



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ISCR Case No. 06-26748
SSN:)
)
Applicant for Security Clearance)

Appearances

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

August 14, 2008

Decision

HOGAN, Erin C., Administrative Judge:

Applicant submitted his Electronic Questionnaire for Investigations Processing (e-QIP), on December 5, 2005. On March 15, 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline F, Financial Considerations, 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.

On April 2, 2007, Applicant answered the SOR and requested a hearing before an administrative judge. Department Counsel was ready to be proceed on April 9, 2008. The case was assigned to another administrative judge on May 19, 2008, and transferred to me on May 21, 2008. On June 5, 2008, a Notice of Hearing was issued, scheduling the hearing for July 15, 2008. The case was heard on that date. The Government offered four exhibits which were admitted as Government Exhibits (Gov) 1 – 4 without objection. The Applicant offered two exhibits which were admitted as

Applicant Exhibits (AE) A – B without objection. Applicant testified. The record was held open until July 29, 2008, to allow Applicant to submit additional evidence. Applicant timely submitted a ten page document that was admitted as AE C without objection. The transcript was received on July 23, 2008. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

Findings of Fact

In his Answer to the SOR, Applicant admitted to all factual allegations in the SOR.

Applicant is a 41-year-old employee with a Department of Defense contractor seeking a security clearance. He has held his current position since April 2007. He is single and has no children. The highest level of education he has achieved is one year of junior college. (Tr at 5-6; Gov 1.)

On December 5, 2005, Applicant filed an Electronic Questionnaire for Investigations Processing (e-QIP). (Gov 1.) A subsequent background investigation revealed that Applicant had seven delinquent accounts, with a total approximate balance of \$22,991. (Gov 2; Gov 3; Gov 4.)

Applicant's delinquent accounts include: an \$663 medical account placed for collection in June 2004 (SOR ¶ 1.a: Gov 2 at 7; Gov 3 at 1; Gov 4 at 6); a \$2,114 delinquent account placed for collection in June 2006 (SOR ¶ 1.b: Gov 2 at 8; Gov 3 at 1); a \$523 delinquent medical account placed for collection in December 2004 (SOR ¶ 1.c: Gov 3 at 1; Gov 4 at 6); a \$238 delinquent utility account placed for collection in May 2002 (SOR ¶ 1.d: Gov 3 at 1; Gov 4 at 6); a \$14,046 delinquent credit card account placed for collection in July 2004 (SOR ¶ 1.e: Gov 2 at 8; Gov 4 at 3); a \$255 delinquent account placed for collection in May 2001 (SOR ¶ 1.f: Gov 2 at 6; Gov 4 at 6); and a \$5,152 delinquent account placed for collection in June 2002 (SOR ¶ 1.g: Gov 2 at 8; Gov 4 at 4-5).

Much of the debt was incurred when Applicant and his live-in girlfriend broke up in late 2002. When they split up, each agreed to be responsible for certain debts. Applicant's ex-girlfriend did not pay the debts that she agreed to pay. Applicant refused to pay her debt even though the accounts were in his name. He realizes that he made a poor choice and is now attempting to resolve the delinquent accounts. (Tr at 18, 20-21, 36.) He admits that the medical accounts (SOR ¶¶ 1.a, 1.c, and 1.f) are his sole debts. (Tr at 43.)

On October 7, 2007, Applicant enrolled in a 40-month debt repayment program with a debt consolidation company. He agreed to pay \$465 month to the debt consolidation company. The debt consolidation company also advised Applicant on his finances. The payments are deducted automatically from his checking account. He has not missed a payment. (Tr at 17, 19, 22, 29, 44; AE A at 1; AE C at 2-8.)

The debts alleged in SOR ¶¶ 1.a and 1.c have been resolved. (AE A at 5-8.) All of the Applicant's remaining delinquent accounts are included in his repayment plan. The debt consolidation company negotiated the balance owed with the creditor who holds the debt alleged in SOR ¶ 1.e. The balance owed is now \$8,572 as opposed to \$14,046. (Tr at 25-27; AE A at 1; AE C at 10.)

Applicant's current net monthly income is \$3,062. His total monthly expenses are \$2,081. This includes his payment to the debt consolidation company. After expenses, Applicant has \$981 left over in discretionary income. (AE C at 9.) He spends a lot of his spare time renovating his house and renovating his parents' house. He has no open credit card accounts. (Tr at 32, 34, 45.)

Several reference letters were submitted on Applicant's behalf. They include letters from a criminal investigator in the local district attorney's office, the Speaker of the House of Representatives in Applicant's state; and the Sheriff of the county where Applicant resides. These letters attest to Applicant's clean criminal record. (AE B at 1-2, 4.) Applicant's immediate supervisor who is also the Facility Security Officer of the company wrote a letter on his behalf. He states that Applicant is consistent in his work ethic. He describes Applicant as a take-charge person who is able to present creative ideas and communicate the benefits. He recommends Applicant for a security clearance noting that he is a team player whose character and ethics are above reproach. (AE B at 3.)

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.

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 disqualifying conditions that could raise security concerns. I find Financial Considerations Disqualifying Condition (FC DC) ¶ 19(a) (an inability or unwillingness to satisfy debts); and FC DC ¶ 19(c) (a history of not meeting financial obligations); apply to Applicant’s case. Since 2002, Applicant has incurred approximately seven delinquent debts, an approximate total of \$22,991. Most of his financial issues resulted from an unwillingness to pay the debts that he believed were his ex-girlfriend’s debts. He was capable of paying the debts.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Financial Considerations Mitigating Condition (FC MC) ¶ 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) is partially applicable. Applicant initially refused to pay several debts because he thought they were his ex-girlfriend's responsibility. He now admits he used poor judgment by refusing to pay these debts and has taken steps to resolve the accounts. He has consistently made payments to a debt consolidation company over the past nine months. The debts are starting to be resolved. However, five of the seven debts remain unresolved so this mitigating condition is given less weight.

FC MC ¶ 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) does not apply. Most of the debts became delinquent because Applicant refused to pay the debts that he thought were his ex-girlfriend's responsibility even though the accounts were in his name. Applicant was capable of paying these debts so FC MC ¶ 20(b) does not apply.

FC MC ¶ 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) applies. The debt consolidation company that Applicant entered into an agreement with also provided him with some financial counseling. He now follows a budget. He has demonstrated that he is capable of paying the monthly payment to the debt consolidation company and pay his other bills. His financial situation is stable and it is likely Applicant will resolve his delinquent accounts based on his seven month history of timely payments to the debt consolidation company. Two of the accounts have been resolved. He lives within his means.

FC MC ¶ 20(d) (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts) applies. Although Applicant initially refused to pay these debts because he believed they were his ex-girlfriend's debts, he eventually accepted his responsibility to repay the delinquent accounts and entered into a repayment agreement with a debt consolidation company. He has followed the terms of the agreement since November 2007. He has demonstrated that he is financially able to make his payments under the plan and pay his other expenses.

Guideline F is found for 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 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. I considered Applicant's favorable references, and his efforts to resolve his delinquent accounts. While Applicant has not resolved all of his delinquent accounts, he has demonstrated that he has taken efforts to resolve his delinquent accounts and is financially able to do so. Applicant accepts responsibility for his foolish decision not to pay these accounts out of anger at his ex-girlfriend. Applicant has established a track record demonstrating his intent to resolve the issues raised under financial considerations. Applicant mitigated the security concerns arising under 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:

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|---------------------------|---------------|
| Paragraph 1, Guideline F: | FOR APPLICANT |
| Subparagraph 1.a: | For Applicant |
| Subparagraph 1.b: | For Applicant |
| Subparagraph 1.c: | For Applicant |
| Subparagraph 1.d: | For Applicant |
| Subparagraph 1.e: | For Applicant |
| Subparagraph 1.f: | For Applicant |
| Subparagraph 1.g: | For Applicant |

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

ERIN C. HOGAN
Administrative Judge