



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 07-05186
SSN: -----)
)
Applicant for Security Clearance)

Appearances

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

April 15, 2008

Decision

CURRY, Marc E., Administrative Judge:

On November 21, 2007, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) detailing the security concern 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.

DOHA received Applicant's answer requesting a hearing on December 14, 2007. I received the case assignment on January 15, 2008. DOHA issued a notice of hearing on February 20, 2008, and I convened the hearing as scheduled on March 5, 2008. During the hearing, I received four government exhibits, one Applicant exhibit, and Applicant's testimony.

I received the transcript on March 19, 2008. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

Findings of Fact

Applicant is a 52-year-old man who was recently married in August 2007. He has no children. He has a high school education. For the past four years he has worked as an installation technician. He primarily helps build radar systems (Exhibit 2).

As of June 2007, Applicant had more than \$60,000 of delinquent debts. He accrued most of it in 1996 after a business venture, a jewelry store, failed (Tr. 22). Shortly after opening the store, Applicant became quickly overwhelmed with the management of the business and began using credit cards to pay business expenses. The business failed after nine months. Although Applicant had a business partner, he failed to structure the partnership accordingly. Also, all of the credit cards were in his name. Consequently, after the business failed, he had no legal recourse when his partner refused to pay her share of the expenses.

Applicant has approximately \$30,000 in a 401(k) savings plan. Over the years, he has borrowed money from it on two occasions to satisfy approximately \$6,000 of delinquencies unlisted in the SOR (Tr. 33). The loans remain unpaid. He has satisfied the delinquencies listed in SOR subparagraphs 1.a (Exhibit A) and 1.b (Tr. 19). These collectively equal approximately \$500 and do not relate to the failed business.

The remaining delinquencies are unpaid. In December 2007, Applicant began researching debt counseling companies. He chose one in February 2008 (Tr. 38). The choice was delayed because his wife underwent back surgery in December 2007, and did not return to work until the following February.

In January 2008, Applicant sold a rental property in an attempt to generate income to use toward debt reduction (Tr. 32). He was unable, however, to generate a profit from the transaction.

Applicant took vacations each year between 2005 and 2007. On the most recent trip, his honeymoon, he spent approximately \$4,000. He used money from his tax returns to finance the trips. (Tr. 36).

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 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

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). Moreover, “an individual who is financially overextended is at risk of having to engage in illegal acts to generate funds” (*Id.*).

Applicant’s longstanding financial delinquencies 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.”

All of his delinquencies, except two small utility bills listed in SOR subparagraphs 1.a and 1.b, resulted from a 1996 failed business. Since 2005, Applicant has satisfied the utility bills, and approximately \$6,000 of delinquencies not listed in the SOR. In the past three months, he attempted to generate income by selling an investment property, he has researched several debt counseling firms, and has recently chosen one. AG ¶ 20(d), “the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts,” applies.

I have considered the remaining mitigating conditions and conclude none apply. Applicant’s business failed nearly 12 years ago and the majority of his business-related delinquencies still remain outstanding. Although he satisfied \$6,000 of his delinquencies, he did so by borrowing money on two occasions from his 401(k). Both loans are still outstanding. He has retained a debt counselor, but has not yet developed

a payment plan. Also, between 2005 and 2007 he spent thousands of dollars on yearly vacations rather than on reducing his delinquencies. 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.

Evaluating this case in the context of the whole person, I conclude Applicant's financial problems remain a security concern. 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.b:	For Applicant
Subparagraphs 1.c - 1.f:	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