



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 07-07693
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Alison O’Connell, Esquire, Department Counsel
For Applicant: *Pro Se*

March 26, 2008

Decision

MATCHINSKI, Elizabeth M., Administrative Judge:

Applicant submitted his security clearance application (SF 86) on October 13, 2006. On October 22, 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing the 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 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 acknowledged receipt of the SOR on November 2, 2007. He answered the SOR in writing on November 16, 2007, and indicated he did not want a hearing. On December 7, 2007, the government notified Applicant of its request for a hearing before an administrative judge pursuant to ¶ E3.1.7 of the Directive. Department Counsel was prepared to proceed on January 4, 2008. On January 10, 2008, I scheduled a hearing for February 14, 2008.

I convened the hearing as scheduled. Before the introduction of any evidence, the government withdrew SOR allegations ¶¶ 1.d and 1.g (duplicate listing of ¶¶ 1.b and 1.c, respectively). The government then moved to amend SOR ¶ 1.f to allege that Applicant was indebted to the listed creditor as the result of a district court judgment entered in May 2001 in the approximate amount of \$5,761 until that judgment was satisfied in July 2005. The motions were granted without any objections from Applicant. Four government exhibits (Ex. 1-4) and two Applicant exhibits (Ex. A-B) were received into evidence without objection and Applicant testified, as reflected in a hearing transcript (Tr.) received by DOHA on February 27, 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 the SOR as amended at hearing, DOHA alleged under Guideline F, financial considerations, that Applicant owes delinquent debt of about \$53,569 (SOR ¶¶ 1.a, 1.b, 1.c, 1.e, 1.h, and 1.i), and that a judgment of \$5,761 had been awarded against him in May 2001 that he paid off in July 2005 (SOR ¶ 1.f, as amended). In his response to the SOR, Applicant admitted the debts with the exception of the \$627 in ¶ 1.i. After consideration of the evidence of record, I make the following findings of fact.

Applicant is a 48-year-old line operator who has worked for a defense contractor most recently since December 2003. He makes fiber optic cable and runs a crew of six (Tr. 36). He had previously worked for the company from February 1988 to September 2002 when he was laid off (Ex. 1, Tr. 35-39). He held a security clearance until November 2007 when it was withdrawn pending final adjudication of his clearance. He seeks a security clearance for access to secure areas of the facility (Tr. 37-38).

On graduating from high school, Applicant enlisted in the United States Air Force (Tr. 35). He served on active duty from November 1979 to September 1987, and then went to work for his present employer (Ex. 1). He held a security clearance while in the military (Tr. 38).

Applicant sent his mother \$20,000 from his savings when she needed knee surgery following a fall at her home that he recalls happened in 1999 or 2000 (Tr. 28, 42-44). She lacked health insurance to cover the cost (Tr. 28, 44), even though she was employed as a janitor in a retirement home (Tr. 43). Applicant was behind in some of his personal credit card obligations when he gave his mother the \$20,000 (Tr. 45). When she needed another surgery about a year or so later, he sent her another \$5,000 (Tr. 44, 46). He borrowed the money from a friend and repaid it in a lump sum in about early 2006 (Tr. 46).

Some of Applicant's consumer credit accounts began to fall delinquent in about 2000, even though he was employed full time. In about December 2000, a credit card lender filed for a judgment to collect a \$4,813 charge-off balance. In May 2001, the lender obtained a \$5,761 default judgment against Applicant (SOR ¶ 1.f). Applicant was

permitted to make monthly payments of \$100 on the debt at his request (Ex. 2, Tr. 55-56).

As of January 2001, Applicant owed a charged off balance of \$12,919 on a credit card account that was \$2,345 past due (SOR ¶ 1.c). As of October 2002, the debt had risen to \$14,866 and was in collection (Ex. 4). Another credit card lender reported a \$4,096 charged off balance as of January 2001 (SOR ¶ 1.e). In June 2002, it was placed for collection with its current assignee (Ex. 4).

In about August 1999, Applicant took out an unsecured loan of \$5,318. It was refinanced in July 2001 with a balance of \$5,477. In about May 2002, the creditor charged off a balance of \$6,568 (SOR ¶ 1.b) (Ex. 4).

After a job layoff in July 2002, Applicant was unemployed until his employer recalled him in December 2003 (Ex. 1). He collected unemployment compensation of about \$300 every two weeks, which went to pay for rent, telephone, and food (Tr. 57-58). Had he been working, his earnings would have been about \$500 to \$600 per week (Tr. 57-58). Struggling financially ("I was broke. I had no money at all." Tr. 68), Applicant stopped paying on his court judgment (SOR ¶ 1.f) in April 2003. He was ordered to pay \$2,500 immediately and then \$100 monthly thereafter. Applicant cashed in his pension of about \$25,000 (Tr. 55-56), which went to paying the \$2,500 (Tr. 56) and living expenses (Tr. 67-68).

In about January 2003, Applicant opened a wireless telephone account in his name for a 17-year-old goddaughter as a birthday present. The girl's mother had promised to pay the \$29 monthly fee (Ex. 4, Tr. 52). The girl incurred substantial charges and her mother didn't pay the bills (Tr. 53-54). Applicant confronted her about the nonpayment but she still refused to pay (Tr. 52-53). A \$627 debt balance was eventually placed for collection (SOR ¶ 1.i) (Ex. 4). In about 2002 or 2003, Applicant lent \$3,000 to a friend who did not repay him (Tr. 78-79).

On his return to work in December 2003, Applicant made no effort to pay his long delinquent debts as he had fallen behind in other bills during his 18 months of unemployment (Tr. 29). He stopped making his \$100 monthly payments on the judgment debt in about August 2004, and he was ordered to appear at a contempt hearing in July 2005 (Tr. 56). Applicant paid a settlement amount in excess of \$1,000 in July 2005 to fulfill his obligation to the creditor. He used some of his pension monies to pay the debt (Tr. 56-57).

In or before June 2004, Applicant opened a telephone services account in his name for a girlfriend who had bad credit ("You do stupid things when you're in love." Tr. 54). In January 2005, the creditor placed a \$211 debt balance in collection (SOR ¶ 1.a) (Ex. 4).

On October 13, 2006, Applicant completed a Questionnaire for Sensitive Positions (SF 86) in application for a security clearance. He responded affirmatively to

questions 28A. "LAST 7 YRS, OVER 180 DAYS DELINQUENT ON ANY DEBTS?" and 28B. "CURRENTLY OVER 90 DAYS DELINQUENT ON ANY DEBTS?" and listed an unpaid credit card balance of \$6,568.24 since January 2001 (SOR ¶ 1.b). He also reported under question 29 concerning any civil actions in the past seven years that he had been under court order to repay the debt in SOR ¶ 1.f at \$100 monthly (Ex. 1).

As of October 25, 2006, the credit bureaus reported Applicant owed several delinquent balances in collection: \$211 on SOR ¶ 1.a, \$19,415 on SOR ¶ 1.c, \$9,726 on SOR ¶ 1.e, \$16,109 (original installment account debt \$6,922) on SOR ¶ 1.h,¹ and \$627 on SOR ¶ 1.i. The delinquent debt Applicant had reported on his SF 86 was listed as charged off with a balance owed of \$6,568 (SOR ¶ 1.b). Applicant was reportedly paying a revolving charge with a credit union on time and it had a balance of \$2,279. (Ex. 4) In early 2007, he began contributing 10% of his pay to his pension at work (Tr. 67-68).

On July 18, 2007, DOHA asked Applicant to provide documentation of any repayment efforts, to complete a personal financial statement, and to furnish copies of his last two pay stubs. He responded on September 4, 2007, submitting a personal financial statement reflecting a net remainder of \$976.26 monthly after payment of expenses and \$150 toward a \$1,629.55 balance on a credit card account with a credit union (Ex. 2). Applicant's reported income included daily overtime earnings (Tr. 64-65). He provided no indication of any efforts to resolve his delinquent debts (Ex. 2).

In September or October 2007, Applicant lent \$5,000 to a teenage goddaughter at her request so that she could buy a car. He borrowed the \$5,000 from a friend who wants it repaid in a lump sum within two years (Tr. 48-49, 70-72, 75-82). The goddaughter has been repaying Applicant at \$100 per month (Tr. 80-81), but as of mid-February 2008, Applicant has not repaid the \$5,000 he borrowed (Tr. 48). The girl's mother is taking care of Applicant's cellular phone charges for him "to get the payment down" in return for the favor (Tr. 74-75).

Equifax Information Services reported on September 27, 2007, that Applicant owed collection debts of \$7,481 (SOR ¶ 1.b) and \$211 (SOR ¶ 1.a) and \$1,395 on a credit card account that was current (Ex. 3). Applicant obtained a copy of his credit report and he began contacting his creditors in October 2007. On October 17, 2007, the collection agency servicing the debt in SOR ¶ 1.b offered to settle the \$7,593.17 balance on receipt of a lump sum payment of \$4,555.90 by November 16, 2007 (Ex. B). On October 22, 2007, Applicant paid another collection agency \$627.43 to satisfy the debt in SOR ¶ 1.i (Ex. A). In December 2007, the assignee attempting to collect the \$19,415 debt in SOR ¶ 1.c offered to settle for about \$7,000 (Tr. 60).

¹A collection agency took on the debt in June 2006 (Ex. 4). Applicant admitted the debt when he answered the SOR, but testified at his hearing that he did not recognize the debt and thought he had only one account (SOR ¶ 1.f) with the original creditor (Tr. 49). This debt was not reported by Equifax in a subsequent credit check in September 2007 (Ex. 3), but it appears on the consolidated credit report of October 2006 (Ex. 4).

As of mid-February 2008, Applicant was still working on saving the money to settle the debt in SOR ¶ 1.b (Tr. 31). Due to a 3.1% increase in his pay (Tr. 77), Applicant had accumulated \$4,400 in his checking account. He had set \$3,000 of it aside for the debt in SOR ¶ 1.b and the rest was intended for bills (Tr. 69).

Applicant plans to repay his debts as quickly as he can (tr. 34). As of February 2008, he was working eight to 12 hours of overtime per week. Over the past three years, his overtime hours have averaged out to two days per week (Tr. 39-40). Applicant estimates about \$176 remaining each month due to less overtime than in September 2007 (Tr. 65-67). Applicant will provide financial assistance to this family members (primarily his mother) in the future if necessary. He might put \$100 in his mother's purse when he goes to see her but does not send her any money on a regular basis (Tr. 47). Over the years he has been "burned" at least once a year by friends who have not repaid funds borrowed from him. He does not intend to lend money to friends in the future (Tr. 78-79). Applicant has not opened any new credit card accounts in the past few years (Ex. 3, Ex. 4, Tr. 73).

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, these guidelines are applied 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 *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.

Applicant has a history of financial delinquency since about 2000. While a debt that went to court judgment (SOR ¶ 1.i) was eventually satisfied with pension monies, about \$52,000 in delinquent debt was still outstanding when he applied for his clearance in October 2006. As his indebtedness continued to mount (*e.g.*, the debt balance of SOR ¶ 1.b alone went from \$6,568 to \$7,481 by September 2007), he borrowed \$5,000 from a friend that he has not repaid. Significant security concerns are raised by “inability or unwillingness to satisfy debts” (AG ¶ 19(a)) and by “a history of not meeting financial obligations” (AG ¶ 19(c)).

Applicant attributes his financial problems to him giving his mother \$25,000 “like between 2000—1999 to 2001, 2002” when she needed two surgeries and had no insurance coverage, and to him being unemployed for 18 months after a job layoff. Unforeseen medical emergency and unemployment are circumstances that implicate AG ¶ 20(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”). Applicant admits he was behind in at least some of his obligations before the situation with his mother arose, and he offered no credible explanation for his failure to remain current when he had about \$20,000 in savings. Yet, his gift of monies to his mother was reasonable under the circumstances, and there is no evidence that Applicant knew he was going to be laid off when he depleted his savings account to help his mother.

After he returned to work in December 2003, Applicant satisfied the court judgment (SOR ¶ 1.f) in July 2005 and a telephone debt (SOR ¶ 1.i) in October 2007. Repayment of a court judgment in response to a contempt citation does not qualify for mitigation under AG ¶ 20(d) (“the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts”), but his October 2007 attempts to make payment arrangements with his creditors and his satisfaction of the debt in ¶ 1.i predate his receipt of the SOR. While these efforts were in good faith, they are too recent to enable the affirmative finding that Applicant is likely to resolve his financial issues in the near future. The debt balance is substantial in relation to his income. As of February 2008, he reported about \$176 remaining after payment of his monthly expenses. Even if he were to manage to settle the debts for less than their full amounts, it would take several years before he paid them off.

Applicant has also made poor financial decisions in the past few years that raise doubts for his judgment and reliability. Knowing he had several outstanding delinquent debts and one court judgment to satisfy, Applicant lent money to others when he could not afford to do so. A friend who borrowed \$3,000 from Applicant in 2002 or 2003 left town without repaying him. In about June 2004, Applicant opened a wireless telephone account in his name (SOR ¶ 1.a) for a girlfriend who had bad credit. When she failed to abide by her promise to pay, he “got silly and didn’t make the payments.” (Tr. 51-52) More recently, in September 2007 he borrowed \$5,000 from a friend so that his 17-year-old goddaughter could buy herself a vehicle. Applicant testified with no rebuttal from the government that she is repaying him at \$100 per month plus her mother is covering the cost of his cell phone in return for the favor. However, he has to repay his lender the \$5,000 in a lump sum by September 2009. There is no evidence that he is setting the \$100 aside for that purpose. He testified he has \$4,400 in checking, \$3,000 of which is intended to settle the debt in SOR ¶ 1.b, and the remainder is for bills (Tr. 69). Applicant now promises to refrain from lending money to friends in the future because he has been “burned at least once a year” (Tr. 78), but that is not enough to overcome the substantial financial considerations concerns that exist in this case.

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. Applicant lost his job through no fault of his own when he had no savings to draw on. He is entitled to a reasonable period of time to reestablish himself financially, and there is no evidence that he is behind in his day-to-day obligations. However, during the past four years he has repeatedly put himself and his friends before his obligations to his creditors. Given the extent of his unresolved debt and his track record of questionable financial decisions, I am unable to conclude at this time that it is clearly consistent with the national interest to grant him access.

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:	Withdrawn
Subparagraph 1.e:	Against Applicant
Subparagraph 1.f:	For Applicant
Subparagraph 1.g:	Withdrawn
Subparagraph 1.h:	Against Applicant
Subparagraph 1.i:	For 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.

ELIZABETH M. MATCHINSKI
Administrative Judge