



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
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XXXXXXXXXXXXXXXXXX) ISCR Case No. 11-04949
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Applicant for Security Clearance)

Appearances

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

11/30/2012

Decision

HOWE, Philip S., Administrative Judge:

On December 1, 2009, Applicant submitted his electronic version of the Security Clearance Application (SF 86) (e-QIP). On May 9, 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 answered the SOR in writing on June 4, 2012 (Answer). Applicant requested his case be decided on the written record in lieu of a hearing.

On August 7, 2012, Department Counsel submitted the Department's written case. A complete copy of the file of relevant material (FORM) was provided to the Applicant on August 10, 2012. He was given the opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant received the file on

August 27, 2012. Applicant filed a Response to the FORM within the 30 day time allowed that would have expired on September 26, 2012. I received the case assignment on October 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 all allegations in the SOR. He submitted an explanation of his delinquent debt history as part of his Answer. Applicant is divorced and has one adult son. He is 50 years old and works for a defense contractor. (Items 2-5)

The SOR lists eight delinquent debts totaling \$281,078. These debts include first and second mortgages in the amount of \$245,000 on his former residence (Subparagraph 1.a). He did not pay them and the house was foreclosed upon in 2008. (Items 2-11)

The SOR listed a Chapter 13 bankruptcy filed on May 18, 2010 (Subparagraph 1.b). The SOR states Applicant withdrew the petition in February, 2010, but the FORM states it was dismissed on September 26, 2011, citing Items 6 through 8 of the FORM, including Item 7, the *Chapter 13 Trustee's Final Report and Account* which shows the September 26th date. None of his debts have been resolved. While his Chapter 13 bankruptcy was pending, Applicant withdrew \$18,000 from his 401(k) account to use as a down payment on another house after he ceased cohabitating with his girlfriend. His attorney advised him the additional debt could affect adversely his bankruptcy petition because the petition claimed he could not pay his present debts, yet he incurred additional debt for the new house. That withdrawal resulted in a federal income tax liability of about \$12,000. He also owed \$900 to his state tax department. He claims he contacted both governments' tax offices and was told he did not owe anything to the Internal Revenue Service (IRS) and the state tax return was "pending." The tax issues were not listed in the SOR but disclosed in Applicant's Answer and interrogatory responses. (Items 2-11)

Applicant has \$36,078 in six unresolved credit card debts (Subparagraphs 1.c to 1.h). He became responsible for these debts after his divorce in 1997 that he initiated. He used the second mortgage on his former home to pay other credit card debts. The debts listed in the SOR are also additional credit debts he incurred in 2008 and 2009 after his divorce. (Items 2-4, 9-11)

Applicant did not pay his mortgages on his first home because he used the monthly payment amounts to help his girlfriend pay her mortgage and to pay moving expenses of himself and his collection of exotic animals into the girlfriend's house. (Items 2-11)

Applicant has a net monthly remainder from his income of \$1,066. He received a salary increase of up to \$2,000 annually in 2012. His gross salary according to his personal financial statement is \$4,598 monthly, resulting in a \$55,176 annual income. (Item 5)

Applicant explains his financial difficulties were caused by his credit card debt after his divorce, a student loan for about \$20,000 for his son's college education, a long-term medical problem for which he used alternative treatments (acupuncture, hypnosis, and Botox injections in his back) that were not covered by Applicant's medical insurance, and for which he had to pay directly. He attributes his failure to sell his first home to the housing market conditions in 2009 and later. (Item 5)

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 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* 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 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. From these nine conditions, 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 eight delinquent debts, including two mortgages on his former residence and six credit card balances, totaling \$281,078 that remain unpaid or unresolved. Applicant filed a Chapter 13 bankruptcy petition in 2010 and withdrew it in 2011.

The guideline in AG ¶ 20 contains six conditions that could mitigate security concerns arising from financial difficulties. No mitigating condition applies.

AG ¶ 20 (a) does not apply because Applicant's debts are ongoing and unpaid.

AG ¶ 20 (b) does not apply because Applicant's financial problems were the result of his decisions to spend more money than he could repay on his salary. He failed to meet his burden of proof on that issue.

Applicant did not present any evidence of financial counseling or show his financial delinquencies are under control. AG ¶ 20 (c) does not apply.

Applicant did not submit any evidence to show he made any good faith efforts in the past four years to repay his delinquent debts. AG ¶ 20 (d) does not apply.

Applicant did not demonstrate any legitimate basis for disputing any debt. He did not offer any documents to show he disputed any debt. AG ¶ 20 (e) does not apply.

The final mitigating condition is affluence resulting from a legal source of income. There is no evidence showing this condition is relevant here.

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