



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

In the matter of:)
)
) ISCR Case No. 07-02085
)
)
Applicant for Security Clearance)

Appearances

For Government: Julie R. Mendez, Esquire, Department Counsel
For Applicant: *Pro Se*

May 29, 2009

Decision

ANTHONY, Joan Caton, Administrative Judge:

After a thorough review of the case file, pleadings, and exhibits, I conclude that Applicant failed to rebut or mitigate the Government’s security concerns under Guideline F, Financial Considerations. His eligibility for a security clearance is denied.

Applicant completed and certified an Electronic Questionnaire for Investigations Processing (e-QIP) on March 26, 2008. On April 30, 2008, he was interviewed by an authorized investigator from the U.S. Office of Personnel Management and provided information, under oath, about his financial obligations. On December 31, 2008, the Defense Office of Hearings and Appeals (DOHA) issued Applicant 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 revised adjudicative guidelines (AG) promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant responded to the SOR on January 21, 2009. He answered the SOR allegations but did not indicate whether he wished to have a hearing or a decision on the record. When this omission was brought to his attention, Applicant indicated on February 19, 2009 that he wanted a decision on the record in lieu of a hearing. The Government compiled its File of Relevant Material (FORM) on March 16, 2009. The FORM contained documents identified as Items 1 through 8. By letter dated March 17, 2009, DOHA forwarded a copy of the FORM to Applicant, with instructions to submit any additional information and/or objections within 30 days of receipt. Applicant received the file on March 23, 2009. His response was due on April 22, 2009. He did not file additional information within the required time period. On May 15, 2009, the case was assigned to me for a decision.

Findings of Fact

The SOR contains nine allegations of financial delinquency under Guideline F, Financial Considerations (SOR ¶¶ 1.a. through 1.i.). In his Answer to the SOR, Applicant admitted all nine of the Guideline F allegations. Applicant's admissions are entered herein as findings of fact. (Item 1; Item 3.)

Applicant is 31 years old and employed as a network administrator by a government contractor. He is a high school graduate and studied at the college level for approximately one semester. From 1996 to 2000, he served in a U.S. military National Guard unit. After he was honorably discharged in 2000, he served for an additional two years in an inactive status, but was not called to duty. He has held a security clearance since 1996. (Item 3; Item 6; Item 8.)

Applicant married in 2006, and he and his wife are the parents of two young children. Applicant's wife is employed outside the home. Applicant has been steadily employed since 2001. (Item 3; Item 6.)

Applicant's grandmother and mother became ill sometime in 2004 or 2005. Applicant took an unspecified amount of unpaid leave to care for his mother and grandmother. Both family members died in 2006. Applicant's older child received a \$100,000 insurance payout when his mother died. His daughter can access this money when she reaches her 18th birthday. (Item 8, 16-18.)

When Applicant was interviewed by an OPM investigator in April 2008, he stated that he anticipated receiving a tax refund of approximately \$1,800, which he intended to use to pay off some of his creditors. He also reported he would use approximately \$5,000 from his 401K plan to satisfy his debts. Applicant reported a monthly net remainder of \$400. However, an unspecified amount of the monthly net remainder was

not used to satisfy debts but to help family members who have financial needs. (Item 8 at 16.)

The nine delinquent accounts alleged on the SOR and admitted by Applicant total approximately \$22,793. Applicant's credit report reflects that these accounts became delinquent between 2003 and 2008. His largest debt is a credit card delinquency of \$15,113, which was placed for collection in July 2006. Applicant is responsible for a student loan account of \$4,554 that was 120 days delinquent as of April 2008 and remained unsatisfied as of October 2008. Two of his delinquencies represent amounts of less than \$1,000 each, and five of the debts are for amounts of less than \$500 each.¹ (Item 1; Item 3; Item 7.)

Applicant provided no documentation to show that he had made payments on the debts alleged in the SOR, although in his September 2008 response to DOHA interrogatories, he stated he would pay some of them in the future. He also provided documentation corroborating his statement that he had settled and paid in full a debt of \$8,057 resulting from the repossession of an automobile and the threat of court action against him. This debt was not alleged in the SOR. Nothing in the record establishes that Applicant has sought and received consumer credit counseling. (Item 8, 3-9.)

Policies

When evaluating an applicant's suitability for a security clearance, an 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 these guidelines in conjunction with the factors listed in the adjudicative process. The administrative judge's over-arching adjudicative goal is a fair, impartial and common sense 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.

¹ The debt alleged at SOR ¶1.a. was for approximately \$158. The debt alleged at SOR ¶ 1.d. was for approximately \$291, and the debt alleged at SOR ¶ 1.e. was for \$160.

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 in 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 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.” 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 notes several conditions that could raise security concerns. Under AG ¶ 19(a), an “inability or unwillingness to satisfy debts” is potentially disqualifying. Similarly under AG ¶ 19(c), “a history of not meeting financial obligations” may raise security concerns. Between 2003 and 2008, Applicant accumulated substantial delinquent debt and did not pay his creditors. This evidence is sufficient to raise these potentially disqualifying conditions.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Several Guideline F mitigating conditions could apply to the security concerns raised by Applicant's financial delinquencies. Unresolved financial delinquency might be mitigated if it 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. (AG ¶ 20(a)). Additionally, unresolved financial delinquency might be mitigated if the conditions that resulted in the financial problem were largely beyond the person's control, such as loss of employment, a business downturn, unexpected medical emergency, or a death, divorce, or separation, and the individual acted responsibly under the circumstances. (AG ¶ 20(b)). Still other mitigating circumstances that might be applicable include evidence 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 (AG ¶ 20(c)) or the individual has initiated a good-faith effort to repay overdue creditors or otherwise resolve debts. (AG ¶ 20(d)).

Applicant has a history of financial delinquencies that dates to at least the period of 2003 to 2008. Moreover, the delinquencies remain unpaid and have occurred under circumstances that are likely to recur. He has not sought consumer credit counseling that could provide him with strategies for resolving his delinquent debts. While he settled a delinquency that was not alleged in the SOR, he did so only in response to threatened court action.

Applicant appears to have resources sufficient to pay or settle his delinquent debts, and he has failed to do so. While he stated that he took unpaid leave to attend to his mother and grandmother when they were seriously ill, he did not specify how much leave he took, when he took it, or how it specifically impacted his financial situation. The record does not reflect that the circumstances that gave rise to his delinquencies were beyond his control. Applicant expressed his intent to pay some of his debts in the future. However, in determining an individual's security worthiness, the Government cannot rely on the possibility that an applicant might resolve his or her outstanding debts at some future date. ISCR Case No. 98-0614 at 5 (App. Bd. Jul. 12, 1999). I conclude that AG ¶¶ 20(a), 20(b), 20(c), and 20(d) do not mitigate the facts of Applicant's case. I also conclude that AG ¶¶ 20(e) and 20(f) are not applicable.²

Whole Person Concept

Under the whole person concept, an administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of an applicant's conduct and all relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a):

² AG ¶ 20(e) reads: "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." AG ¶ 20(f) reads: "the [unexplained] affluence resulted from a legal source of income."

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.

Joan Caton Anthony
Administrative Judge