



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



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| In the matter of: |) | |
| |) | |
| |) | ISCR Case No. 11-04932 |
| |) | |
| |) | |
| Applicant for Security Clearance |) | |

Appearances

For Government: Gina Marine, Esquire, Department Counsel
For Applicant: *Pro se*

10/16/2012

Decision

WHITE, David M., Administrative Judge:

Applicant incurred over \$35,000 in delinquent debts since 2008 when he lost his last steady employment for cause. He was also fired from previous jobs in 2003 and 2004. He remains unable to resolve these obligations or avoid further financial problems. The evidence is insufficient to mitigate resulting security concerns. Based upon a review of the pleadings, testimony, and exhibits, eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application (SF-86) on August 5, 2010. On April 4, 2012, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant, 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 for Determining Eligibility for Access to Classified Information*, effective within the Department of Defense after September 1, 2006.

Applicant answered the SOR in writing (AR) on June 5, 2012, and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on June 25, 2012. The case was assigned to me on July 2, 2012. DOHA issued a Notice of Hearing on July 20, 2012, and I convened the hearing, as scheduled, on August 15, 2012. The Government offered Exhibits (GE) 1 through 5, which were admitted without objection, and Hearing Exhibit (HE) I, a Government exhibit list. Applicant offered Exhibits (AE) A through C, and testified on his own behalf. I granted Applicant's request to leave the record open for submission of additional evidence until September 5, 2012. DOHA received the transcript of the hearing (Tr.) on August 22, 2012. Applicant timely submitted AE D through AE G, which were admitted without objection, and the record closed as scheduled.

Findings of Fact

Applicant is a 54-year-old former and potential employee of a defense contractor, with a job offer pending determination of his eligibility for a security clearance. He is twice divorced, with three adult children. He is a high school graduate, and retired from the Army in 1996 as a sergeant (E-5), after 20 years of active service. (GE 1; AE E; AE F; Tr. 77.) In his response to the SOR, Applicant admitted the truth of all of the factual allegations in the SOR. Applicant's admissions, including his statements in response to DOHA interrogatories (GE 2), are incorporated in the following findings.

Applicant admits that he owes the seven delinquent debts, as listed in the SOR and corroborated by the record credit reports, totaling \$35,298. He testified that he is now at least three monthly payments behind on his home mortgage loan, which is listed as one-month delinquent in SOR ¶ 1.f; and that his last three Federal income tax refunds, totaling \$1,009, were kept by the Internal Revenue Service (IRS) to reduce the \$8,000 he owed to it. (AR; GE 2; GE 3; GE 4; GE 5; Tr. 50-52.)

Applicant attributes his financial problems to his inability to secure regular full-time employment since he was "let go" from his job as a bus driver due to the amount of damage he caused by hitting a barrier with the side of his bus in August 2008. Shortly before that, his divorce from his second wife became final. From the information listed on his SF-86, it appears that she was in the military and he lost access to her income after the divorce. He had previously been fired from jobs in September 2003, after he "made a bad joke" that he was going to shoot the place up over a pay dispute, and in September 2004 after a supervisor "falsely accused [him] of not being in his assigned work places, falsifying time cards, and not knowing [his] job." (GE 1; Tr. 33-39.)

Applicant has communicated with the IRS, and the payday loan creditor listed in SOR ¶ 1.b, but has not been able to afford repayment agreements. He also contacted a debt consolidation company, but has not had sufficient income to begin a payment plan through them. He disagreed with the outstanding balance claimed by the collection agency on the debt listed in SOR ¶ 1.e, but neither substantiated a basis for such dispute nor provided evidence of any communication with the creditor to resolve it. (AR; Tr. 45-47, 50-51, 59-65.)

Applicant testified that he underwent some financial counseling when he first started having problems, but could not remember with whom or describe the nature of the counseling. (Tr. 56-57.) On September 8, 2010, he told an investigator from the Office of Personnel Management that he had never had financial counseling or participated in a debt consolidation program. He affirmed the accuracy of that statement under oath on February 13, 2012. (GE 2.)

Applicant's financial statement as of February 2012 reflected a monthly net shortage of about \$40, and included \$1,280 per month of unemployment compensation for which he has since exhausted his eligibility. He testified that he had recently started working for \$18 per hour in what he hoped would turn into full-time work, but was not sure that would happen. He declared his loyalty to the United States, and his desire to obtain a security clearance in order to qualify for employment overseas that would provide better income so he could resolve his debts. (GE 2; AE D; Tr. 40-44.)

Applicant submitted no references or other recent evidence concerning his reputation, work performance, or good character. His discharge certificate reflects his Honorable discharge in 1996 after 20 years of service, during which time he earned six awards of the Army Good Conduct Medal, an Army Commendation Medal, four awards of the Army Achievement Medal, and several service awards. (AE G.)

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 (DCs) and mitigating conditions (MCs), 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 AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶¶ 2(a) and 2(c), the entire process is a conscientious scrutiny of applicable guidelines in the context 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 the 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.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, “[t]he 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: “[a]ny determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.”

A person applying for access to classified information seeks to enter 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 concerns under the guideline for financial considerations are set out in AG ¶ 18, which reads in pertinent part:

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 record evidence established security concerns under two Guideline F DCs, as set forth in AG ¶ 19:

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

Applicant’s SOR-listed delinquent debts arose over the past four years, and remain completely unresolved. He provided no corroborating evidence of available income, or other assets, from which to satisfy these debts or avoid incurring additional delinquencies. This evidence raises substantial security concerns under DCs 19(a) and (c), thereby shifting the burden to Applicant to rebut, extenuate, or mitigate those concerns.

The guideline includes five conditions in AG ¶ 20 that could mitigate security concerns arising from Applicant's financial difficulties:

- (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; 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.

Applicant's seven delinquent debts accumulated over the past four years, total more than \$35,000, and continue to date. They are frequent, recent, and arose under circumstances that involved Applicant's choices to incur credit obligations he had no reason to think he could meet. He showed no capacity to avoid additional delinquent debt. The ongoing nature of these debts, and his inability to secure or maintain steady employment, preclude a finding of unlikely recurrence. Applicant failed to demonstrate that his reliability, trustworthiness, and judgment have improved, and failed to attempt to resolve any of these debts even after their security implications became apparent. The evidence does not establish mitigation under MC 20(a).

Applicant offered insufficient evidence to support mitigation under MC 20(b). None of the debts were shown to have arisen from conditions beyond his control. His recent inability to secure steady full-time work follows his being fired or "let go" for cause from three previous jobs in 2003, 2004, and 2008. Finally, his total inaction toward resolution of any of these debts does not demonstrate responsible action under the circumstances.

Applicant offered no credible evidence of financial counseling, and did not establish clear indications that the financial problems are either being resolved or under control. He provided no evidence to establish any good-faith effort to repay his many

overdue creditors or otherwise resolve his debts, particularly in the absence of evidence of the means to do so. MC 20(c) and 20(d) are therefore inapplicable.

Applicant failed to provide proof to substantiate a basis to dispute the legitimacy of the debts alleged in SOR, to which he admitted and for which the record credit reports provide substantial evidence. Accordingly, he failed to mitigate those allegations under MC 20(e).

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 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 pertinent facts and circumstances surrounding this case. Applicant appeared to be a sincere and earnest individual, but did not take the opportunity to introduce evidence of his good character, reliability, or trustworthiness, to counter contrary record evidence. He is a mature individual who is accountable for his choices and actions. He honorably served for 20 years in the Army, and declared his loyalty and intention to never betray the United States.

Applicant's inaction toward resolution of any portion of his substantial delinquent indebtedness, and apparent lack of means to do so, preclude a supportable finding of permanent behavioral changes or rehabilitation. The potential for exploitation or duress is undiminished. Overall, the record evidence creates doubt as to Applicant's present eligibility and suitability for a security clearance, and any such doubt must be resolved in favor of the national security.

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 through 1.g: 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.

DAVID M. WHITE
Administrative Judge