



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ISCR Case No. 10-10357
)
)
Applicant for Security Clearance)

Appearances

For Government: Pamela Benson, Esq., Department Counsel
For Applicant: *Pro se*

06/18/2012

Decision

WHITE, David M., Administrative Judge:

Applicant accrued about \$18,000 in delinquent debts over the past seven years. He made no progress toward resolution of any of them, despite being fully employed since at least November 2002, except for two months of part-time work in 2008 and one month of unemployment in 2010 after he quit a job working as a contractor in Iraq. 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 26, 2010.¹ On October 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,

¹Item 5.

²Item 1.

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 promulgated by the President on December 29, 2005, and effective within the Department of Defense after September 1, 2006.

Applicant received the SOR on October 27, 2011.³ He submitted an undated written response, and requested that his case be decided by an administrative judge on the written record without a hearing.⁴ Department Counsel submitted the Government's written case on February 22, 2012. A complete copy of the File of Relevant Material (FORM)⁵ 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 March 6, 2012, 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 May 10, 2012.

Findings of Fact

Applicant is a 46-year-old employee of a defense contractor, where he is pending assignment to work overseas as a truck driver. He has been fully employed since at least November 2002, except for two months of part-time work in 2008 and one month of unemployment in 2010 after he quit a job working as a contractor in Iraq.⁶ He graduated from high school in 1984, and received a "Class A" drivers license from a truck driving school in 2007. He is married, for the third time, with an adult son, two adult stepsons, and a 15-year-old stepdaughter. He served on active duty in the Air Force from July 1984 to August 1988, in the Air National Guard from August 1988 to April 1990, then on active duty in the Army from April 1990 to May 1995. He held a security clearance during those periods of service, and was honorably discharged from each.⁷

In his response to the SOR, Applicant admitted the truth of the factual allegations in SOR ¶¶ 1.a through 1.o. The total due on the 14 delinquent debts, which Applicant incurred after his earlier debts were discharged through Chapter 7 bankruptcy

³Item 3.

⁴Item 4.

⁵The Government submitted ten Items in support of the SOR allegations.

⁶As reported on his SF-86: Item 5.

⁷Item 5.

proceedings in August 1994, is \$17,949.⁸ Applicant's admissions, including those made in response to DOHA interrogatories,⁹ are incorporated into the following findings of fact.

Applicant has not purchased health insurance, and said he could not afford what was provided by most of his recent employers. Eight of his delinquent debts, totaling \$2,787, were incurred for medical services. These debts became delinquent between 2004 and 2009, but \$2,200 of the debt was from 2009. Five other delinquent debts, totaling \$4,993, were for consumer items ranging from an unpaid 2004 cell phone bill to an unpaid 2010 debt to his son's high school. Applicant's largest delinquent debt is for the charged-off \$10,169 second mortgage on a home that he lost to foreclosure in December 2005.¹⁰

Applicant said that he has not paid these debts because he has not had sufficient income to do so. He submitted a personal financial statement, dated July 17, 2011, showing a monthly deficit of \$192 without any payments allocated toward delinquent debt. He expressed his intention to repay his delinquent debts from his anticipated increased earnings working overseas if his security clearance is granted. He cited his personal and family history of service to the United States, and expressed his patriotism and loyalty to the nation. He submitted no evidence of financial counseling, and did not make payments toward any of his SOR-listed delinquent debts during the six months that he worked as a support contractor in Iraq during 2008 and 2009.¹¹

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.

⁸Item 4. The delinquent amounts are confirmed in Items 6, 8, and 9.

⁹Item 6.

¹⁰Items 6, 7, 8, and 9.

¹¹Items 4, 5, and 6.

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 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 not shown to have arisen from incidents beyond his control, but rather resulted from his poor choices. Despite his knowledge of their security significance, he showed no effort to resolve even the \$88 delinquent cable television bill from January 2006. 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 fourteen delinquent debts arose over the past seven years, total almost \$18,000, and continue to date. They are frequent, recent, and arose under circumstances that involved Applicant's entirely voluntary choices. He showed no capacity to avoid additional delinquent debt. The ongoing nature of these debts, that arose after his 1994 bankruptcy discharge of earlier 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. The medical debts were not shown to have arisen from unexpected emergencies, and he chose not to buy health insurance. He knowingly contracted for the remaining six delinquent consumer 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 many years, and continues at present. It involves delinquent debts totaling almost \$18,000, toward which he had made no payments by 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.o:	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