



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



In the matter of:)
)
) ISCR Case No. 11-03401
)
)
Applicant for Security Clearance)

Appearances

For Government: Paul M. DeLaney, Esquire, Department Counsel
For Applicant: *Pro se*

03/12/2012

Decision

HOGAN, Erin C., Administrative Judge:

Applicant submitted a security clearance questionnaire on April 3, 2007. On September 26, 2011, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the 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), effective within the Department of Defense for SORs issued after September 1, 2006.

On October 26, 2011, Applicant answered the SOR and requested that his case be decided on the written record. Department Counsel prepared a File of Relevant Material (FORM) on December 15, 2011. The FORM was forwarded to Applicant on December 20, 2011. Applicant received the FORM on January 4, 2012. He had 30 days to submit a response to the FORM. He did not submit additional information. On February 24, 2012, the case was forwarded to the hearing office and was assigned to me on February 27, 2012.

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

Findings of Fact

In his answer to the SOR, Applicant admits to all SOR allegations. (Item 4)

Applicant is a 52-year-old male employed by a Department of Defense contractor seeking to obtain a security clearance. He has been employed with the company since April 2007. Applicant also has a side business repairing swimming pools. He is divorced and has two adult sons. (Item 5)

After Applicant completed his security clearance questionnaire, a background investigation was initiated. His background investigation revealed five delinquent accounts, an approximate total balance of \$63,787. (Items 8, 9 and 10) The delinquent accounts include: an \$11,663 delinquent credit card account placed for collection (SOR ¶ 1.a: Item 8 at 1; Item 9 at 1; Item 10 at 7); an \$8,890 delinquent account with a bank placed for collection (SOR ¶ 1.b: Item 8 at 1; Item 9 at 1; Item 10 at 9); a \$16,072 delinquent credit card account placed for collection (SOR ¶ 1.c: Item 8 at 2; Item 10 at 8); a \$22,522 delinquent credit card account placed for collection (SOR ¶ 1.d: Item 8 at 2; Item 7 at 3); and a real estate mortgage that was at least 90 days delinquent in August 2010 in the amount of \$4,640 (SOR ¶ 1.e: Item 8 at 2).

On October 18, 2010, Applicant was interviewed by the investigator conducting his background investigation. He admitted three delinquent credit card accounts which are the debts alleged in SOR ¶¶ 1.a, 1.c, and 1.d. The debts alleged in SOR ¶¶ 1.a and 1.c were credit card accounts that he opened for his swimming pool repair business. The debt alleged in SOR ¶ 1.d was a credit card account for his personal use. Applicant began to have financial problems in 2009 when his swimming pool business slowed down. His income from the business dropped from \$2,000 a month to \$200 a month. He was unable to pay his bills. He does not believe the debts were caused by circumstances beyond his control. He admits that he spent more than he earned. He indicated that he intended to pay his delinquent debts. He was thinking about paying off the debts with a loan from his 401(k) account. (Item 6 at 4-5)

Applicant's net monthly income is \$3,270. He earns \$400 a month from his swimming pool business and \$350 a month from a roommate. His total net monthly income is \$4,020. He states that he is current on his mortgage. His mortgage payment is \$1,540. Other expenses include a truck loan for \$278, and a boat loan for \$202. His monthly expenses also include: \$240 groceries, \$30 clothing, \$300 utilities, \$400 car expenses, \$62 life insurance, \$200 entertainment. After expenses, he has approximately \$767 left over each month in discretionary income. (Item 6 at 5)

In August 2011, Applicant answered interrogatories that asked him about the status of his delinquent debts. He indicated that he reached a settlement agreement to pay the debt alleged in SOR ¶ 1.a. He attached a copy of the agreement to his answer

to the interrogatory. He agreed to pay \$4,360 on July 18, 2011, and \$125 on the 15th of each month until the judgment and the post-judgment interest are paid in full. He did not provide proof that he was making payments in accordance with the agreement. He indicated that he was unable to resolve the remaining delinquent accounts. He is still trying to put his financial problems in order and needs more time to get his financial matters resolved. (Item 7) He did not submit additional matters for consideration in his answer to the SOR (Item 4) or in response to the FORM.

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the revised adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which must be considered when 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.

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 for obtaining 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 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.” 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 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 over-extended is at risk of having to engage in illegal acts to generate funds.

The guideline notes several disqualifying conditions that could raise security concerns. I find Financial Considerations Disqualifying Condition AG ¶19(a) (an inability or unwillingness to satisfy debts) and AG ¶19(c), (a history of not meeting financial obligations) apply to Applicant’s case. Applicant incurred numerous delinquent debts that he has been unable or unwilling to pay over the past several years.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Several mitigating conditions potentially apply to Applicant’s case.

AG ¶ 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) does not apply. Applicant recently entered into a repayment plan for the debt alleged in SOR ¶ 1.a, but did not provide proof that he is actually making payments in accordance with the plan. His other delinquent debts remain unresolved. Applicant’s extensive unresolved debt indicates irresponsible behavior and continues to cast doubt on his reliability, trustworthiness, and good judgment.

AG ¶ 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) partially applies. Applicant’s pool business suffered a downturn in 2009. However, he has not demonstrated that he acted

responsibly under the circumstances. He admits that his financial problems are mostly caused by his overspending. I cannot conclude that he acted responsibly under the circumstances.

AG ¶ 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) does not apply. Applicant did not attend financial counseling. All of the delinquent debts remained unresolved at the close of the record. Applicant's financial situation is unlikely to be resolved in the near future.

AG ¶ 20(d) (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts) applies with respect to the settlement agreement he entered into regarding the debt alleged in SOR ¶ 1.a. However, he did not provide proof that he was making the payments under the agreement. He has not taken steps to resolve his other delinquent accounts. Overall, he has not initiated a good-faith effort to resolve his debts.

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 the 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 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 the facts and circumstances surrounding this case. I considered Applicant's employment history with a defense contractor. I considered that a business downturn contributed to Applicant's financial problems. Regardless of these factors, Applicant admits to overextending himself. He is given credit for entering into a repayment agreement for one debt, but did not provide proof that he was, in fact, making the payments under the terms of the agreement. He has not taken steps to resolve his other delinquent accounts.

The concern under financial considerations is not only about individuals who are prone to engage in illegal acts to generate funds. Another concern is that failure 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, which raises questions about an individual's reliability, trustworthiness, and ability to protect classified information. In other words, if an individual has trouble managing their finances, this can raise doubts about an individual's ability to handle and protect classified information. Applicant's history of financial problems raises doubts about his ability to handle and protect classified information. Mindful of my duty to resolve cases where there is doubt in favor of national security, I find Applicant failed to mitigate the concerns raised under financial considerations.

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.e: Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

ERIN C. HOGAN
Administrative Judge