



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



In the matter of:)
)
) ISCR Case No. 11-02154
)
Applicant for Security Clearance)

Appearances

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

February 9, 2012

Decision

NOEL, Nichole L., Administrative Judge:

Applicant contests the Defense Department's intent to deny his eligibility for a security clearance to work in the defense industry. Applicant has approximately \$54,000 in unresolved delinquent debt. Clearance is denied.

Statement of the Case

Acting under the relevant Executive Order and DoD Directive,¹ on July 20, 2011, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons

¹ This case is adjudicated under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry*, signed by President Eisenhower on February 20, 1960, as amended, as well as DoD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program*, dated January 2, 1992, as amended (Directive). In addition, the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* (AG), effective within the Defense Department on September 1, 2006, apply to this case. The AG were published in the Federal Register and codified in 32 C.F.R. § 154, Appendix H (2006). The AG replace the guidelines in Enclosure 2 to the Directive.

(SOR) explaining that it was not clearly consistent with the national interest to grant Applicant access to classified information. The SOR detailed the reasons for the action under Guideline F, financial considerations.

Applicant answered the SOR and requested a decision without a hearing. Department Counsel submitted the Government's written case on October 27, 2011. A complete copy of the file of relevant material (FORM) was provided to Applicant, who was afforded an opportunity to file objections and submit material to refute, extenuate, or mitigate the security concerns. Applicant received the FORM on November 12, 2011. He did not object to the items appended to the Government's brief. These items are admitted as Government's Exhibits (GE) 1 through 9. Applicant timely submitted a response, which is admitted as Applicant's Exhibit (AE) A without objection. The case was assigned to me on January 3, 2012.

Findings of Fact

Applicant is a 34-year-old employee of a federal contractor. He has worked for his current employer since June 2010. He is single with no children.²

The SOR alleges and Applicant admits that he is indebted to ten creditors for approximately \$54,000. His financial problems began when he was laid off in February 2009. He received only one week of unemployment compensation and returned to work four to five weeks later, earning significantly less money. He also incurred debt while living with his sister who did not always pay her share of the living expenses. He often used credit cards to pay his bills. Applicant tried to resolve his delinquent accounts using a debt consolidation loan, but could not qualify for the loan. He has consulted a debt management program and learned about the different options available to him to resolve his delinquent debt. In May 2011, he started the process of selecting a lawyer to help him with debt consolidation.³

In the meantime, Applicant asserts that he has made changes in his lifestyle to save money. He now lives with his girlfriend in a cheaper apartment and has traded in a more expensive car for a less expensive model.⁴

To date, he has not made any payments on any of his delinquent accounts.⁵

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief

² GE 5.

³ GE 5, 6 -7.

⁴ GE 7; AE A.

⁵ GE 4; AE A.

introductory explanations for each guideline, the adjudicative guidelines 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, administrative judges apply the guidelines 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.

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 the applicant or proven by Department Counsel." The applicant has the ultimate burden of persuasion to obtain 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.

Section 7 of EO 10865 provides that adverse 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." See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline F, Financial Considerations

The security concern 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.

The guideline notes several conditions that could raise security concerns under AG ¶ 19. Two are potentially applicable in this case:

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

Both disqualifying conditions apply. Since 2009, Applicant has accumulated \$54,000 in delinquent debt, which remains unresolved.

None of the mitigating conditions available under AG ¶ 20⁶ apply. Applicant has been gainfully employed for the past 18 months. In that time he has not made any payments toward the resolution of his delinquent debt. Nor does he have a concrete plan for doing so. He claims to have consulted a debt management program, but this

⁶ 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;

20(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;

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;

20(d) The individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts;

20(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

20(f) The affluence resulted from a legal source of income.

