



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ISCR Case: 11-03393
)
Applicant for Security Clearance)

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

07/19/2012

Decision

DAM, Shari, Administrative Judge:

Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

On July 16, 2010, Applicant submitted a Questionnaire for National Security Positions (SF 86). On December 22, 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 (DoD) for SORs issued after September 1, 2006.

Applicant answered the SOR in writing on or about February 6, 2012 (AR), and requested a hearing before an administrative judge. On May 3, 2012, DOHA assigned the case to another administrative judge. It was reassigned to me on June 12, 2012.

On June 23, 2012, DOHA issued a Notice of Hearing, setting the case for July 31, 2012. On July 23, 2012, DOHA issued an Amended Notice of Video Teleconference Hearing. The case was heard on July 31, 2012, as scheduled. Department Counsel offered Government Exhibits (GE) 1 through 9 into evidence without objection. Applicant testified and offered Applicant Exhibit (AE) A into evidence without objection. DOHA received the hearing transcript on August 7, 2012. The record remained open until August 24, 2012, to give Applicant an opportunity to submit documents. That deadline was extended to September 10, 2012, per Applicant's request and without objection from Department Counsel. Applicant timely submitted AE B, C, and D, which were admitted into the record without objection.

Findings of Fact

In his Answer to the SOR, Applicant admitted the allegations contained in Paragraphs 1.a, 1.g, and 1.i. He denied the allegations contained in Paragraphs 1.b, 1.c, 1.d, 1.e, 1.f, and 1.h.

Applicant is 45 years old and divorced. He was married four times. He has two children, ages 15 and 22. He earned an associate's degree in 1995. He served in the Army from May 1990 to August 1999. He received an honorable discharge. He was an E-5, working in telecommunications. (GE 1.)

Applicant's financial problems began prior to 2000 while he was stationed in a European country and not earning enough money. (Tr. 27, 29.) He was married at the time and his wife was living in the United States. (Tr. 28.) He explained that his "debts got out of hand". (Tr. 27.) In September 2000 he filed Chapter 7 bankruptcy and in February 2001 the court discharged \$44,694 of debt. (Tr. 29; GE 2.) In a May 2002 statement regarding that bankruptcy, he wrote that after the bankruptcy "I have become more responsible with my finances, ensuring that I will not have debt problems again. This was a one-time incident that I ensure (sic) will not happen again." (GE 3.)

After leaving the Army in late 1999, Applicant began working as a contractor for DoD. He has worked for several contractors and been deployed to Europe and the Middle East for most of these years. (Tr. 26.) He held a security clearance while in the Army and while working for DoD.

From January 2005 to July 2005, Applicant worked in Europe. From August 2005 to September 2006, he worked in the Middle East. He thinks he earned about \$80,000 in 2005 and 2006. (Tr. 73.) From January 2007 to September 2009, he went to another Middle Eastern country. (Tr. 72.) He thinks he earned about \$180,000 in 2007 and \$120,000 in 2008. (Tr. 71.) From September 2009 to November 2009, he

worked for another defense contractor. He estimated that his 2009 income was around \$30,000 to \$40,000. (Tr. 70.)¹

Applicant was unemployed from September 2009 to January 2010. He received unemployment benefits for those three months. (Tr. 35.) In January 2010 he started working for a security firm. He worked there until June 2010. He also worked a second job for another security firm from February 2010 to July 2010. In May 2010 he started his current position as a video teleconference technician. Over the past year he has been deployed to the Middle East. (Tr. 36; GE 1.) In 2010 his income was about \$65,000. In 2011 his salary increased to about \$180,000, half of which is not subject to income taxes. His current contract is for \$195,000 per year. (Tr. 37.)

Applicant spoke to a government investigator in August 2010, September 2010, and October 2010 about his financial problems, 2001 bankruptcy, and other matters. During those interviews, he said he was working with a law firm to resolve and consolidate his debts. In the September 2010 interview, he told the investigator that he hired a law firm in 2004 to handle the \$18,016 debt listed in SOR ¶ 1.h. He later asked the firm to resolve other delinquent debts. He anticipated reaching settlements soon. (GE 5.) While testifying, he said he hired the law firm in 2007. (Tr. 43.)

Based on a review of his recent credit report, Applicant thought his delinquent debts totaled about \$45,000. (Tr. 74; AE A.) He has been trying to pay his debts over the past years while investing money. (Tr. 42.) He decided to find another law firm to help him resolve his debts because the firm has not been successful in helping him resolve them. (Tr. 45, 63.) He pays the firm \$100 per month for their services. (Tr. 46.)

On August 29, 2012, Applicant hired a new law firm to resolve his debts. (AE B.) He noted in his agreement with the firm that he has not participated in financial counseling. (AE B at 19.) According to the terms of his agreement, he will pay \$947 per month for 42 months to resolve six debts, four of which are included in the SOR.² Those four debts total \$44,640. The total debt incorporated into the plan is \$60,406. (AE B at 13.) The debt agreement contains a Hardship Letter in which Applicant explained the circumstances leading to his financial problems:

I have had loss of employment twice while paying these debts that caused me to fall behind. I was out of work for 3 months back in 2009 to 2010 and out of work for two months in 2011. The interest rates on these debts were

¹This estimate may be a miscalculation because Applicant worked in the Middle East for eight months of 2009, during which time his annual salary was about \$80,000. He then worked for another federal contractor for two months.

² Two debts, AT&T for \$5,000 and T-Mobile for \$10,766, are also included in the repayment plan. These debts are not listed in the SOR and will not be considered in the analysis of disqualifying conditions under Guideline F. However, they may be considered relevant under the Whole-Person section of this decision.

increased to the point that I just couldn't afford the payments no more.”
(AE B at 18.)

The SOR alleged a 2000 bankruptcy and eight delinquent debts totaling \$45,290. The debts became delinquent between 2007 and 2012. The status of each debt is as follows:

1. (¶ 1.b) The \$64 medical debt is paid. The debt appeared on the November 2011 credit bureau report (CBR). It is not listed on the April 2012 CBR. (Tr. 51; GE 8, 9.)
2. (¶ 1.c) The internet debt for \$186 is paid. The debt appeared on the November 2011 CBR. It is not listed on the April 2012 CBR. (Tr. 52; GE 8, 9.)
3. (¶ 1.d) The \$102 medical debt is paid. The debt appeared on the November 2011 CBR. It is not listed on the April 2012 CBR. (Tr. 53; GE 8, 9.)
4. (¶ 1.e) The \$298 medical debt is paid. The debt appeared on the November 2011 CBR. It is not listed on the April 2012 CBR. (Tr. 54; GE 8, 9.)
5. (¶ 1.f) The \$3,603 credit card debt is unresolved. Applicant's previous law firm disputed it in May 2011. Applicant used his company credit card while in the Middle East. He asserted that his former company should pay the debt. It is now included in his August 29, 2012 repayment plan, as his debt. (Tr. 57-58; GE 4, 9; AE B at 13.)
6. (¶ 1.g) The \$11,953 automobile repossession debt is unresolved. He incurred the debt while in the Middle East in 2007 to 2009. Applicant's previous law firm disputed it in April 2011. It is now included in his August 29, 2012 repayment plan. (Tr. 60-62; GE 4; AE B at 13.)
7. (¶ 1.h) The \$18,016 credit card debt is unresolved. Applicant's previous law firm disputed it in May 2011. It is now included in his August 29, 2012 repayment plan. (Tr. 63; GE 4; AE B at 13.)
8. (¶ 1.i) The \$11,068 for an automobile loan is unresolved. He incurred the debt while in Europe in 2005. It is now included in his August 29, 2012 repayment plan. (Tr. 64; GE 4; AE B at 13.)

For the past seven years, Applicant has been investing in a friend's business. (Tr. 49.) In 2012 he invested about \$10,000. (Tr. 75.) In 2011 he invested more. (Tr. 76.) His total investment to date is about \$100,000. (Tr. 50, 65.) He has not received

any return on this investment. (Tr. 64.) To date Applicant has paid \$650 of the SOR listed debts.

After the hearing, Applicant established a budget with his new debt repayment firm. According to that budget, his net monthly income is \$5,000, and expenses are \$3,880. He has \$1,120 remaining to apply to the \$947 debt repayment plan. (AE B at 19.)

Applicant testified candidly. He did not have a thorough understanding of his finances or the scope of his debts. He has not taken aggressive actions to resolve his debts over the past two years because he did not realize the effect they could have on his security clearance. (Tr. 78.) He now realizes that making those investments while he had unpaid debts “was foolish.” (Tr. 80-81.) His supervisor is aware of his security clearance problems, but does not know they relate to his finances. (Tr. 88.) The commanding general for his division wrote a letter, requesting that Applicant be granted a Top Secret clearance based on Applicant’s loyalty and dedication. (AE C.)

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 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, 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

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 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 an 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.

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.”

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 describes two conditions that could raise a security concern and may be disqualifying in this case:

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

Applicant has a history of accumulating delinquent debts. It began in the late 1990’s, while he was deployed to Europe and then in 2001 when he had discharged \$44,640 of debt through Chapter 7 bankruptcy. Subsequent to that discharge, he began accumulating more delinquent debts that remain unresolved. The evidence is sufficient to raise these disqualifying conditions.

After the Government produced substantial evidence of the disqualifications, the burden shifted to Applicant to produce evidence to rebut and prove mitigation. AG ¶ 20 provides four conditions that could potentially mitigate the above security concerns:

(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.

There is insufficient evidence to support the application of AG ¶ 20(b). From 2009 to 2011, Applicant was unemployed for approximately five months. For a year or more, he was underemployed. While those five months of unemployment and a period of underemployment may have been circumstances beyond his control, he did not provide sufficient evidence that he responsibly managed his finances since his 2001 bankruptcy, especially in view of years of earning high salaries and despite hiring a law firm to resolve them beginning in 2007.

The facts do not warrant the application of AG ¶ 20(c). Applicant has not participated in financial counseling and did not provide evidence that his financial issues are under control. In fact, he has not aggressively addressed his delinquent debts totaling about \$45,000 until late 2011 despite earning a substantial salary in 2010, 2011, and into 2012.

AG ¶ 20(d) has limited application. In 2011 Applicant paid four debts totaling \$650, demonstrating a good-faith effort to resolve those small debts. He has not shown a good-faith effort to resolve or diligently address his four large debts over the past couple of years. Applicant's previous lawyer disputed those four SOR-listed debts, the reason for which is unclear, as Applicant acknowledged three of those debts were his responsibility. The application of AG ¶ 20(e) is minimal.

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 include 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 45-year-old former soldier, who has worked for defense contractors for most of his career. His command recommends him for a security clearance. Those facts support his request for a security clearance. However, there are persuasive facts that outweigh that evidence and relate to his history of financial mismanagement. Applicant began experiencing financial problems while deployed in the late 1990s. He filed Chapter 7 bankruptcy in 2000 and discharged \$44,640 of delinquent debts in 2001. In a May 2002 statement to the government, he said "this was a one-time incident" and asserted the situation would not occur again. During interviews in 2010, he said his lawyer was trying to consolidate and resolve the debts. Almost two years later, his delinquent debts total \$60,405 and remain unresolved. While testifying, he exhibited a lack of familiarity with his financial situation, including the amount of his current salary. For example, he testified that he had a \$195,000 contract, and yet his budget recorded a net monthly income of \$5,000, a noted discrepancy. More troubling is Applicant's decision to invest \$100,000 in a friend's business over the past seven years and ignore his debts. That decision demonstrates his lack of judgment and a disregard for his financial obligations.

At this time, Applicant may be on track to resolving his debts, but to date he has not established a pattern of managing his finances, despite having knowledge of the government's concerns in 2002 and 2010. Overall, the record evidence creates doubt 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 Financial Considerations and the whole-person analysis.

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
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	For Applicant
Subparagraph 1.e:	For Applicant
Subparagraph 1.f:	Against Applicant
Subparagraph 1.g:	Against Applicant
Subparagraph 1.h:	Against Applicant
Subparagraph 1.i:	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