



**DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS**



In the matter of:)	
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-----)	ISCR Case No. 12-06046
)	
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Applicant for Security Clearance)	

Appearances

For Government: Pamela C. Benson, Esquire, Department Counsel
For Applicant: *Pro se*

04/26/2013

Decision

HOWE, Philip S., Administrative Judge:

On February 7, 2012, Applicant submitted his Security Clearance Application (SF 86). On October 25, 2012, the Department of Defense (DoD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F (Financial Considerations). 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 adjudicative guidelines (AG) effective within the Department of Defense on September 1, 2006.

Applicant acknowledged receipt of the SOR on November 6, 2012. He answered the SOR in writing on November 12, 2012, and requested a hearing before an administrative judge. Defense Office of Hearings and Appeals (DOHA) received the request on November 19, 2012. Department Counsel was prepared to proceed on December 31, 2012, and I received the case assignment on January 7, 2013. DOHA issued a Notice of Hearing on February 14, 2013, and I convened the hearing as scheduled on March 5, 2013. The Government offered Exhibits 1 through 7, which were

received without objection. Applicant testified and submitted Exhibits A and B, without objection. DOHA received the transcript of the hearing (Tr.) on March 14, 2013. I granted Applicant's request to keep the record open until March 19, 2013, to submit additional matters. On March 19, 2013, he submitted Exhibits C to E, without objection. The record closed on March 19, 2013. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

Findings of Fact

In his Answer to the SOR, Applicant admitted all the factual allegations in the SOR contained in ¶¶ 1.a, through 1.x of the SOR, with explanations. He also provided additional information to support his request for eligibility for a security clearance.

Applicant is 47 years old, married, and has three children between the ages of 18 and 25. He is a vice-president of a family owned electrical contracting company, earning slightly less than \$100,000 annually. Applicant is in charge of the services division of the company. He is a licensed electrical contractor who has done work for the government previously through his family company. His wife was a real estate agent. When the property market declined in 2007 she sought other employment that Applicant claimed paid her 25% of her former income. (Tr. 14, 17, 18, 21; Exhibit 1)

Applicant and his wife purchased a home in 2006. He did not make a down payment on the house. His monthly mortgage payments were \$1,900 until December 2012 when a renegotiation dropped them to \$1,600 monthly starting in March 2013. He owes \$238,000 on the house at present. He purchased it for \$230,000. Applicant pays about \$500 monthly to send his youngest child to a private high school. That child will graduate in May 2013 but will not attend college. Applicant will only have his middle child in college at that time. (Tr. 21, 31, 36, 45; Exhibits 1, C, D)

Applicant claimed not to have any credit cards at the present time. He took a financial counseling course about 15 years ago. Since then he has not had any type of training or education in the investment and spending of his annual income. He does have a Section 401(k) retirement account through his company. (Tr. 14, 38, 40, 41; Exhibit 1)

Applicant attributes much of his financial difficulties to his rare kidney disease that resulted in a transplant about one year ago. Applicant first felt the effects of the kidney problem in 2007. He traveled frequently to the Mayo Clinic in Minnesota for several years after deciding the local medical services in his hometown were not able to diagnose and treat him properly. Applicant takes numerous medicines to prevent rejection of the kidney by his body and to increase his immune system to avoid illness. Until he had the transplant he worked half days and slept frequently each day. He was very tired. He had little energy to spend on everyday tasks. He took about six months to recover from the transplant operation. His personal financial statement contained in the exhibits showed monthly medical expenses of \$900 to \$1,200. His friends had fundraisers for him to help him pay for travel expenses to the Mayo Clinic and monthly

expenses, but he still incurred the delinquent accounts contained in the SOR. (Tr. 15, 30, 34-36; 49; Exhibits 1, 2, A)

The SOR contains 24 allegations of delinquent debts, totaling \$28,387. Of those debts, 23 are owed to medical creditors and total \$5,104. The small amounts on each of the debts indicate they are the copays on the medical insurance Applicant had during his illness. The earliest debt shown on the credit reports is 2007. The remaining allegation is in Subparagraph 1.k and pertains to Applicant's delinquent mortgage payments. The amount listed is \$23,283 as past due. Applicant admitted he had not paid any of the delinquent debts at the time of the hearing. His financial interrogatory signed in October 2012 states he will make payments on the delinquent debts after his wife obtains employment. Applicant declared in that document there was insufficient household income to pay monthly bills, medical expenses, and make payments on the delinquent accounts. He did renegotiate his mortgage payments to lower them starting in March 2013. (Tr. 27-30; Exhibits 2-5, 7)

Applicant stated he was withdrawing \$6,000 from his Section 401(k) account to pay his delinquent accounts. He was waiting for the money at the time of the hearing. (Tr. 16, 43)

Subsequent to the hearing, Applicant submitted a document showing his mortgage renegotiation was effective in March 2013. The arrearages were added to the outstanding mortgage balance, increasing it to \$265,252.87. The maturity date of the mortgage was extended from April 2041 to February 1, 2053. He submitted a copy of the check he sent to the bank for the mortgage payment on February 24, 2013. Applicant also paid seven delinquent medical debts listed in the SOR, although two debts were duplicates. He paid the amounts owed in Subparagraphs 1.e and 1.p (duplicates) in the amount of \$85, Subparagraph 1.h for \$85, Subparagraph 1.q for \$58, Subparagraph 1.t for \$162, Subparagraph 1.u for \$30, and Subparagraph 1.v for \$35. The total of these payments is \$455 out of \$5,104 owed on the medical debts. (Exhibits 2-5, 7, C to E)

Applicant submitted two character letters from Army officers he knows from coaching youth sports and high school. These two officers consider Applicant trustworthy and honest. (Exhibits A, B)

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the 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 (AG ¶ 2(a)). The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense 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, an "applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance 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 at AG ¶ 19 contains nine disqualifying conditions that could raise security concerns. Two conditions are applicable to the facts found in this case:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant accumulated \$5,104 in delinquent debt from 2007 to the present time that remains unpaid for medical expenses. Applicant has one delinquent debt listed in the SOR concerning his past due payments on his mortgage totaling \$23,283. He had not repaid these monies or arranged mechanisms to resolve them at the time of the hearing.

The guideline in AG ¶ 20 contains six conditions that could mitigate security concerns arising from financial difficulties. Two conditions may be applicable:

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

Applicant attributes his financial difficulties to the expenses and time he spent battling his kidney disease. That serious illness resulted in a kidney transplant one year ago in 2012. That medical condition was beyond Applicant's control. At the same time or earlier his wife stopped earning an income as a realtor and took jobs that paid her 75% less than she earned selling real estate. The second part of the mitigating condition requires Applicant to have acted responsibly under the circumstances. His medical debts are such low amounts individually that they must be the medical insurance co-pays to which he did not attend immediately when billed. His mortgage payments became delinquent during his illness. His serious kidney ailment was the prime cause of his financial problems because of the travel and medical expenses involved. Three fundraisers were held by family and friends to obtain money for Applicant to use for his ordinary expenses during the time of his illness. His plan to borrow from his retirement account sufficient money to repay the medical debts shows that with his improved health he is now acting responsibly. Further, he responsibly renegotiated his delinquent mortgage. AG ¶ 20 (b) applies.

Applicant paid six delinquent medical debts totaling \$455 of the \$5,104 unresolved financial obligations, leaving him with \$4,649 remaining to pay. He also did renegotiate his mortgage payments to lower them by \$300 monthly. In other words, he has resolved or made payment arrangements to resolve 80% of his debts. He plans to borrow \$6,000 from his Section 401(k) account to repay the remaining medical accounts. His son will graduate from a private high school in May 2013 providing Applicant an additional \$500 with which to resolve his delinquent accounts. AG ¶ 20 (d) applies because of Applicant's good-faith efforts to repay some of his delinquent debts.

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 an 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.

AG ¶ 2(c) requires each case must be judged on its own merits. 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. Applicant spent several years dealing with a life-threatening kidney disease. He was tired each day as his body reacted to the declining function of his kidney. During that time his wife had to take lesser paying jobs than she had previously as a realtor. Meanwhile, with his medical and travel expenses to the Mayo Clinic increasing, his ordinary monthly expenses remained the same. Applicant made decisions regarding payments of all debts that resulted in the 24 delinquent debts listed in the SOR. Now Applicant has renegotiated his mortgage and is bringing it current. He paid six of the 23 medical debts and can repay all of them with the money he borrows from his retirement account. The amount remaining to be paid is less than \$4,700. His kidney problem is resolved and Applicant can now devote his energies to his work, family, and repaying his delinquent debts, as he declared he was interested in doing.

Applicant resolved his mortgage problems by negotiating a new agreement with his mortgage lender. That problem also resulted from his kidney problem and the

expense involved in that procedure, including travel to the Mayo Clinic and other financial obligations. Now that the kidney problem is resolved, the mortgage deficiency is also.

Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant 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 ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F: FOR APPLICANT

Subparagraphs 1.a to 1.x: For Applicant

Conclusion

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

PHILIP S. HOWE
Administrative Judge