



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 06-26579
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: James F. Duffy, Esquire, Department Counsel
For Applicant: *Pro Se*

Decision

Braeman, Kathryn M., Administrative Judge:

History of the Case

The Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to the Applicant on June 14, 2007. The SOR detailed reasons why the Government could not make the preliminary positive finding that it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant.¹ The SOR alleged specific concerns over Financial Considerations (Guideline F) in paragraph 1 based on the revised Adjudicative Guidelines² issued on December 29, 2005, and implemented by the Department of Defense, to be effective September 1, 2006. Applicant responded to these SOR allegations in a notarized Answer of July 7, 2007 where he admitted three of the allegations, denied one, and requested a hearing.

¹ This procedure is required by Executive Order 10865, as amended, and Department of Defense Directive 5220.6, dated January 2, 1992 (Directive), as amended and revised.

² A copy of the revised Adjudicative Guidelines was sent with his Statement of Reasons (SOR).

Department Counsel on July 25, 2007, submitted a Ready to Proceed notice. Subsequently the case was assigned to me on July 31, 2007. A Notice of Hearing issued on August 16, 2007, set the matter for September 26, 2007; subsequently, an Amended Notice of September 20, 2007, set the case for September 24, 2007, after Applicant agreed to this change.

At the hearing Department Counsel offered five documents (Exhibits 1-5) that were admitted into evidence without objection. Applicant offered five documents (Exhibits A-E), testified himself, and called his wife as a witness. At his request and as the Department Counsel did not object, we left the record open until October 8, 2007, in order for him to submit supplemental information. (TR 35-36, 83) He timely submitted ten pages of records (Exhibit F); Department Counsel reviewed the documents and stated on October 9, 2007, that he had no objection to them being admitted into evidence. The transcript (TR) was received on October 2, 2007.

Findings of Fact

After a complete and thorough review of the evidence in the record, and upon due consideration of that evidence, I make the following Findings of Fact:

Applicant is 33 years old and has worked as a pipefitter for a defense contractor from July 2001 to present. Applicant completed a Security Clearance Application (SF 86) to obtain a security clearance in June 2005 and signed it in September 2005. (Exhibit 1; TR 28) He understands that he needs a security clearance for a promotion to supervisor, not for his current job. (TR 32)

Applicant was a student at a state university from 1993 to 1995. He received no degree. He married in July 1999 and has two children, ages 3 and 7. (Exhibit 1; TR 26) For the past eighteen months he has been taking leadership classes at a university; if he passes the defense contractor pays the tuition bills. So far he has passed 15 hours of his classes and is working towards a supervision certificate and an associate's degree. He has a certificate for several completed classes in the 2006 to 2007 period. (TR 27-28, 29-30; Exhibit F) Applicant has not served in the U.S. military, but did register with the U.S. Selective Service System. (Exhibit 1)

Finances

Applicant disclosed on his SF 86 that he had his wages garnished in 2002 for unpaid rent after his roommates left the area early. He explained that he could not afford the rent and had to terminate the contract early. He paid this debt in full. He disclosed a 2007 tax lien that was issued in error. He disclosed no unpaid judgments. He reported that he had bills over 180 days delinquent – four student loans of approximately \$5,000 each from 1999, 1998, 2003, and 2002. He consolidated those loans in November 2004 and reported in 2005 that he was current paying off that debt

of approximately \$21,000. He reported no debt(s) over 90 days delinquent. (Exhibit 1) He had these loans from the time he was in school from 1993 to 1995. (TR 26)

In response to a Financial Interrogatory sent to him, Applicant stated in March 2007 that he would pay a \$100 medical bill and a \$175 debt to another creditor on April 1, 2007, but he explained he was unable to make timely payments or set up a payment plan for his student loans. He explained that he was again in school at a community college. (Exhibit 2)

Applicant has made progress in resolving these ongoing, delinquent debts. He paid the \$100 to Creditor #1 in April 2007. (SOR ¶ 1.a) (Answer; Exhibits 2, 5; TR 33-34)

At the hearing he stated that in 2006 he re-financed his home , hoping to settle and pay off his student loans with the additional \$13,500 he received. He had three private loans which were in default and a federal loan that was in forbearance. When he made the payment, his intent was to pay on the loans that were in default as he had been given a settlement figure by a collection agency. However, the money was mistakenly credited instead to his federal loan that was in forbearance as all the loans had the same number. Beginning in January 2006, he was paying \$100 per month to a credit agency on the student loans that were in default. However, in August 2007 they insisted that he had to pay \$300 per month, which he could not afford. He then worked with another credit agency and has made consistent payments to them since June 2007 of \$190 per month. His ultimate goal is to work out the loans in default and reach a settlement. (Exhibits A, B, C, D, E; TR 23-25; 37-43, 46-47, 54-56; 56-58; 60-62) He documented his making \$190 monthly payments on his consolidated student loans. (Exhibit F)

At the time of the hearing, he stated he owned a home on two lots; but he was also behind on his mortgage payments as money is tight given his expenses. He made those payments in September 2007. His wife earns \$1,600 a month and works full time as a surgical technician. She also is in school full time studying to be a registered nurse and has taken student loans in her name to attend the program. They hope when she graduates they will have more financial resources. She had one more semester to complete to graduate with honors in May 2008. (Exhibit F; TR 44-45; 50-53; 69-73) Applicant reported that he earns \$460 per week and provided a detailed breakdown of his monthly expenses. They have especially high child care expenses as his wife is in school and working; and Applicant often also has to work weekends. (Exhibit F; TR 52-53; 59-60)

Applicant's supervisor assessed him as a "take charge kind of guy, who, you can surely depend on in a crunch." He described him as very intelligent, well mannered and a good worker. He explained that Applicant serves as a "make-up foreman" when the supervisor is not at work. He sees that Applicant "strives for excellence in all that he does." He is in the company leadership development program, and he views Applicant as a "future leader." (Exhibit F)

Policies

Enclosure 2 of the Directive sets forth adjudicative guidelines to consider in evaluating an individual's security eligibility which are divided into conditions that could raise a security concern and may be disqualifying and conditions that could mitigate security concerns. In deciding whether to grant or continue an individual's access to classified information, the mere presence or absence of any adjudication policy condition is not decisive.

Based on a consideration of the evidence as a whole in evaluating this case, I weighed the relevant Revised Adjudication Guidelines, and determined the following security concern was relevant to my determination:

Guideline F: Financial Considerations

The security concern caused by financial problems is:

Failure or inability to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, clack 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. Compulsive gambling is a concern as it may lead to financial crimes including espionage. Affluence that cannot be explained by known sources of income is also a security concern. It may indicate proceeds from financially profitable criminal acts.

AG ¶ 18.

The responsibility for producing evidence initially falls on the Government to demonstrate that it is not clearly consistent with the national interest to grant or continue applicant's access to classified information. Then the applicant may present evidence to refute, explain, extenuate, or mitigate in order to overcome the doubts raised by the Government, and to demonstrate persuasively that it is clearly consistent with the national interest to grant or continue the clearance. Under the provisions of Executive Order 10865, as amended, and the Directive, a decision to grant or continue an applicant's security clearance may be made only after an affirmative finding that to do so is clearly consistent with the national interest. In reaching the fair and impartial overall common sense determination, the Administrative Judge may draw only those inferences and conclusions that have a reasonable and logical basis in the evidence of record.

Section 7 of Executive Order 10865 specifically provides industrial security clearance 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." The decision to deny an

individual a security clearance is not necessarily a determination as to the allegiance, loyalty, and patriotism of an applicant.³ It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a security clearance.

Analysis

Financial Considerations

The government provided substantial evidence of Applicant's financial problems reflecting a medical debt and three unresolved student loans totaling approximately \$25,000 which went into default. Consequently, Financial Considerations Disqualifying Condition, AG ¶ 19(a), "inability or unwillingness to satisfy debts," and AG ¶ 19(c), "a history of not meeting financial obligations," apply. His financial problems are sufficiently significant to raise security concerns.

With the government's case initially established, the burden shifted to Applicant to present evidence of refutation, extenuation, or mitigation to overcome the case against him.

Five Financial Considerations Mitigating Conditions under AG ¶¶ 20(a)-(e) are potentially applicable:

- (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;
- (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;
- (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;
- (d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and,
- (e) 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.

³Executive Order No. 10865 § 7.

AG ¶ 20(a) partially applies¹ because his financial problems “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.” He fell behind on his student loans because he was attending school. He was unable to make greater payments because his wife was also attending school, and they have small children at home that require expensive childcare services. In January 2006, he was making payments of \$100 per month on his student loans, and in June 2007 he increased his payments to \$190 per month. His payments are current. His wife will graduate in May 2008, and the family income will significantly increase as she will be able to obtain employment as a nurse. He does not receive full credit under AG ¶ 20(a) because the family will continue to be under financial stress until his wife graduates from college and her income is available to offset their expenses.

AG ¶ 20(b) provides that security concerns may be mitigated when, “the conditions that resulted in the behavior 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 and his wife chose to attend school and have a family in lieu of other choices that might have resulted in more income and less expenses. Applicant described his tight financial circumstances as he and his wife both work full time, and both are in school to try to better themselves. He adequately explained how he “acted responsibly under the circumstances.” He has accumulated some additional debt as he got behind on his mortgage; however he documented how he corrected that problem. Thus, he has a plan in place to resolve three delinquent student loan debts. Further, Applicant demonstrated that he intended to settle his student loans in default when he re-financed his house in order to resolve those financial issues. He paid the medical debt. He receives partial credit under AG ¶ 20(b).

AG ¶ 20(c) applies. Although Applicant did not receive financial counseling, there are clear indications that the problem is being resolved or is under control. One SOR debt is paid. The others are under payment plans, and Applicant has been current on his payments for a sufficient period of time to demonstrate his responsibility and to demonstrate the problem is under control.

AG ¶ 20(d) applies because he “initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.” AG ¶ 20(e) does not apply as Applicant did not “dispute the legitimacy of the past-due debt which is the cause of the problem.”

In sum, Applicant documented his resolution of his medical debt in 2007 and negotiated with the debt collection agency for his three student loans to accept a payment of \$190 per month that he is regularly paying. His extraordinary efforts to try to resolve these date debts is reflected by his decision to refinance his house in 2007 with

¹See *generally* ISCR 04-07360 at 2 (App. Bd. Sept. 26, 2006) (stating partial credit was available under the good faith mitigating condition for debts being resolved through garnishment).

the plan of settling these old student loan debts; but the \$13,000 was mistakenly credited to a different loan. Sallie Mae applied the payment to a different loan with the same account number which was in forbearance, as he is also back in school.

Whole Person Analysis

Both Applicant and his wife are full time workers, who attend school to advance their careers in the future. They demonstrated they will have additional financial resources when his wife completes her degree in May 2008. He is taking courses to lay the ground work that will prepare him for promotion to supervisor with high pay. Applicant's current supervisor attests not only to the quality of his current work, but to his potential for advancement at the company.

Having considered both the record and Applicant in light of the "whole person" concept, I conclude he is a sincere person who made substantial efforts to reform his financial practices. He is on the road to financial recovery. There is little potential for pressure, coercion, exploitation, or duress as he has stable employment. His supervisor assesses him as reliable and trustworthy. Applicant's supervisor summed him up as a "take charge kind of guy, who, you can surely depend on in a crunch."

In conclusion, financial issues do not remain a security concern. After weighing the disqualifying and mitigating conditions, and all the facts and circumstances in the context of the whole person, I conclude he has mitigated the security concerns pertaining to financial considerations. I rule For Applicant in subparagraphs 1.a through 1.d. as he paid or developed and implemented a plan to resolve his student loan debts.

After reviewing the allegations of the SOR in the context of the Adjudicative Guidelines in Enclosure 2 and the factors set forth under the Adjudicative Process section, I make the following formal findings:

Formal Findings

Paragraph 1. Guideline F: FOR APPLICANT

Subparagraphs 1.a through 1.d: For Applicant

Conclusion

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant. Clearance is granted.

Kathryn Moen Braeman
Administrative Judge