



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 07-05377
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Daniel F. Crowley, Department Counsel
For Applicant: *Pro Se*

September 18, 2008

Decision

TESTAN, Joseph, Administrative Judge:

On October 11, 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to applicant detailing the security concerns under Guidelines E, F and J. 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 in writing on November 5, 2007, and requested an Administrative Determination by an Administrative Judge (AJ). Department Counsel issued a File of Relevant Material (FORM) on January 31, 2008. Applicant did not file a response to the FORM. The case was assigned to me on June 24, 2008. Based upon a review of the case file, pleadings, and exhibits, eligibility for access to classified information is denied.

Findings of Fact

Applicant is a 41 year old employee of a defense contractor.

Applicant is indebted to Capital One Bank in the approximate amount of \$1,482.00 on a delinquent account opened in 1999 and charged off in 2000 (Exhibit 6). In response to interrogatories sent to him by DOHA (Exhibit 7), applicant stated this debt was "not correct."

Applicant is indebted to Unifund in the approximate amount of \$5,966.00. This debt was placed for collection with Unifund by Providian. Applicant opened the Providian account in 1999, and it went delinquent in 2000. During an interview with an OPM investigator in 2007, applicant stated the Providian credit card debt "could have belonged" to him. He further stated that even if were determined to be his debt he is not sure he would pay it. In his response to the SOR, he stated that the "Providian account was an erroneous entry."

Applicant is indebted to NCOINOMED in the approximate amount of \$1,761.00 on an account placed for collection.

Applicant is indebted to Credit Protection in the approximate amount of \$52.00 on a delinquent account referred for collection by Susquehanna Communication in 2001. During his interview with the OPM investigator, applicant stated this was for a cable bill that he did not pay before moving out of the country. In his response to the SOR, he stated this debt was "cleared" prior to leaving the U.S. and the account was closed.

Applicant is indebted to Alltel Pennsylvania in the approximate amount of \$483.00 on an account that was referred to FRST COLL SRV for collection in 2001. During the interview with the OPM investigator, applicant stated this debt was for a phone bill that was not paid prior to he and his family moving out of the country. In his response to the SOR, applicant stated "this bill will have to be reviewed."

Applicant is indebted to Cavalry in the approximate amount of \$11,903.00. This auto debt was referred to Cavalry for collection by Americredit in 2002. According to applicant's statement to the OPM investigator, "this could be the debt remaining after [one of applicant's vehicles] was sold after repossession. Applicant blames the lender for the problem and will not pay the debt.

Applicant is indebted to DEFENSE on a government debt in the approximate amount of \$1,878.00. In his response to the SOR, applicant stated he "is not sure what this account is for."

A Personal Financial Statement from January 2007 indicates applicant had a positive monthly cash flow of approximately \$3,704.00. In his response to the SOR applicant disputed this information. He explained that this figure included his wife's monthly income, but for privacy reasons did not include her debts.

Applicant completed an electronic questionnaire for national security positions (EQNSP) in January 2006. In response to two questions on the EQNSP, applicant denied that (1) in the prior seven years he had been over 180 days delinquent on any debt and (2) he was then over 90 days delinquent on any debts. As documented above, applicant was well over 180 days delinquent on many debts when he completed the EQNSP. In his response to the SOR, applicant stated he did not list his debts on the EQNSP “because at the time [he] purchased his home [in December 2005] [he] was told that most of the debts on [his] credit report had been charged off and [he] assumed [he] did not need to list these debts as they were charged off.” I find that applicant intentionally provided the false information.

Policies

The President has “the authority to . . . control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to occupy a position that will give that person access to such information.” (*Department of the Navy v. Egan*, 484 U.S. 518,527 (1988).) In Executive Order 10865, *Safeguarding Classified Information Within Industry* (February 20, 1960), the President set out guidelines and procedures for safeguarding classified information within the executive branch. The President authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.” (Exec. Ord. 10865, Section 2.)

To be eligible for a security clearance, an applicant must meet the security guidelines contained in the Directive. Enclosure 2 of the Directive sets forth personnel security guidelines, as well as the disqualifying conditions and mitigating conditions under each guideline.

Initially, the Government must present evidence to establish controverted facts in the SOR that disqualify or may disqualify the applicant from being eligible for access to classified information. (Directive, Paragraph E3.1.14.) Thereafter, the applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate the facts. (Directive, Paragraph E3. 1.15.) An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.” (ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002).) “Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security.” (Directive, Paragraph E2.2.2.)

A person granted access to classified information enters into a special relationship with the government. The government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to classified information. The decision to deny an individual a security clearance is not a determination as to the loyalty of the applicant. (Exec. Ord. 10865, Section 7.) It is merely an indication that the applicant has not met the strict guidelines the President has established for issuing a clearance.

Analysis

Guideline F, Financial Considerations

The security concern relating to Financial Considerations is set forth in Paragraph 18 of the new AG, and is as follows:

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 AG note several conditions that could raise security concerns. Under Paragraph a., an "inability or unwillingness to satisfy debts" is potentially disqualifying. Under Paragraph c., "a history of not meeting financial obligations" may raise security concerns. The evidence shows applicant has a long history of an inability or unwillingness to pay his debts. Accordingly, these disqualifying conditions are applicable.

The guidelines also set out mitigating conditions. Paragraph a. may apply where "the behavior 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." Applicant's failure to honor his financial obligations is both recent and frequent. The evidence does not support a finding that his financial irresponsibility will not recur. Accordingly, this mitigation condition is not applicable.

Under Paragraph 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 presented no credible evidence that would justify application of this mitigating condition.

Evidence that "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" is potentially mitigating under Paragraph c. This mitigation condition does not apply.

Paragraph d. applies where the evidence shows "the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts." This mitigating condition does not apply.

Guideline E, Personal Conduct

The security concern relating to the guideline for Personal Conduct is set forth in Paragraph 15 of the AG, and is as follows:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

Paragraph 16 describes conditions that could raise a security concern and may be disqualifying. Under Paragraph 16.a., the “deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities,” may be disqualifying. This disqualifying condition is applicable because applicant intentionally provided false, material information on an EQNSP.

Paragraph 17 sets forth conditions that could mitigate security concerns. I considered each of them and conclude none apply.

Guideline J, Criminal Conduct

The security concern for criminal conduct is set forth in Paragraph 30 of the AG, and is as follows:

Criminal activity creates doubt about a person's judgment, reliability, and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules and regulations.

Paragraph 31 describes conditions that could raise a security concern and may be disqualifying: Under Paragraph 31.a., “a single serious crime or multiple lesser offenses” may be disqualifying. And, under Paragraph 31.c., an “allegation or admission of criminal conduct, regardless of whether the person was formally charged, formally prosecuted or convicted,” may be disqualifying. Applicant’s intentional misrepresentation of material facts on the 2006 EQNSP (a felony under 18 U.S.C. 1001) raise these two disqualifying conditions.

Paragraph 32 of the AG sets forth conditions that could mitigate security concerns. I have considered each of them and conclude none apply.

“Whole Person” Analysis

Under the whole person concept, the AJ must evaluate an applicant’s security eligibility by considering the totality of the applicant’s conduct and all the circumstances. An AJ should consider the nine adjudicative process factors listed at AG Paragraph 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 Paragraph 2c, the ultimate determination of whether to grant a security clearance must be an overall common sense 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 is a mature man who has a history of not meeting his financial obligations. In addition, he lied to the Government in January 2006 when he denied any delinquent debt. Applicant’s inability or unwillingness to honor his financial obligations and to be truthful about them is serious and recent, and preclude findings that applicant’s financial difficulties will not recur and that applicant is unlikely to provide false information to the Government in the future. Based on the foregoing, I conclude applicant failed to mitigate the security concerns arising from Guidelines E, F and J.

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

Paragraph 2, Guideline E: AGAINST APPLICANT

Paragraph 3, Guideline J: 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.

JOSEPH TESTAN
Administrative Judge