



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



In the matter of:)	
)	
)	ISCR Case No. 12-01520
)	
Applicant for Security Clearance)	

Appearances

For Government: Ray Blank, Esq., Department Counsel
For Applicant: *Pro se*

04/10/2013

Decision

HEINY, Claude R., Administrative Judge:

Applicant contests the Department of Defense’s (DoD) intent to deny his eligibility for a security clearance to work in the defense industry. The seven charged-off or collection accounts alleged in the Statement of Reasons (SOR), totaling more than \$17,000, have not been resolved. The financial considerations and personal conduct security concerns were not mitigated. Clearance is denied.

History of the Case

Acting under the relevant Executive Order and DoD Directive,¹ on November 7, 2012, the DoD issued an SOR detailing security concerns. DoD adjudicators could not find that it is clearly consistent with the national interest to grant or continue Applicant’s security clearance. On December 3, 2012, Applicant answered the SOR and requested

¹ Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DoD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the DoD on September 1, 2006.

a hearing. On February 5, 2013, I was assigned the case and on the same day, the Defense Office of Hearings and Appeals (DOHA) issued a Notice of Hearing for the hearing convened on February 28, 2013. I admitted Government's Exhibits (Ex) 1 through 4, without objection. Applicant testified at the hearing. On March 12, 2013, DOHA received the hearing transcript (Tr.).

Findings of Fact

In Applicant's Answer to the SOR, he denied owing unpaid traffic violations (SOR 1.d), denied owing federal income tax for 2009 and 2010, (SOR 1.e and 1.f) and denied the personal conduct security concerns regarding outstanding warrants for his arrest due to unresolved traffic violations (SOR 2.a). He admitted the remaining factual allegations in the SOR. His admissions are incorporated herein. After a thorough review of the pleadings and exhibits, I make the following findings of fact.

Applicant is a 40-year-old who has worked for a defense contractor mailing equipment to the military. He was employed with the contractor for four years before being laid off eight months ago. (Tr. 17, 19) When employed, he made \$1,300 every two weeks. (Tr. 23) He currently receives \$500 every two weeks in unemployment compensation. (Tr. 48) From June 2008 through March 2009, Applicant was unemployed and received unemployment compensation. (Ex. 2) Applicant called no witnesses other than himself, and produced no work or character references.

Applicant is very anxious to get his clearance restored. He made numerous statements that he "just wanted to go back to work." (Tr. 14) He has unpaid taxes and unpaid traffic tickets. He currently supports three children, ages 8, 10, and 17, on his monthly unemployment. (Tr. 15) His wife is a part-time home health care provider. (Tr. 16)

In May 2009, Applicant was stopped for a traffic infraction during his lunch break. He was arrested on a warrant for numerous unpaid traffic tickets. (Ex. 2) The tickets were for speeding, driving without proper insurance, driving on the shoulder of the road, and not having a valid driver's license. Not having funds to pay the tickets, he chose to simply ignore them. (Ex. 2) Following his arrest, he spent four days in jail. He was terminated from his employment for failing to return from lunch. He has not received any new traffic citations since his 2009 arrest. (Tr. 39) During his December 2011 personal subject interview, he stated he intended to pay his fines in January 2012. (Ex. 2)

Applicant asserted that when he was employed, he was paying \$100 monthly on his tickets. (Tr. 20) He provided no documentation supporting his claim of payment. He also asserted the outstanding arrest warrants should have been dismissed. (Tr. 21) Again he provided no documents to support this assertion. He had been working with an attorney to address his outstanding tickets. He believes he owes between \$1,500 and \$1,800 on the tickets. (Tr. 52) He claims he is required to pay \$25 per month on this obligation and has made his two most recent payments. (Tr. 35) These two payments are the only ones he has made since being laid off. (Tr. 37) After one year, the monthly

amount will rise to \$75. (Tr. 35) Additionally, he claimed he was paying a company \$120 monthly for three or four months to help him correct his credit. (Tr. 23)

During his December 2011 subject interview, Applicant stated he owed approximately \$5,000 in federal income tax for tax years 2009 and 2010. (Ex. 2) He said he had failed to have the proper amount of tax withheld from his pay. He failed to file his returns because his mother, sister, and brother-in-law were involved in a vehicle accident when their car was struck by a truck. (Tr. 24) He received a letter from the Internal Revenue Service (IRS) stating he owed taxes, at which time he increased the amount of withholding on his pay. He has not contacted the IRS concerning what he owes. During his December 2011 interview, he stated he hoped the filing of his current tax return would pay any delinquency owed. (Ex. 2) However, his 2011 return did not pay his past due tax obligation and he owed additional tax for tax year 2011. (Ex. 2)

Applicant's tax delinquencies are listed at SOR 1.e, 1.f, and 1.g. His wages for 2009 were \$22,145 and he owed \$1,385 taxes for the year. He had \$305 withheld and owed \$680 in additional tax. (Ex. 2) His wages for 2010 were \$36,497 and he owed \$3,268 taxes for the year. He had \$415 withheld and owed additional taxes of \$3,650. For 2011, his wages were \$39,201 and he owed \$2,751 taxes for the year. He had \$1,283 withheld and owed additional taxes of \$4,034. (Ex. 2)

At the hearing, Applicant asserted he had the tax forms at his home and would be filing them shortly. (Tr. 24) Any refund he might be entitled to will be intercepted and used to address his child support obligation. (Tr. 24) He pays \$300 monthly child support for one child age 13. (Tr. 25) He asserted, but provided no documentation, that he had made two payments of \$25 each for a total of \$50 to the IRS. (Tr. 43, 47)

Applicant suffers from diabetes and has a network health card entitling him to health services. The network strives to provide quality goods and services at a low equitable cost to individuals and the community. He owes more than \$6,700 on two delinquent medical bills (SOR 1.a and 1.b). At the hearing, he asserted he was going to pay off his past-due electric bill in the amount of \$1,272 (SOR 1.c). (Tr. 50)

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which must be considered 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 interests of 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 to obtain 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 of potential, rather than actual, risk of compromise of classified information.

Section 7 of Executive Order (EO) 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

Adjudicative Guideline (AG) ¶ 18 articulates the security concerns relating to financial problems:

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.

Additionally, an individual who is financially irresponsible may also be irresponsible, unconcerned, negligent, or careless in properly handling and safeguarding classified information. Behaving responsibly or irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life.

A person's relationship with his creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to repay debts as agreed. Absent substantial evidence of extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a position of risk that is inconsistent with holding a security clearance. An applicant is not required to be debt free, but is required to manage his finances to meet his financial obligations.

Applicant has a history of financial problems. He owes approximately \$6,800 on two medical collection accounts, \$3,700 for unpaid traffic fines and an electric utility bill, and owes approximately \$6,700 in tax for tax years 2009, 2010, and 2011. Disqualifying Conditions AG ¶ 19(a), "inability or unwillingness to satisfy debts" and AG ¶ 19(c), "a history of not meeting financial obligations," apply.

Applicant meets none of the mitigating factors for financial considerations. His financial difficulties are both recent and multiple. He was unemployed for the past eight months receiving \$500 every two weeks in unemployment compensation on which he is raising three children. Before being laid off, he was a full-time employee. His salary for 2009 was \$22,145, for 2010 \$36,497, and \$39,201 for 2011. Even when he was making this amount of money, his payment on his past-due obligations was minimal. He was making some payment on his traffic tickets and no payment on his other obligations. From June 2008 through March 2009, Applicant was unemployed and received unemployment compensation.

Applicant has received no credit or financial counseling. He has not demonstrated that his financial problems are under control, or that he has a plan to bring them under control. He has not made a good-faith effort to satisfy his debts. I conclude Guideline F against Applicant.

Applicant asserted that when he was employed, he was paying \$100 monthly on his traffic tickets. The remaining balance on the tickets is between \$1,500 and \$1,800. He has made two \$25 monthly payments on the tickets since being laid off. Two payments is a start, but not enough time has passed to give assurance he will be able to continue making his payments. Two payments is not a meaningful track record.

The concept of "meaningful track record" includes evidence of actual debt reduction through payment of debts. However, an applicant is not required to establish that he has paid off each and every debt listed in the SOR. All that is required is for him to demonstrate he has established a plan to resolve his delinquent debt and has taken significant action to implement that plan. I must reasonably consider the entirety of Applicant's financial situation and his actions in evaluating the extent to which that plan is credible and realistic. There is no requirement that a plan provide for payments on all

outstanding debts simultaneously. Rather, a reasonable plan may provide for payment on such debts one at a time. Likewise, there is no requirement that the first debts actually paid in furtherance of a reasonable debt plan be the ones listed in the SOR. In this case, Applicant plans on paying \$25 monthly on his traffic fines. He has made no arrangement concerning his other collection accounts.

Even if Applicant's financial difficulties initially arose, in whole or in part, due to circumstances outside his control, the Judge could still consider whether Applicant has since acted in a reasonable manner when dealing with those financial difficulties. ISCR Case No. 05-11366 at 4 n.9 (App. Bd. January 12, 2007)(citing ISCR Case No. 03-13096 at 4 (App. Bd. November 29, 2005); ISCR Case No. 99-0462 at 4 (App. Bd. May 25, 2000); ISCR Case No. 99-0012 at 4 (App. Bd. December 1, 1999). Applicant was unemployed nine months before obtaining his current job in 2009. While employed, he made minimal payment on his past-due obligations.

Personal Conduct

Adjudicative Guideline (AG) ¶ 15 articulates the security concerns relating to personal conduct:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

The following Personal Conduct Disqualifying Conditions under AG ¶ 16 are potentially applicable:

(c) credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information; and

(d) credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the

person may not properly safeguard protected information. This includes but is not limited to consideration of:

. . .

(3) a pattern of dishonesty or rule violations

Applicant had numerous arrest warrants for failing to pay his fines for traffic violations. In 2009, he was arrested due to his outstanding warrants and spent four days in jail. Even with jail time, he still has unresolved tickets. AG ¶¶ 16(c) and 16(d) apply to his conduct because it demonstrated questionable judgment and an unwillingness to comply with rules and regulations. None of the mitigating conditions apply.

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 the facts and circumstances surrounding this case. Applicant is very anxious to get his clearance restored. He made numerous statements that he "just wanted to go back to work." For the past eight months he has supported himself, his wife, and three children on his monthly unemployment compensation. He has not documented any payments on his SOR debts.

The only evidence in favor of mitigating Applicant's conduct is his claim to have made two \$25 payments on his traffic fines and tax debts during the past eight months. He has failed to document any payments on his delinquent accounts. His long-standing failure to repay his creditors, at least in reasonable amounts, or to arrange payment plans, reflects traits which raise concerns about his fitness to hold a security clearance.

The issue is not simply whether all Applicant's debts have been paid, but whether his financial circumstances raise concerns about his fitness to hold a security clearance. (See AG ¶ 2(a)(1).) Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated the personal conduct and financial considerations security concerns.

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, Financial Considerations: AGAINST APPLICANT

Subparagraphs 1.a – 1.g: Against Applicant

Paragraph 2, Personal Conduct: AGAINST APPLICANT

Subparagraph 2.a: 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 a security clearance. Eligibility for access to classified information is denied.

CLAUDE R. HEINY II
Administrative Judge