



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
XXXXXXXXXXXXXXXXXX) ISCR Case No. 11-03168
)
)
Applicant for Security Clearance)

Appearances

For Government: Greg A. Cervi, Esquire, Department Counsel
For Applicant: *Pro se*

10/09/2012

Decision

HOWE, Philip S., Administrative Judge:

On December 15, 2010, Applicant submitted an electronic version of the Security Clearance Application (SF 86) (e-QIP). On May 3, 2012, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F. 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 within the Department of Defense on September 1, 2006.

Applicant received the SOR on May 9, 2012. He answered the SOR in writing in an undated document. Applicant requested his case be decided on the written record in lieu of a hearing.

On July 20, 2012, Department Counsel submitted the Department's written case. A complete copy of the file of relevant material (FORM) was provided to Applicant on July 25, 2012. This document included a Motion to Amend by the Department Counsel

to add two amendments to the SOR. The first amendment sought to re-label Paragraph 1.j. as Paragraph 1.i. The second amendment requested the addition of two Subparagraphs to Paragraph 1. The first addition would be a new Subparagraph 1.j, which alleged a delinquent mortgage owed on a first mortgage owed to Flagstar Bank in the amount of \$384,904. The second addition was in a new Subparagraph 1.k alleging a second delinquent mortgage owed to Desert Federal Credit Union in the amount of \$16,730.

Applicant was given the opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant received the FORM on August 1, 2012. He filed a Response to the FORM on August 28, 2012, within the 30 day time allowed that would have expired on August 31, 2012. Applicant's Response to the FORM did not admit or deny any of these amendments. I granted the Motion to Amend the SOR and considered the amendments denied by Applicant based on his non-response.

I received the case assignment on September 12, 2012. Based upon a review of the complete case file, pleadings, and exhibits, eligibility for access to classified information is denied

Findings of Fact

Applicant admitted the allegations in Subparagraphs 1.a through 1.j of the original SOR. He neither admitted nor denied the amended allegations. (Item 4, Response)

Applicant is 60 years old and married. He has two children from his first marriage and one step-child. Applicant has been continuously employed since December 2004 as a security officer for a defense contractor. Applicant claims to have held a security clearance for 20 years. (Items 4-6)

Applicant has nine delinquent debts totaling over \$413,903.56 alleged in the amended SOR. Two Chapter 13 bankruptcy filings in 1997 and 2003 were also listed in the first two subparagraphs of the SOR. They were dismissed in 1999 and 2003, respectively. The nine debts included two mortgage debts, two medical debts, and six credit card or loan debts, including one debt used to finance his step-son's wedding. His earliest delinquent debts date from 2008. Applicant did not provide any evidence of a plan to resolve his delinquent debts. He has not repaid any of his debts listed in the SOR. (Item 4)

In his March 2012 interrogatory answers, Applicant claimed his debts were charged off and his mortgage foreclosed. He did not provide any documents to demonstrate he paid any debt or established a repayment plan. His Response included a letter from an attorney asserting he represented Applicant in attempting to resolve the delinquent debts. Applicant allegedly will deposit a monthly amount into a bank account from which the attorney will pay any settlement amount. No monthly payment amount is specified nor is there any information about any settlements arranged before the date of the Response. (Items 6-12)

Applicant's Response consisted of multiple pages printed from the internet containing complaints about Flagstar Bank and its refusal to renegotiate mortgages with its borrowers. Applicant purchased a house for \$384,000 in May 2004. He moved from the house in November 2011 when it was foreclosed. Applicant claims Flagstar Bank would not modify his mortgage. Applicant denies he is liable for any deficiency on his first mortgage owed to Flagstar Bank because a state law prohibits the recovery of any money owed on a foreclosed house. He listed his second mortgage in his Response. Applicant blames Flagstar Bank for his mortgage debt problems because it would not agree to a modification or short sale. (Items 6, 10-12)

The government investigator spoke with Applicant between January 4, 2011, and February 21, 2011. Applicant told the investigator that his net monthly income remainder is \$1,167.87, and he has only \$50 in a savings account. Applicant claimed his financial situation worsened after his wife was injured in an automobile accident, broke her foot in a fall at work, and contracted pneumonia, resulting in her unemployment for four months in 2010. His medical insurance did not pay the bulk of the expenses, he asserted. Applicant told the investigator he could not pay his delinquent debts. He considered filing a Chapter 7 bankruptcy but had not taken any action to do so. Applicant had notice from the time of the interview that the Government had a security concern about his finances. (Item 6)

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 and mitigating conditions, which are useful 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, the administrative judge applies 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 contained in the record.

According to Directive ¶ E3.1.14, the Government must 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.”

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. See also E.O. 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline F, Financial Considerations

The security concerns relating to the guideline for Financial Considerations are 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 at AG ¶ 19 contains nine disqualifying conditions that could raise security concerns. Two conditions are applicable to the facts found in this case:

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

From 2008 to the present, Applicant accumulated nine delinquent debts, totaling about \$413,903.56, which remain unpaid or unresolved.

AG ¶ 20 provides six conditions that could mitigate security concerns. None of them apply to Applicant’s case:

- (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.

Applicant's behavior is current and frequent. It occurred under normal circumstances that are likely to recur, meaning Applicant spent or borrowed money he could not repay because he did not have the money to resolve his debts. He admitted to having only \$50 in a savings account, yet he told the government investigator he had a net monthly income remainder of \$1,167.87. AG ¶ 20 (a) does not apply.

There were no conditions regarding his delinquent debts that were beyond Applicant's control and he has not acted responsibly under the circumstances. He had notice since February 2011 that the government was concerned about his finances. Yet he took no action to resolve them. AG ¶ 20 (b) does not apply.

Applicant has not received any financial counseling. There is no evidence that his financial problems are under control. AG ¶ 20 (c) does not apply.

Applicant has not made any good-faith efforts to resolve his debts in any manner. AG ¶ 20 (d) does not apply.

Applicant did not provide any reasonable basis for disputing any of the debts. He did not present any documents showing he did dispute any debt on any basis. AG ¶ 20 (e) does not apply.

There is no evidence supporting the application of 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):

(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 common-sense 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 was an adult when he incurred the debts. He has not taken any action to resolve his delinquent debts, despite learning of the government's concerns in 2011. This inaction leaves him vulnerable to pressure, coercion, exploitation, or duress based on the magnitude of his financial obligations. His lack of action continues to this day, and is obviously voluntary. Applicant's inaction will continue based on his past performance. Applicant displayed a lack of good financial judgment incurring the debts and has exhibited a continued lack of judgment by failing to make payments on any of his delinquent debts during the past seven years.

Overall, the record evidence leaves me with questions or substantial doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant did not mitigate the security concerns arising under the guideline for Financial Considerations. I conclude the whole-person concept against Applicant.

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 to 1.k:	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.

PHILIP S. HOWE
Administrative Judge