all of those costs except the debt alleged in SOR ¶ 1.a. He said he had stopped using credit cards, but was having difficulty getting his credit back in order and working with his wife to stay within the budget. He provided no evidence concerning their budget, or

⁹Items 4 and 6.

¹⁰Items 6, 7, and 9.

¹¹Items 4, 5, 6, 7, and 9.

¹²Items 4, 6, and 9.

the details of their earnings and living expenses from which to analyze his present or future solvency. He also submitted no evidence of financial counseling.¹³

Applicant provided no evidence concerning the quality of his professional performance, the level of responsibility his duties entail, or his track record with respect to handling sensitive information and observation of security procedures. He submitted no character references or other evidence tending to establish good judgment, trustworthiness, or reliability. I was unable to evaluate his credibility, demeanor, or character in person since he elected to have his case decided without a hearing.

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."

¹³Items 4, 5, 6, and 7.

A person applying for access to classified information seeks to enter 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.

Analysis

Guideline F, Financial Considerations

The security concerns under the guideline for financial considerations are set out in AG ¶ 18, which reads in pertinent part:

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 record evidence established security concerns under two Guideline F DCs, as set forth in AG ¶ 19:

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

Applicant's SOR-listed delinquent debts arose over the past seven years, and remain completely unresolved. His financial problems were largely unexplained, with inconsistent record evidence concerning his various claims. Despite his stated intention to do so, he showed no effort to resolve even the \$54 medical debt that he acknowledged. He provided no evidence of available income, or other assets, from which to satisfy these debts or avoid incurring additional delinquencies. This evidence raises substantial security concerns under DCs 19(a) and (c), thereby shifting the burden to Applicant to rebut, extenuate, or mitigate those concerns.

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

- (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's five delinquent debts arose over the past seven years, and continue to date. They are both frequent and recent, and arose under circumstances that involved Applicant's entirely voluntary choices. He showed no capacity to avoid additional delinquent debt, and the ongoing nature of these debts precludes a finding of unlikely recurrence. Applicant failed to demonstrate that his reliability, trustworthiness, and judgment have improved, and failed to resolve any of these debts even after their security implications became apparent. The evidence does not establish mitigation under MC 20(a).

Applicant offered insufficient evidence to support mitigation under MC 20(b). None of the debts were shown to have arisen from conditions beyond his control. Neither medical debt was shown to have arisen from an unexpected emergency, and he knowingly contracted for the remaining three delinquent obligations. Finally, his total inaction toward resolution of any of these debts is not responsible action under the circumstances.

Applicant offered no evidence of financial counseling, and did not establish clear indications that the problem is being resolved or is under control. He provided no evidence to establish any good-faith effort to repay his many overdue creditors or otherwise resolve his debts, particularly in the absence of evidence of the means to do so. MC 20(c) and 20(d) are therefore inapplicable.

Applicant failed to provide any proof to substantiate a basis to dispute the legitimacy of the debts alleged in SOR, to which he admitted and for which the record credit reports provide substantial evidence. Accordingly, he failed to mitigate those allegations under MC 20(e).

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 an accountable adult, who is responsible for his voluntary choices and conduct that underlie the security concerns expressed in the SOR. His financial irresponsibility spans several years, and continues at present. It involves delinquent debts totaling more than \$15,400, toward which he had made no payments at the close of the record. He has not shown a willingness to fulfill his legal obligations to his creditors. He did not demonstrate that these debts arose under circumstances that were beyond his control, or that he initiated any changes to prevent additional financial difficulties. He offered no evidence of financial counseling, rehabilitation, or responsible conduct in other areas of his life. The potential for pressure, coercion, and duress remains undiminished.

Overall, the record evidence leaves me with substantial doubt as to Applicant's present eligibility and suitability for a security clearance. He did not 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.e:	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.

DAVID M. WHITE
Administrative Judge