



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 07-06553
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Julie R. Edmunds, Esquire, Department Counsel
For Applicant: *Pro Se*

January 23, 2008

Decision

LYNCH, Noreen A., Administrative Judge:

Applicant submitted his Security Clearance Application (SF 86), on August 7, 2006. On July 13, 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guidelines F and E 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 acknowledged receipt of the SOR on July 2, 2007, and elected to have his case decided on the record in lieu of a hearing. Department Counsel submitted the Government’s written case on August 15, 2007. Applicant received a complete file of relevant material (FORM) on August 22, 2007, and was provided the opportunity to file

objections and submit material to refute, extenuate, or mitigate the Government's case.¹ Applicant submitted additional information on September 11, 2007. The case was assigned to me on January 10, 2007.² Based upon a review of the case file, eligibility for access to classified information is denied.

Findings of Fact

In his Answer to the SOR, which was undated, Applicant denied the factual allegations in ¶¶ 1.a-1.j, of the SOR, with explanations. He also denied the factual allegation in ¶ 2.a of the SOR.³ He provided additional information to support his request for eligibility for a security clearance.⁴

Applicant is a 30-year-old employee of a defense contractor. He attended college in 2005 and received a technical certification. He is married with three young children. He has worked for his current employer since June 2006.⁵

In 1996, Applicant opened several credit accounts. He worked as a sheet metal worker at the time. He purchased a home, a new truck, and acquired some loans. His income for that year was \$5,000. After a year, Applicant was laid off from his job and collected unemployment. He obtained loans to pay his bills. Applicant sold his truck to pay the truck loan. He continued to make house payments and payments for utilities. His other obligations went unpaid.⁶

Although Applicant remained employed as a sheet metal worker from 1997 until September 2000, his salary slowly progressed yearly from approximately \$9,000 to \$15,203. In 2001, his salary dropped to \$9,844. During this time period Applicant's work was seasonal.⁷

Applicant obtained more loans to cover his bills between steady employment. However, he could not make payments on the loans and they became delinquent. He could not afford to file for bankruptcy. He stopped using his credit cards in approximately 2000. His credit rating was unsatisfactory at the time. He chose not to pay anything on the delinquent accounts so that he could keep his house and pay the utilities. He reasoned that the loan companies had insurance on the loans and charged

¹The Government submitted seven items in support of its contentions.

²The case was originally assigned to another judge but was reassigned due to caseload considerations.

³Item 3 (Applicant's undated answer to SOR).

⁴Applicant's Response to FORM.

⁵Item 4 (Security Clearance Questionnaire, dated August 7, 2006).

⁶Item 6 (Applicant's Response to DOHA Interrogatories, dated June 6, 2007).

⁷Attachment - Social Security Statements- with Applicant's Response to FORM.

the accounts off. Applicant believes he does not owe any of the delinquent accounts. He admits this was not a responsible way to handle this financial matter. Moreover, because the accounts are over seven years old and do not appear on his recent credit report, he firmly believes he does not have to pay them. His concern is saving money and paying cash for things to avoid the use of credit cards. He currently has two accounts that are in good standing.⁸

The SOR alleges eight delinquent debts and a tax lien from 1999. The SOR affirms that the tax lien has been fully satisfied in the amount of \$420 and Applicant asserts that this was for his grandfather who had the same name. The total amount of debt is approximately \$20,000.⁹ Applicant asserts that the medical account in allegation ¶ 1.a for \$57 should have been paid by his employer but he also stated that he could pay it but has not. For several allegations, including allegations ¶¶ 1.b, 1.c, 1.d, and 1.f, Applicant denied owing the accounts because they are more than seven years old. They are collection accounts and have been charged off. They total approximately \$9,400. The SOR allegation in ¶ 1.e for a medical bill of \$210 was paid.¹⁰ Allegation ¶ 1.g for a collection agency appears to be the same as allegation 1.b. Applicant states he has never done business with the collection agency named in ¶ 1.g, or the creditor listed in ¶ 1.h.

Applicant's income steadily increased from 2002 until the present. The salary range is \$22,000 to \$64,000 for 2006. Applicant worked two jobs in order to earn the higher income. His current monthly gross income is \$5,500. After monthly deductions of \$900, he has a net remainder of \$2,651. He lists total assets as approximately \$67,000.¹¹

Applicant disputed several collection accounts and is satisfied that since they do not appear on his 2007 credit report, he does not owe them. He has not paid them because they are not collectible and are charged off. While it may be true that a state Statue of Limitations (SOL) may render an account more than seven years old ineligible for litigation purposes, it does not mean the debt is no longer owed. The SOL refers to the creditor's right to sue in order to collect the money. The debt is not erased.

Applicant has not received any financial counseling. He did not contact his creditors to arrange any settlements or even small payments on any of the delinquent accounts. He is now cognizant of credit card use and pays cash for goods. His credit rating has improved with the deletion of some of the older accounts. He is current with his mortgage and other bills.

⁸Item 3 (Applicant's Answer to SOR, undated).

⁹Item 5 (Credit Bureau Report for Applicant, dated August 24, 2006).

¹⁰Item 7 (Credit Bureau Report for Applicant, dated June 28, 2007).

¹¹Item 6 (Personal Financial Statement, dated June 6, 2007).

On his August 7, 2006, security clearance questionnaire, Applicant answered “no” to Section 28. Your Financial Delinquencies. The response indicated he was not more than 180 days delinquent on any debt. He stated he did not respond affirmatively because the accounts were not on his credit report and that he answered to the best of his knowledge.

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, 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.

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 delinquent debt and was unable to pay some obligations for a period of time. His credit reports confirm that he has not paid the charged off collection accounts. He does not intend to pay the debts due to the age of the accounts. The activity for the delinquent debts ranges from 2000 until 2005. 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(a), the disqualifying condition may be mitigated 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 financial worries arose between about 2000 and 2001. He accumulated some delinquent debt due to his low salary and some seasonal employment. While the unemployment may have precipitated the debt, the inquiry does not end at that point. The Applicant’s problems have been ongoing and he has not resolved the debts. His inaction after being employed raise concerns about his current reliability, trustworthiness, or good judgment. This potentially mitigating condition does not apply.

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.” As noted above, some of

the financial problems arose from his seasonal employment and lower income. He did not act responsibly in identifying and resolving these debts. I find this potentially mitigating condition is not a factor for consideration in this case.

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 AG ¶ 20(c). Similarly, AG ¶ 20(d) applies where the evidence shows “the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.” Applicant has not received counseling and has not resolved the delinquent debts, either by payment or settlement. He is now financially sound and prepared for future contingencies. I conclude these potentially mitigating conditions do not apply.

AG ¶ 20(e) applies where the evidence shows “the individual has a reasonable basis to dispute the legitimacy of the past due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.” In this case his credit bureau report confirms that he disputed some accounts and that one account was a duplicate. I conclude this potentially mitigating condition applies in part.

Guideline E, Personal Conduct

The security concern relating to the guideline for Personal Conduct is set out in AG ¶ 15:

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 cooperate with the security clearance process.

The guideline notes several conditions that could raise security concerns. Under AG ¶ 16(a), “deliberate omission, concealment, or falsification of relevant facts from any personnel 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” is potentially disqualifying.

In this case, Applicant believed he did not owe any money on his delinquent accounts because they were old and falling off his credit report. He did not consider them delinquent at that point in time but rather closed or charged off accounts. He did not intentionally falsify his security clearance application.

Under 16(a), the government established that he omitted a material fact from his answer to Section 28. He denied that he deliberately or knowingly falsified an answer to his security clearance questionnaire and that he answered to the best of his knowledge. When a falsification allegation is controverted, the government has the burden of

proving it. Proof of an omission, standing alone, does not establish or prove an Applicant's intent or state of mind when the omission occurred. An administrative judge must consider the record evidence as a whole to determine whether there is direct or circumstantial evidence regarding an Applicant's state of mind at the time the omission occurred. The government has not established that Applicant deliberately falsified his answer to Section 28.

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 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. When these problems first began, Applicant was a young man. He accumulated debt due to circumstances largely beyond his control, including sporadic employment and low income. However, he did not act responsibly under the circumstances. He is married and has three children. As a result, he has focused his attention on providing a stable domestic environment for his family. He did stop using credit cards and now pays cash for his goods. However, he has not taken affirmative action to pay or resolve most of the delinquent debts raising concerns about his good judgment. True, the Statute of Limitations has expired, making some debts uncollectible. (See AG ¶ 2(a)(8).) Thus, this debt cannot be a source of improper pressure or duress. Of course, the issue is not simply whether all his debts are paid—it is whether his financial circumstances raise concerns about his fitness to hold a security clearance. Applicant has not resolved most of his delinquent debts and does not intend to do so. He has not met his burden of proof in this case to overcome the government's case.

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated 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:	For Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	For Applicant
Subparagraph 1.f:	Against Applicant
Subparagraph 1.g:	Against Applicant
Subparagraph 1.h:	Against Applicant
Subparagraph 1.i:	For Applicant
Subparagraph 1.j:	Against Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraph 2.a:	For 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.

NOREEN A. LYNCH
Administrative Judge