



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



In the matter of:)
)
) ISCR Case: 11-00786
)
)
Applicant for Security Clearance)

Appearances

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

October 26, 2011

Decision

DAM, Shari, Administrative Judge:

Based upon a review of the record evidence, eligibility for access to classified information is denied.

On August 25, 2010, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP). On June 15, 2011, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) 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 effective within the Department of Defense for SORs issued after September 1, 2006.

On July 6, 2011, Applicant filed an answer to the SOR and requested that the case be decided on the written record in lieu of a hearing. On July 21, 2011, Department Counsel prepared a File of Relevant Material (FORM) containing eight

Items and mailed Applicant a complete copy on July 28, 2011. Applicant received the FORM on August 4, 2011, and had 30 days from its receipt to file objections and submit additional information. He timely submitted additional information. On September 15, 2011, DOHA assigned the case to me. I subsequently marked Applicant's submissions as Applicant Exhibits (AE) A through D and admitted them into the record without objection from Department Counsel.

Findings of Fact

In his answer to the SOR, Applicant admitted the allegations contained in ¶¶ 1.a, 1.b, 1.d, 1.e, 1.g, 1.h, and 1.i. He denied the remaining allegations. His admissions are incorporated into the following findings.

Applicant is a 37 years old and unmarried. He graduated from high school in June 1992. He experienced numerous periods of unemployment since 2004. He was unemployed from January 2004 to February 2004; September 2005 to November 2006; January 2007 to April 2007; December 2007 to June 2008; and October 2008 to August 2010. In August 2010 he began an administrative assistant position for a defense contractor. (Item 5.) Applicant accumulated debts during those periods of unemployment when his unemployment benefits were exhausted. (Item 4 at 4.)

In October 2010 Applicant met with a government investigator to discuss the delinquent financial obligations. He acknowledged his debts, but stated that he did not intend to make payment arrangement with the creditors until he became a permanent employee. (Item 6 at 3.) In June 2011, DOHA issued an SOR. In his July 2011 Answer to the SOR, he stated that he was now "in a position to make arrangements to pay [his] creditors." Item 4 at 4. On August 19, 2011, he entered into a debt repayment plan that included six creditors with estimated balances totaling \$11,891. His first monthly payment of \$336 was due on August 23, 2011. (AE B, C.) The record does not contain proof that he made the initial payment. He has not received credit counseling.

Based on September 2010 and March 2011 credit bureau reports (CBR), the SOR alleged 12 delinquent debts totaling \$22,089, which accumulated between 2006 and 2010. (Items 7, 8.) The status of each debt is as follows:

1. (¶ 1.a) The \$2,549 judgment owed to a credit card company is included in the repayment plan. (AE A, C; Item 6 at 2.)
2. (¶ 1.b) The \$2,767 judgment, filed in 2007 and owed to a credit card company is included in the repayment plan. (AE C.)
3. (¶ 1.c) The \$54 debt owed to a pizza parlor is paid. Applicant submitted a confirmation number for its payment. (AE A.)
4. (¶ 1.d) The \$3,546 debt owed to a credit card company is included in the repayment plan. (AE C.)

5. (¶ 1.e) Applicant asserted that the \$5,982 debt owed to a credit card company is a duplicate debt of the judgment listed in (¶ 1.b), and includes additional monies for late fees. (AE A, C.) He did not submit evidence to support that assertion.
6. (¶ 1.f) The \$1,495 debt owed to a credit card company is included in the repayment plan. (AE C.)
7. (¶ 1.g) The \$829 debt owed to a credit card company is included in the repayment plan. (AE C.)
8. (¶ 1.h) The \$705 debt owed to a department store is included in the repayment plan. (AE C.)
9. (¶ 1.i.) Applicant asserted that the \$3,099 debt owed to a credit card company is a duplicate debt of the judgment listed in (¶ 1.a), and includes additional monies for late fees. (AE A, C; Item 6 at 3.) He did not submit evidence to support that assertion.
10. (¶ 1.j) The \$70 debt owed to a cell phone company was paid on March 22, 2011. (AE D.)
11. (¶ 1.k) The \$48 debt owed to a cell phone company is a duplicate of the above debt and is paid. (AE D.)
12. (¶ 1.l) Applicant asserted that the \$945 debt owed to a collection agency for a credit card company is a duplicate of the debt listed in ¶ 1.g, and includes late fees. (AE A.) He did not provide evidence to support that assertion.

To date, Applicant has paid three debts that total \$172. His recently executed repayment plan incorporates an estimated balance of \$11, 891 owed to six creditors. He provided no evidence that he made the initial August 2011 payment on the plan. He asserted during his interview and in AE A that three debts totaling \$10,026 are duplicate accounts, but provided no evidence to confirm that statement. He has not obtained credit counseling. He did not submit evidence concerning the quality of his job performance. He submitted no character references or other evidence tending to establish good judgment, trustworthiness, or reliability.

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 (AG) list potentially disqualifying conditions and mitigating conditions, 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 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.

Directive ¶ E3.1.14 requires the Government to present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an "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 that 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."

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 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 concern relating to the guideline for Financial Considerations is set out in AG ¶ 18:

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.

AG ¶ 19 notes two disqualifying conditions that could potentially raise security concerns in this case:

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

Based on two credit bureau reports and his statements, Applicant has been unable to satisfy delinquent debts that began accruing in 2006. The evidence is sufficient to raise these potentially disqualifying conditions.

After the Government produced substantial evidence of those disqualifications, the burden shifted to Applicant to produce evidence and prove a mitigating condition. AG ¶ 20 sets forth conditions that could mitigate financial security concerns:

- (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;
- (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; and
- (f) the affluence resulted from a legal source of income.

Because Applicant's delinquent debts are ongoing and not isolated, there is insufficient evidence to support a finding that the indebtedness is unlikely to recur or continue. Hence, AG ¶ 20(a) does not apply. There is some evidence to warrant a limited application of AG ¶ 20(b) because the delinquent debt alleged in the SOR

accumulated as a result of periods of unemployment, which may have been the result of circumstances beyond his control. However, full application is not warranted because he did not provide evidence that he began to responsibly address any of his debt until after the SOR issued, and not while they were accruing. Applicant did not establish mitigation under AG ¶ 20(c). He has not participated in credit counseling or submitted evidence that his financial situation is under control. AG ¶ 20(d) has minimal application. He provided evidence that he paid three debts that total \$172. At the end of August 2011, he entered into a repayment plan to resolve six debts through monthly payments. He did not provide proof that he made the initial payment or other evidence to confirm his assertions that three SOR-listed debts are duplicates. He failed to present sufficient evidence that he made a good-faith effort to pay or resolve his delinquent debts since their accrual. There is no evidence to support the application of AG ¶ 20(e) or AG ¶ 20(f).

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). They include the following:

- (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 facts and circumstances surrounding this case. Applicant is a mature individual, who has worked for a defense contractor since August 2010. In October 2010 he learned of the Government's concerns relating to his financial delinquencies, and specifically the SOR-listed debts. He indicated that he did not intend to address those debts until he became a permanent employee. On June 15, 2011, DOHA issued an SOR listing \$22,089 of delinquent debts. On July 21, 2011, the Government filed the FORM, notifying him of the Government's request that he be denied a security clearance and that he had an additional 30 days to file a response. On July 28, 2011, he received said document. On August 19, 2011, he executed a monthly debt repayment plan that was scheduled to begin on August 23, 2011. He then filed his response within the 30-day deadline.

For at least nine months, Appellant was on notice that his unpaid and unaddressed debts were creating security concerns and potentially affecting his employment. Despite that notice he waited until he received the FORM and issued a deadline to begin resolving the debt. While he may have had limited funds to address all debts since starting his position in August 2010, he could have taken some steps to address the debts, such as promptly paying the smaller debts, obtaining credit counseling or financial assistance through his company's Employee's Assistance Program, and establishing a solid budget or plan to resolve his obligations. At this time he has not provided a track record of responsibly managing his finances, resolving his delinquent debts, or exhibiting good judgment in responding to the government's concerns. The record contains insufficient evidence about his character, trustworthiness, responsibility to mitigate these concerns, or make their continuation less likely. Overall, the record creates sufficient doubt as to Applicant's present eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant did not 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 and 1.b:	Against Applicant
Subparagraph 1.c:	For Applicant
Subparagraphs 1.d through 1.i:	Against Applicant
Subparagraphs 1.j and 1.k:	For Applicant
Subparagraph 1.l:	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.

SHARI DAM
Administrative Judge