



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 07-09817
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Nichole Noel, Esquire, Department Counsel
For Applicant: *Pro se*

July 30, 2008

Decision

CURRY, Marc E., Administrative Judge:

On February 20, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) 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 answered the SOR on March 24, 2008, and requested a hearing. I received the case assignment on April 25, 2008. DOHA issued a notice of hearing on April 30, 2008, and I convened the hearing as scheduled on May 29, 2008. During the hearing, I received four government exhibits and Applicant's testimony. At the close of the hearing, I left the record open at Applicant's request, to allow him to submit documents. Applicant then submitted three exhibits, within the time allotted, that I admitted as Exhibits A through C. DOHA received the hearing transcript (Tr.) on June

13, 2008. Based upon a review of the record, eligibility for access to classified information is denied.

Findings of Fact

Applicant is a 29-year-old single man with an eight-year-old child. His four-year marriage to the child's mother ended in divorce in 2004, and they share joint custody of the child. He has had physical custody of the child since December 2007 (Tr. 18).

Applicant has a high school degree and is currently attending college, majoring in computer networking systems. He is a warehouse worker for a contractor. His duties include maintaining property and keeping inventory records (Tr. 47).

Applicant has approximately \$13,000 of delinquent debt. He accrued most of it when he was married. His then-wife managed their income, but repeatedly failed to pay their bills (Tr. 21).

The bills include delinquent car notes (SOR subparagraphs 1.a and 1.b), utilities (SOR subparagraphs 1.c through 1.f, 1.h, 1.k, 1.l, and 1.n), medical bills (SOR subparagraphs 1.g, 1.m, 1.p, through 1.r), a payday loan (SOR subparagraph 1.i), a bill for overdue library books (1.j), a rental delinquency (SOR subparagraph 1.o), a delinquent student loan (SOR subparagraph 1.s), and a department store credit card (SOR subparagraph 1.t). Although he admitted the debt listed in SOR subparagraph 1.u, he did not recognize it.

Applicant purchased the car listed in SOR subparagraph 1.b in the late 1990s when he was 19 or 20 years old. It malfunctioned shortly afterwards, and a dispute ensued with the dealer regarding repair payments. Applicant refused to pay for repairs, and the dealer repossessed it (Tr. 25).

Applicant purchased the car listed in SOR subparagraph 1.a approximately five years ago. When the account grew delinquent, he contacted the creditor and promised to pay. He did not follow through with his promise (Tr. 23). Recently, in April 2008, he again contacted the creditor to arrange a payment plan (Exhibit A).

All of the utilities except SOR subparagraphs 1.f, 1.l and 1.n stem from Applicant's failed marriage (Tr. 24). When Applicant and his wife separated in 2001, he moved from their shared apartment, but never transferred responsibility for the utilities.¹ His testimony that he is satisfying them through payment plans was unsupported by documentary evidence. Similarly, his contention that he had arranged to pay the utility listed in SOR subparagraph 1.f was unsupported by documentary evidence.

¹He was concerned primarily for the well-being of his son who remained, at that time, with his estranged wife.

Applicant satisfied the utility listed in SOR subparagraph 1.i (Exhibit B), and the overdue library book fine listed in subparagraph 1.j (Exhibit C). His dispute of SOR subparagraph 1.n is unsupported by documentary evidence.

The medical bills were for routine treatment for Applicant's son. He is attempting to organize payment plans (Tr. 32). He disputes the medical bill listed in SOR subparagraph 1.m. (Tr. 33). Applicant's remaining delinquencies are outstanding.

In 2000, Applicant was unemployed for six months after being laid off (Tr. 45). Between 2002 and 2004, he worked sporadically, struggling to make ends meet through jobs with insufficient income.

Currently, Applicant has \$7,000 invested in a 401(k) plan, and \$125 in a savings account. He recently received a \$100 per month raise. He owns one car, and has fully satisfied its note.

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. 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. 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.

Analysis

Guideline F, Financial Considerations

Under this guideline, “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” (AG ¶ 18). Applicant’s longstanding financial problems trigger the application of AG ¶¶ 19(a), “inability or unwillingness to satisfy debts,” 19(c), “a history of not meeting financial obligations, and 19(e), “consistent spending beyond one’s means, which may be indicated by excessive indebtedness, significant negative cash flow, high debt-to-income ratio, and/or other financial analysis.”

Applicant’s financial delinquencies were partially caused by bad decisions indicative of youthful immaturity. His failed marriage, a six-month period of unemployment, and a two-year period of underemployment also contributed to his delinquencies. None of the mitigating conditions apply, however. Applicant testified that he was negotiating payment plans for some of the delinquencies, and that the remainder were either satisfied or to be satisfied in the near future. The only delinquencies he definitively proved he had satisfied were an overdue library book fee (SOR subparagraph 1.j) and a utility bill (SOR subparagraph 1.l), collectively less than \$75.

Applicant’s finances have improved somewhat in the last four years. He deserves credit for assuming physical custody of his son, and attending college while working full-time. He provided scant documentary evidence to support his assertion that he was gradually satisfying the delinquencies, however. Also, he earlier failed to fulfill a promise to repay one of his automobile loans. Consequently, his assertion that the delinquencies are under control has limited probative value. I conclude Applicant has not mitigated the financial considerations security concern.

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 whole person factors in the financial considerations section of the decision, and that analysis does not support a favorable decision. Clearance is denied.

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
Subparagraphs 1.a - 1.i:	Against Applicant
Subparagraph 1.j:	For Applicant
Subparagraph 1.k:	Against Applicant
Subparagraph 1.l:	For Applicant
Subparagraphs 1.m - 1.u:	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 eligibility for a security clearance. Eligibility for access to classified information is denied.

MARC E. CURRY
Administrative Judge