



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 07-08157
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: D. Michael Lyles, Esquire, Department Counsel
For Applicant: *Pro Se*

July 24, 2008

Decision

MATCHINSKI, Elizabeth M., Administrative Judge:

Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) on July 25, 2006. On January 14, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing the security concerns under Guideline F that provided the basis for its action to deny him a security clearance and refer the matter to an administrative judge. 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 January 25, 2008. He answered the SOR in writing on February 11, 2008, and requested a decision without a hearing. On March 21, 2008, the government submitted a File of Relevant Material (FORM) consisting of eight exhibits (Items 1-8). DOHA forwarded a copy of the FORM to

Applicant and instructed him to respond within 30 days of receipt. No response was received by the May 4, 2008, due date. On June 24, 2008, the case was assigned to me to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for him. Based upon a review of the government's FORM, including Applicant's Answer to the SOR allegations (Item 4), eligibility for access to classified information is denied.

Findings of Fact

DOHA alleges under Guideline F, financial considerations, that Applicant owes delinquent credit card debt totaling \$116,865 (SOR ¶¶ 1.a through 1.f). Applicant admitted the debts in his Answer (Item 4). After considering the evidence of record, I make the following findings of fact.

Applicant is a 46-year-old client-server analyst who has worked for a defense contractor on a U.S. military installation, most recently since June 2006. He had previously worked for the company as a computer technical support analyst associate for about three months, from January to March 2006. The available record does not show that he has ever held a security clearance even while serving on active duty in the U.S. Air Force from June 1980 to April 1983, in the National Guard from June 1985 to October 1986, and in the U.S. Navy Reserve from February 1987 to February 1992 (Item 1).

Applicant worked as a customer engineer for a computer hardware company from June 1996 to June 2003. He was then unemployed for about seven months before going to work as a field service representative for a commercial company in February 2004. According to his e-QIP, he came to the military base in September 2005, as a help desk analyst. In January 2006, he started working for his current employer, but found himself again unemployed in March 2006. In June 2006, he returned to work for the company, this time as a client-server analyst (Item 1).

Applicant completed his e-QIP in application for a security clearance on July 25, 2006. He responded "Yes" to question 28.a, "In the last 7 years, have you been over 180 days delinquent on any debt(s)?" and to question 28.b, "Are you currently over 90 days delinquent on any debt(s)?" He disclosed that he was past due on several credit card accounts because of major surgery in fall 2004 which depleted his savings, and a job layoff in September 2005.¹ Applicant listed five delinquent credit card accounts

¹Applicant indicated in the employment section of his e-QIP (Item 1) two breaks in his employment record, from June 2003 to February 2004 and from March 2006 to June 2006, neither of which coincide with a claimed job layoff in September 2005.

(SOR ¶¶ 1.b²–1.f), which had an aggregate balance of \$98,934.92. He expressed his intention to make repayment arrangements (Item 1).

On February 26, 2007, Applicant was interviewed by a government investigator about his financial issues and the reasons for the debt. Applicant explained that he was laid off from June 2003 until February 2004. While he began working for a commercial company, he broke his hip that fall and was unable to work and without benefits for three months following surgery.³ He depleted his savings and 401(k) accounts, and relied on consumer credit to pay his living expenses. He kept his monthly obligations current with the exception of some credit card accounts (SOR ¶¶ 1.a–same as ¶ 1.b, 1.c, 1.d, 1.e, and 1.f), which he acknowledged had not been satisfied. He indicated that he had contacted the creditor in SOR ¶ 1.f in 2005, and was given a grace period of four months. It was referred for collection in January 2006. He admitted he had not contacted the other creditors. Applicant expressed his intent to contact all his creditors by the end of 2007 to arrange for repayment. Based on income, expense, and debt payment figures he provided, Applicant reported a net monthly remainder of \$454 (Item 8).

A history of his delinquent accounts is reflected in the following table (Items 1, 5, 6, 7).

Debt	Delinquency history	Status as of Jan 08
¶ 1.a \$12,869 charge off	Revolving charge opened Aug 95, \$12,869 past due balance charged off, debt transferred Sep 05 (see ¶ 1.b)	No payments since Aug 05
¶ 1.b \$14,159 collection debt	\$12,869 debt balance as of Sep 05, referred for collection, \$14,159 balance as of Dec 07	(See SOR ¶ 1.a)

²SOR ¶¶ 1.a and ¶ 1.b appear to be the same debt. Applicant’s January 2008 credit report (Item 5) indicates that an account opened with the creditor in ¶ 1.a was transferred or sold. The account number and the high credit of \$12,869 which appear under the name of the creditor in SOR ¶ 1.a on his June 2007 credit report (Item 6) correspond to the account number and high credit for the debt in SOR ¶ 1.b on the January 2008 credit report.

³His e-QIP shows no break in employment at that time. Presumably, he was out of work on some type of unpaid sick or disability leave.

Debt	Delinquency history	Status as of Jan 08
¶ 1.c \$30,180 charge off	Revolving charge opened Jan 99, last activity Oct 05, \$26,700 credit limit, balance \$30,180 as of Dec 07	No payments since Aug 05
¶ 1.d \$20,330 charge off	Revolving charge opened Nov 2001, \$18,000 high credit, transferred Oct 05, \$19,742.07 balance as of Jun 06	No payments since Aug 05, admits \$20,330 owed
¶ 1.e \$35,275 collection debt	Revolving charge with \$32,316 high credit, for collection Nov 05, \$35,275 balance as of Nov 07	No payments since Aug 2005
¶ 1.f \$4,052 charge off	Charge account opened Feb 04, \$4,052 charged off Dec 05, for collection Jan 06	No payments since Feb 06

In response to DOHA financial interrogatories, Applicant admitted on August 28, 2007, that he had not made any payments on the debts since August 2005—in the case of SOR ¶ 1.f, February 2006—as he had not been in a financial position to address the debts, in part due to uncertainty about his employment status. He added he was “trying to stay current on his other financial obligations” and reiterated his intent to arrange repayment terms for his delinquent accounts:

When I spoke with the investigator, I told him that I planned to make arrangements to begin satisfying the debts within 12 months. That is still my desire and intention. I am current on my other financial obligations. These debts are past due because of an extended employment gap as well as major surgery which exhausted my savings.

(Item 7). A check of Applicant’s credit on January 2, 2008, revealed no progress in resolving his delinquent accounts. He was making payments on several other credit card accounts rated as current. Their outstanding balances totaled \$19,104 as of December 2007. Most of the accounts were close to the credit limit. One account with a retail wholesale club was over its limit by \$11. Applicant was making his \$614 monthly mortgage payment on time (Item 5).

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(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." 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 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.

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 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.

Applicant incurred about \$94,000 in delinquent credit card debt that was charged off and/or placed for collection during the last quarter of 2005. Significant security concerns are raised by "inability or unwillingness to satisfy debts" (AG ¶ 19(a)) and by "a history of not meeting financial obligations" (AG ¶ 19(c)).

Due to accruing interest on the accounts in collection, his delinquent debt is now about \$104,000. AG ¶ 20(a) ("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") clearly does not apply. Applicant's job layoff from June 2003 to February 2004 and his unexpected surgery in fall 2004 implicate AG ¶ 20(b) ("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"). Yet ¶ 20(b) does not adequately allay the judgment concerns in this case. Based on figures similar to those he reported in February 2007, his monthly expenses would have been around \$2,000 a month. Assuming he relied on consumer credit exclusively to pay those costs for the seven months in 2003/04 and again for three months in late 2004, he owes much more in credit card debt than what would have been required to maintain his household. Applicant finds himself under a significant debt burden in large part because of his failure to manage consumer credit responsibly.

Applicant has remained current in his living expenses and on some credit card accounts. This is not enough to demonstrate a favorable change in his financial habits, given his failure to take any action since February 2006 to address his delinquent credit card debt. According to his e-QIP, he was again unemployed from March until June 2006. His failure to make any payments toward his delinquent debt during the three months is understandable, but he has since been consistently employed by the defense contractor. As of his interview with a government investigator in February 2007, it should have been clear to him that the government was concerned about his finances. Applicant expressed his intent to contact his creditors by the end of the year. By late August 2007, he had not done anything to arrange for repayment, due to uncertainty about his employment status but also because he was not in a position to do so. A

promise to arrange for repayment in the future, however sincere, is not enough for mitigation under AG ¶ 20(c) (“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”) or AG ¶ 20(d) (“the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts”). The prospects are not good for Applicant resolving his sizeable delinquent debt in the foreseeable future. As of December 2007, he owed \$19,104 in current credit card balances on which he was making payments. Considerable doubts are raised about his judgment where he continues to incur new credit card debt while older consumer credit accounts go unpaid.

Whole Person Concept

Under the whole person concept, the administrative judge must evaluate an Applicant’s eligibility for a public trust position 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) the 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 public trust position must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole person concept.

I considered the disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. The government must be assured that those persons with classified access can be counted on to exercise good judgment at all times. Applicant remains under a significant debt burden that is not likely to be resolved in the near future. He continues to incur new debt as older obligations are ignored. Applicant’s candor about his debts is in his favor, but given his demonstrated financial irresponsibility, I am unable to conclude that it is clearly consistent with the national interest to grant him access.

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:	(Same debt as ¶ 1.a)
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	Against Applicant
Subparagraph 1.f:	Against Applicant

Conclusion

In light of 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.

ELIZABETH M. MATCHINSKI
Administrative Judge