



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ISCR Case No. 07-07253
SSN:)
)
Applicant for Security Clearance)

Appearances

For Government: Candace Le'i, Esquire, Department Counsel

For Applicant: ***** , Personal Representative

April 25, 2008

DECISION

ROSS, Wilford H., Administrative Judge:

Applicant submitted his Electronic Questionnaire for Investigations Processing (e-QIP), on September 19, 2005 (Government Exhibit 1). On September 25, 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline F concerning the 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 President Bush on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant submitted an Answer to the SOR on October 17, 2007, and requested a hearing before an Administrative Judge. Department Counsel was prepared to proceed on November 27, 2007. I received the case assignment on December 3, 2007. DOHA issued a notice of hearing on January 15, 2008, and I convened the hearing as scheduled on February 21, 2008. The Government offered Government Exhibits 1

through 7, which were received without objection. Applicant testified on his own behalf, called one additional witness, and submitted Applicant's Exhibits A through C, without objection. I granted Applicant's request to keep the record open until February 29, 2008, to submit additional matters. On February 27, 2008, he submitted Applicant's Exhibit D, without objection. DOHA received the transcript of the hearing on February 29, 2008. The record closed on February 29, 2008. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

Findings of Fact

The Applicant is 56, married and has an advanced degree. He is employed by a defense contractor as a Linguist and seeks to obtain a security clearance in connection with his employment.

Guideline F, Financial Considerations

The Applicant has two debts that are seriously past due.

1.a. The Applicant was hospitalized in August 2003 due to heart problems related to high blood pressure. He went to two hospitals and some procedures were done. At that time the Applicant was separated from his wife, living in a different state, and unable to practice his profession. He was working as a security guard and not making a lot of money. Accordingly, he could not pay the bills in full as they came due. The Applicant testified that he paid a little on each bill every month, from \$5.00 to \$50.00. He accepts the fact that as of the day of the hearing he still owes money on his medical bills, but he is disputing the amount he is alleged to owe. (Transcript at 84-95.)

The three credit reports in the record indicate that the Applicant owes approximately \$21,000.00 in past due medical debts. (Government Exhibits 2, 3 and 5.) The Applicant also submitted documentation from the current creditor/collection agency, which alleges the same debt. (Government Exhibit 4 at 14-15.) The Applicant disputes this amount. He believes the debt for his hospitalization should be in the neighborhood of \$2,100. He submitted records showing that he contacted the collection agency by mail in August 2007, and telephone in October 2007. (Applicant's Exhibit B.) He testified that he had not had any further contacts and, as of the day of the hearing, he had received no response from them. (Transcript at 111-112.) The Applicant repeatedly stated that he would pay for his just medical bills, but that he did not think he received \$21,000.00 worth of medical care. (Transcript at 117-122.) After the hearing was concluded, the Applicant filed a dispute with the credit reporting services concerning this debt. (Applicant's Exhibit D.)

The Applicant submitted copies of his medical bills to DOHA in his Interrogatories (Government Exhibit 4.) These documents indicate that the Applicant was receiving bills from two hospitals, an ambulance service, and various medical providers. The Applicant submitted documentation from one hospital that his Financial Hardship

Application was granted at 100% of his billing. (Government Exhibit 4 at 6, Applicant's Exhibit A.) He also submitted billing statements from a doctor and an ambulance company showing that they were accepting his small monthly payments for several years on his accounts through August 2007. From the available records, the Applicant has paid each of these creditors about half of their bill. (Government Exhibit 4 at 23-31.) These two debts are the only ones that were being paid after 2005. From July 2005 through September 2007, the Applicant was serving overseas with the United States Armed Forces in support of the Global War on Terror. His wife paid these bills during his absence. (Transcript at 87, 99, 123-124.) At the hearing, neither the Applicant or his wife were able to say when the last payment was made to any of his creditors. (Transcript at 60-61.)

Using the original bills that the Applicant submitted in Government Exhibit 4, a total original amount of at least \$6,764.75 is found owing. This does not include the bill from the hospital which forgave the Applicant's debt. The Applicant's records also show total payments of \$1,405.00. Therefore, by the Applicant's own figures, he still owes at least \$5,359.75 in medical bills. Of that amount, \$1,183.75 is owed to the doctor and ambulance company, who have been accepting the Applicant's payments. This means the Applicant owes at least \$4,176.00 in medical bills that he is not currently paying, and indicates that he will not pay until he receives what he finds to be a correct and current billing.

1.b. The Applicant and his wife used an accountant to prepare their joint tax return. His normal charge for this was \$225.00 a year. They separated in 2000. The accountant prepared tax returns for each of them that year and charged each of them \$465.00. The Applicant paid \$232.00 on this account on May 22, 2001, and protested to the accountant about what he felt was the excessive price. The Applicant's wife also submitted a check for \$232.50. (Applicant's Exhibit C, Transcript at 32-40.) The Applicant feels that he has a legitimate dispute with this accountant and refuses to pay anything more on this bill. (Transcript at 122.) After the hearing was concluded, the Applicant filed a dispute with the credit reporting services concerning this debt. (Applicant's Exhibit D.)

Policies

Security clearance decisions are not made in a vacuum. 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. In addition, the Administrative Judge may also rely on his own common sense, as well as his knowledge of the law, human nature, and the ways of the world, in making a reasoned 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. Security clearance decisions include, by necessity, consideration of the possible risk that 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.

Finally, as emphasized by President Eisenhower in Section 7 of Executive Order 10865, “Any determination under this order . . . shall be a determination 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. Based on the state of this record, I am unable to determine the total past due indebtedness of the Applicant regarding subparagraph 1.a. The Applicant has at least \$4,176.00 in past due medical bills, which have been due and owing for several years. This does not include the two medical debts that the Applicant has been paying over the years. 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 difficulties arose in 2003. However, he still owes a considerable amount of debt as of the date of the hearing, no matter whose figures are used. This mitigating condition is not applicable to this case.

AG ¶ 20(b) states that the disqualifying conditions may be mitigated where *the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment . . . unexpected medical emergency, . . . separation), and the individual acted responsibly under the circumstances*. The Applicant was laid off from his job. He and his wife separated and he had to move to another state, where he was underemployed and hospitalized. For a period of time he made small payments on his medical debts. He disputes the amount he owes for some of the debts. However, he has not acted responsibly or in a timely manner. He has not contacted the collection agency since last year, and it was only after the hearing that he filed a dispute with the credit reporting agencies. Even taking into consideration his service overseas from 2005 through 2007, I cannot find, under these particular circumstances, that the Applicant has acted responsibly.

The Applicant has initiated a good-faith effort to pay off some of his creditors. Consequently, AG ¶ 20(d) is arguably applicable. As stated earlier, based on the state of this record, I cannot determine with any kind of certainty how much the Applicant currently owes in past due medical debts. Given that fact, I cannot find that *there are clear indications that the problem is being resolved or is under control*, as required by AG ¶ 20(c).

AG ¶ 20(e) states that it may be mitigating where *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. The Applicant has filed disputes about both allegations with the credit reporting firms. However, based on the state of the record, I can find that only the one with regards to the accountant is legitimate at this time. Therefore, subparagraph 1.b. is found for the Applicant.

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. The Applicant is a hard-working, professional person who has had some tough times. However, by his own admission, the Applicant is nowhere near being able to pay off even the medical debt he admits he owes in any reasonable period of time.

Of course, the issue is not simply whether all the Applicant's debts are paid - it is whether his financial circumstances raise concerns about his fitness to hold a security clearance. Under AG ¶ 2(a)(3), this conduct is recent. Given the state of the record, I am not convinced that the Applicant has a good grasp of his actual debt situation. Nor has he been diligent in figuring these figures out. Accordingly, I cannot find that there have been permanent behavioral changes under AG ¶ 2(a)(6). Therefore, at the present time, I cannot find that there is little to no potential for pressure, coercion, exploitation, or duress (AG ¶2(a)8)), or that the likelihood of recurrence is close to nil (AG ¶2(a)9)).

Overall, the record evidence leaves me with questions and/or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude the Applicant has not mitigated the security concerns arising from his financial considerations. If the Applicant can plainly and clearly resolve the questions surrounding his total indebtedness, and how he intends to resolve it, he may be eligible for a security clearance in the future. He is not eligible now.

On balance, it is concluded that the Applicant has not successfully overcome the Government's case opposing his request for a DoD security clearance. Accordingly, the

evidence supports a finding against the Applicant as to the factual and conclusionary allegations expressed in Paragraph 1 of the Government's Statement of Reasons.

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 THE APPLICANT
Subparagraph 1.a:	Against the Applicant
Subparagraph 1.b:	For the 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.

WILFORD H. ROSS
Administrative Judge