



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



In the matter of:)
)
) ISCR Case No. 10-07382
)
)
Applicant for Security Clearance)

Appearances

For Government: Tovah A. Minster, Esquire, Department Counsel
For Applicant: *Pro se*

March 29, 2011

Decision

CREAN, Thomas M., Administrative Judge:

Based on a review of the case file and pleadings, Applicant failed to provide adequate information to mitigate security concerns under Guideline F. Eligibility for access to classified information is denied.

On November 9, 2009, Applicant submitted an Electronic Questionnaire for Investigation Processing (e-QIP) to obtain a security clearance for his employment with a defense contractor. (Item 5) On October 27, 2010, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns for financial considerations under Guideline F. (Item 1) 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 in the Department of Defense on September 1, 2006.

Applicant timely answered the SOR. He denied the five factual allegations with explanation. Applicant elected to have the matter decided on the written record. (Item 4)

Department Counsel submitted the Government's written case which is dated January 6, 2010.¹ On January 21, 2011, Applicant received a complete file of relevant material (FORM), and was provided the opportunity to file objections, and submit material to refute, extenuate, or mitigate the disqualifying conditions. He did not provide any additional information in response to the FORM. The case was assigned to me on March 10, 2011.

Findings of Fact

I thoroughly reviewed the case file and the pleadings. I make the following findings of fact.

Applicant is 41 years old, and has worked in information technology for a defense contractor for over 12 years. He is a college graduate. He is married with one child. There is no information in the case file to show his monthly income and expenses. (Item 5)

Credit reports (Item 7, dated September 9, 2010, and Item 8, dated November 20, 2009) show the following delinquent debts for Applicant totaling over \$109,000 with nationally recognized credit card companies: \$32,014 in collection for credit card company A (SOR 1.a); \$11,632 in collection for credit card company A (SOR 1.b); \$21,577 charged off by credit card company B (SOR 1.c); \$19,414 in collection for credit card company C (SOR 1.d); and \$24,854 in collection for credit card company D (SOR 1.e). In his response to the SOR, Applicant states he has never entered a business relationship with the collection agencies collecting the debts at SOR 1.a, 1.b, 1d, and 1.e. He admits to revolving credit accounts with credit card companies B, C, and D, but only an automobile loan with credit card company A. (Item 4 and Item 6)

Prior to the fall of 2004, Applicant claims his credit card accounts were maintained in accordance with his agreement with the creditors, his payments were on time, and more than the minimum amount due was paid. He had a balance of \$13,000 on his credit card company B card, and \$9,000 on his credit card company C card. In late 2004, the creditors raised the interest rates on the accounts from approximately 13% to 24%. Applicant withheld payment on the credit card bills because of what he classifies as the creditors' predator lending practices. Applicant claims the interest rates were raised because of his high income to debt ratio. He further claims that this practice was not in accord with his agreement with the creditors.

Applicant contacted each creditor by telephone requesting an explanation for the interest rate increase and a return to the original interest rate. He did not receive a reply from credit card company B, so he refused to make any payment on the debt. He called credit card company B again in 2007 to have the interest rate lowered without success. The answer he allegedly received was to either agree to the new rate, or stop using the card and pay the amount due. Applicant stopped using the credit card, but refused to

¹ The date on the FORM is a mistake. The date should have been January 6, 2011.

pay the amount requested until the amount of the debt was validated. Credit card company C responded that the rate would not be lowered and that they would take legal action to collect the debt. No legal action was ever taken. Applicant provided no information on his credit card company D account. Since he denied he had a credit account with Bank of America, he did not provide information on the two credit card company A accounts. Applicant agreed to pay only what he considered he was legally obligated to pay. Applicant also pointed out that the statute of limitations had run on the ability to collect on the debts. (Item 4 and Item 6)

Applicant has not presented documentation concerning any payments made on the debts, He has not presented any documentation concerning any action taken, legal or otherwise, to challenge the alleged "Predatory Lending Practices" of the creditors. His communications with the creditors all seem to be telephonic and not written.

Policy

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 must be considered 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.

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 applicant or proven by Department Counsel. . . ." The Applicant has the ultimate burden of persuasion in seeking 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 safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Analysis

Financial Considerations

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, 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. (AG ¶ 18) Similarly, an individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in their obligations to protect classified information. Behaving responsibly or irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life.

A person's relationship with his creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to repay debts under agreed terms. Absent evidence of strong extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a situation of risk inconsistent with the holding of a security clearance. An applicant is not required to be debt free, but is required to manage his finances in such a way as to meet his financial obligations. Applicant's delinquent debts as listed in credit reports and partially admitted by Applicant raise Financial Considerations Disqualifying Conditions (FC DC) AG ¶ 19(a) (inability or unwillingness to satisfy debts), and FC DC AG ¶ 19(c) (a history of not meeting financial obligations). Credit reports show five significant credit card debts. Applicant admits to three of the credit card accounts. He stated his refusal to pay the accounts because he did not agree with the creditors' business practices. The credit reports and Applicant's statement establish these three delinquent accounts. The credit report alone is sufficient to establish the other two delinquent debts owed to the same creditor.

The Government produced substantial evidence to establish the disqualifying conditions as required in AG ¶¶ 19(a) and 19(c). The burden shifts to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the security concerns under financial considerations. An applicant has the burden to refute an established allegation or prove a mitigating condition, and the burden to prove or disprove it never shifts to the Government.

I considered Financial Considerations Mitigating Conditions (FC MC) AG ¶ 20(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); FC MC ¶ 20(b) (the conditions that resulted in the financial problems were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce, or separations) and the individual acted responsibly under the circumstances); FC MC ¶ 20(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 FC MC ¶ 20(d) (the individual has initiated a good-faith effort to repay the overdue creditors or otherwise resolve debts). These mitigating conditions do not apply. The behavior is current and ongoing because Applicant refuses to pay the credit card debt. His refusal is well within his ability to control and is ongoing. He did not present any evidence of any counseling or even attempts to contact experts to verify the correctness of his understanding of his legal obligations concerning the debts. He did not present any evidence to show payment of the debt, good-faith or otherwise. His access to discretionary funds to pay debts each month is not relevant because he stated he does not intend to pay the debts. Applicant has not presented adequate evidence to show he is resolving or intends to resolve his delinquent debts. Applicant's lack of action to resolve his delinquent debts is significant. He has not shown he is or will act reasonably under the circumstances to resolve his delinquent debts. Based on the delinquent debts presented by the Government in credit reports, which Applicant partially acknowledges, Applicant has not acted responsibly towards his debts and finances. Applicant has not presented sufficient information to mitigate security concerns for financial considerations.

Whole-Person Concept

Under the whole-person concept, an administrative judge must evaluate an applicant's eligibility for access to classified information by considering the totality of the applicant's conduct and all the 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 access to classified information must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept.

