



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



In the matter of:)
)
) ISCR Case No. 11-00368
)
Applicant for Security Clearance)

Appearances

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

January 20, 2012

Decision

CURRY, Marc E., Administrative Judge:

Applicant failed to mitigate the security concern generated by his delinquent finances. Clearance is denied.

Statement of the Case

On September 14, 2011, the Defense Office of Hearings and Appeals (DOHA) issued an 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 (AG) implemented by the Department of Defense (DoD) on December 1, 2006.

Applicant answered the SOR on October 4, 2011, admitting the allegations and requesting a decision based on the written record rather than a hearing. On October 20, 2011, Department Counsel prepared a File of Relevant Materials (FORM) setting forth the Government's case. Applicant received the FORM on October 27, 2011 and was

given 30 days to file a response. He did not file a response, and on January 3, 2012, the case was assigned to me.

Findings of Fact

Applicant is a 43-year-old married man with one child, age four. He is a high school graduate and a U.S. Army veteran, having served from 1990 to 1992. He was honorably discharged. (Item 5 at 21) Since September 2009, Applicant has worked for a defense contractor as a facilities technician. His duties include performing various odd jobs such as drywall repair and painting. (Item 6 at 14)

Since 2003, Applicant has accrued approximately \$16,000 of delinquent debt. Approximately \$13,800 stems from two tax liens entered against Applicant in 2003 and 2006, respectively. (Item 7 at 1) The remaining two delinquent debts are credit card accounts.

Applicant contends his financial problems resulted from losing his job in February 2009. Until his current employer hired him in September 2009, he was underemployed. Moreover, his wife lost her job in 2010 and remains unemployed. (Item 4)

Currently, Applicant cannot afford to pay his tax delinquencies, and he has no intentions of paying the other two debts, asserting that they are non-collectible because of the expiration of the statute of limitations. (Item 4) He has not participated in any debt counseling programs. (Item 6 at 8)

Policies

In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are required to 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. 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."

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 as to obtaining a favorable security decision.

Analysis

Guideline F, Financial Considerations

Under this guideline, “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.” (AG ¶ 18) Applicant’s financial struggles trigger the application of AG ¶¶ 19(a), “inability or unwillingness to satisfy debts,” and 19(c), “a history of not meeting financial obligations.”

The following mitigating conditions under AG ¶ 20 are potentially applicable:

(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.

I conclude none of the mitigating conditions apply. Applicant’s tax delinquencies compose nearly 90 percent of his debt, and both predate his 2009 job loss. Moreover, Applicant has no plans to pay either the tax delinquencies nor the other delinquencies. Although the statute of limitations on the period the creditors listed in subparagraphs 1.a and 1.d can collect the debts under state law may have expired, as Applicant contends, this has little probative value in gauging Applicant’s security clearance worthiness. Allowing a state statute of limitations on debt collection to expire does not constitute a good-faith effort to resolve a debt (ISCR Case No. 08-01122 (App. Bd. February 9, 2008)).

Whole-Person Concept

Under the whole-person concept, 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.

Applicant served the country honorably as a member of the U.S. Army. Such evidence of good character, alone, is insufficient to meet the burden of proof. Absent proof that Applicant has either begun paying his debts, or has sought help to resolve them, he cannot prevail. Considering this case in the context of the whole-person concept, I conclude Applicant has failed to mitigate the security concern.

Formal Findings

Formal findings for or against Applicant 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

Subparagraphs 1.a - 1.d: 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.

MARC E. CURRY
Administrative Judge