



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 07-07324
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Richard A. Stevens, Esquire, Department Counsel
For Applicant: *Pro Se*

March 26, 2008

Decision

HOWE, Philip S., Administrative Judge:

Applicant submitted his Security Clearance Application (SF 86), on December 21, 2006. On July 13, 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline F for Applicant. 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's receipt for the SOR is dated July 13, 2007. He answered the SOR in writing on August 6, 2007, and requested his case be decided on the written record in lieu of a hearing.

On December 11, 2007, Department Counsel submitted the Department's written case. A complete copy of the file of relevant material (FORM) was provided to the Applicant. He was given the opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant received the file on December 17, 2007. Applicant did not file a response to the FORM within the 30 day time allowed that would have expired on January 16, 2008. I received the case assignment on March 13, 2008. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

Findings of Fact

In his Answer to the SOR, dated June 25, 2007, Applicant admitted the factual allegations in ¶¶ 1.a, 1.b, 1.c, and 1.d of the SOR, with explanations.

Applicant is 30 years old, married, and works for a defense contractor. (Item 5)

Applicant admits he owes \$109 to a debt collector for a telephone bill. Applicant admits he owes \$9,083 to a bank on a credit card debt. He also admits he owes \$8,718 to another credit card company. Lastly, Applicant admits he owes \$37,874 to another bank on a credit card debt. Applicant sent letters to each collector or creditor in 2006 and 2007, seeking "validation" of these debts, but has not paid any of these delinquent debts. (Items 4, 6, 7, 8)

Applicant's Answer refers to a cost of living increase, his real estate taxes increasing, and his home remodeling business failing in 2005. He provides no explanation of these statements, or supporting documentation to show the context within which he did not repay the delinquent debts listed in the SOR. (Item 4)

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 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.

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 as to 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 *a/so* 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. Applicant accumulated substantial delinquent debt. He has not paid them, and

offers no reasonable, good-faith explanation as to why he has not paid these debts listed in the SOR. Merely sending response letters to creditors without negotiating a settlement, arranging installment payments, or paying the debts in full, shows an unwillingness to pay his debts. The evidence is sufficient to raise these potentially disqualifying conditions, requiring a closer examination.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Under AG ¶ 20(b), it may be mitigating where “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.” Applicant hints at a business downturn in his Answer, but does not explain what he means. Nor does he explain what “cost of living increases” he blames for his inability to repay these debts. Neither does he explain how the debts arose from his business, or if they came from his personal spending habits. The burden of proof is on him to show that the mitigating conditions should apply to him. He failed in this burden. I do not find this potentially mitigating condition is a factor for consideration in this case. There are no other mitigating conditions which could apply under these facts.

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) 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. It is unclear from Applicant’s answer when and how his financial problems arose, and what were the basis for these debts which are now delinquent. (See AG ¶ 2(a)(4).) Applicant does not explain in any detail how his debts occurred, what efforts he made to repay them, or avoid such problems in the future. (See AG ¶ 2(a)(2).) Applicant provided no information concerning efforts to repay the debts or behavioral changes to remedy the situation. Applicant owes about \$56,000 and refuses to make good-faith efforts to repay these debts. He has not repaid even the \$109 phone bill. (See AG ¶ 2(a)(6).) The potential for coercion, exploitation or duress exists because of the size of the debt, which will affect his credit ratings, thereby causing him to take advantage

of any method to extricate himself from this predicament, including coercive methods by other persons. (See AG ¶ 2(a)(8).) Applicant voluntarily entered into these debts, and it is likely he will continue in his refusal to repay them. (See AG ¶ 2(a)(5) and (9).)

Overall, the record evidence leaves me with questions and substantial doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant did not mitigate the security concerns arising from his 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
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	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.

PHILIP S. HOWE
Administrative Judge