



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



In the matter of:)
)
) ISCR Case: 12-07447
)
)
Applicant for Security Clearance)

Appearances

For Government: Caroline E. Heintzelman, Department Counsel
For Applicant: *Pro se*

11/26/2013

Decision

DAM, Shari, Administrative Judge:

Applicant mitigated the Government’s security concerns raised under Guideline F, Financial Considerations. His eligibility for a security clearance is granted.

On March 13, 2012, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP). On March 13, 2013, the Department of Defense issued Applicant a Statement of Reasons (SOR) detailing security concerns under the guideline for 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 effective within the Department of Defense for SORs issued after September 1, 2006.

On or about March 20, 2013, Applicant answered the SOR in writing and elected to waive his right to have a hearing on the allegations contained in the SOR. On July 31,

2013, Applicant changed that decision and requested a hearing, having been informed that a hearing could be held at a location near his residence. On September 9, 2013, the Defense Office of Hearings and Appeals (DOHA) assigned the case to me. On September 16, 2013, DOHA issued a Notice of Hearing, setting the case for October 4, 2013. The case was reset to October 30, 2013, as a consequence of a government shutdown. It proceeded as rescheduled. Department Counsel offered Government Exhibits (GX) 1 through 5 into evidence without objection. Applicant testified and offered Exhibits (AX) 1 through 5 into evidence without objection. The record closed at the end of the hearing. DOHA received the hearing transcript on November 14, 2013.

Findings of Fact

In his Answer, Applicant admitted the six factual allegations contained in the SOR. His admissions are incorporated into the findings herein.

Applicant is 51 years old and divorced since 1998. He enlisted in the U.S. Army in October 1983 and was on active duty until honorably discharged in December 1986. He was an E-4 at the time of his discharge, serving in the military police. He held a security clearance while in the Army. (Tr. 8.) In June 1992 he completed an associate's degree in law enforcement. (Tr. 40.)

After leaving the Army in 1986, Applicant began a position with a city's law enforcement department, where he remained for 12 years. He worked as a policeman, detective, and crime scene investigator. He is certified as a hostage crisis negotiator. He then worked in a temporary law enforcement position for 18 months before starting a position with a local city in January 2002. Eight years later, in January 2010, he suffered a heart attack and was on medical leave for six weeks. (Tr. 20.) He remained with that law enforcement department until August 2010, at which time he resigned having negotiated a resolution to a lawsuit he filed to collect unpaid medical benefits. (Tr. 20-21; AX 2.)

Applicant was subsequently unemployed and underemployed from August 2010 to November 2011, when he took a position with a school district. He remained with the school district until May 2012, earning \$1,400 monthly. (Tr. 41.) He was again unemployed until March 2013, when he took a part-time position with a paint store, earning \$450 every two weeks. (Tr. 37.) Throughout those past two years, he earned money as a part-time actor, and borrowed money from his sister. (Tr. 29.) In July 2013 Applicant started a part-time position with a local police department, which then became full-time in September 2013. (AX 3.) His net monthly income is \$2,400. His expenses are less than that, leaving some monies remaining. (Tr. 34-36.)

Applicant submitted copies of various law enforcement courses and certifications he completed during his career as a policeman. He received numerous awards and accolades while in the Army, and during subsequent work in law enforcement as a policeman and investigator. (AX 2, 5.)

On May 3, 2012, a government investigator interviewed Applicant about his finances and delinquent debts as part of a security clearance investigation. Applicant explained that during his period of unemployment from August 2010 until November 2011, he began to experience financial problems. In an effort to manage debts and living expenses, he withdrew about \$47,000 from his pension plan, not realizing the resulting tax consequences. (Tr. 26; 44-45.) He attributed his over-all financial problems to legal problems resulting after his heart attack, and subsequent periods of unemployment and underemployment. (Tr. 22.)

Applicant explained that in the early 2000's he experienced some financial difficulties when he attempted to obtain and market a patent for a device he invented. He subsequently resolved all debts related to that business venture. (Tr. 50-51; GX 2.)

Based on credit bureau reports (CBR) dated March 2012, February 2013, and June 2013, the SOR alleged six delinquent debts totaling \$26,415, which accumulated between 2010 and 2012. The status of each debt is as follows:

1. (¶ 1.a) The \$18,000 debt is owed to the Internal Revenue Service (IRS) for taxes related to monies removed from Applicant's pension. Applicant stated the current balance is \$25,000. In September 2013 he began making automatic monthly payments of \$300 from his bank account. He has made two payments as of the date of the hearing. He would have started payments sooner but did not have enough money until he obtained his full-time position in September 2013. (Tr. 24-26; AX 4: Tab A-1.) He will be able to renegotiate the amount in the future. (Tr. 46.) The debt is slowly being resolved.

2. (¶ 1.b) The \$1,621 judgment owed to a condominium association was paid on June 14, 2012. (AX 4: Tab B-1.)

3. (¶ 1.c) The \$287 debt owed to a utility company was paid on September 20, 2013. (AX 4: Tab C-1.)

4. (¶ 1.d) The \$361 debt owed to a cable company was paid on October 9, 2013. (AX 4: Tab D-1.)

5. (¶ 1.e) The \$1,383 debt owed to a credit card company was settled for \$750 and paid on October 7, 2013. (AX 4: Tab E-1.)

6. (¶ 1.f) This \$4,763 debt became delinquent in July 2011 when Applicant was unable to pay his car loan, resulting in a voluntary repossession. He has not had sufficient money to resolve this to date.

Applicant has learned an important financial lesson over the past couple years. He lives frugally and does not contemplate "falling into this situation again." (Tr. 37.) He intends to pay the outstanding tax liability and automobile repossession debt. He will be

able to pay them quickly should he be granted a security clearance and begin work as a forensic investigator in the Middle East. (Tr. 34, 46-47.)

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the Adjudicative Guidelines. In addition to brief introductory explanations for each guideline, the Adjudicative Guidelines (AG) 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 AG ¶ 2(a), describing the adjudicative process. 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 "Any doubt concerning personnel being considered for access to classified information will be resolved in favor of national security."

Directive ¶ E3.1.14 requires the Government to 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." 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."

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 an 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.

Analysis

Guideline F, Financial Considerations

The security concerns pertaining to Financial Considerations are set out in AG ¶ 8, and reads in pertinent part:

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.

AG ¶ 19 describes two conditions that could raise a security concern and may be disqualifying:

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

Between 2010 and 2012, Appellant began accumulating delinquent debts, including a large tax penalty, which he was unable to pay. The evidence raised the above disqualifications.

After the Government raised a potential disqualifying condition, the burden shifted to Applicant to rebut and prove mitigation of the resulting security concerns under this guideline. AG ¶ 20 includes four conditions that could mitigate the security concerns arising under this guideline:

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

AG ¶ 20(a) has some application. Applicant accumulated debts as a consequence of an employment issue with a previous employer, resulting in legal action, and subsequent periods of unemployment and underemployment. The circumstances underlying Applicant's financial situation are unlikely to recur, or continue, given his current full-time employment and efforts at resolving debts. Those circumstances do not cast doubt on his current trustworthiness. AG ¶ 20(b) also has partial application, as the conditions underlying the financial issues related to legal matters beyond his control. There is some evidence that he attempted to responsibly manage his debts after they began accumulating in 2010, albeit imprudently, with the withdrawal of pension monies.

Applicant did not undergo financial counseling, but he demonstrated that he has the ability to manage his financial obligations without incurring additional delinquent debts. He documented the payment of four debts and establishment of a repayment plan for his largest debt, a tax liability. There are clear indications that his financial issues are coming under control through his good-faith efforts. AG ¶¶ 20(c) and 20(d) are therefore applicable.

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 relevant 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.

According to 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 facts and circumstances surrounding this case. Applicant is 51 years old. He is a former soldier, who honorably served four years and received commendations and awards. He began a successful law enforcement career during his military service, which continues into the present. He submitted evidence verifying his accomplishments.

In most instances an outstanding tax liability of \$25,000 and an unresolved automobile repossession debt of \$4,700, would result in the denial of a security

clearance. However, after listening to his testimony and observing his behavior, I find Applicant to be credible, and have no doubt that he will continue to comply with his tax repayment plan and resolve a \$4,700 automobile repossession debt as money becomes available. For the past couple years he has managed his limited finances and not accumulated additional debts. He will be able to renegotiate the tax debt in the future, after establishing a repayment track record. He expressed remorse over his financial history and acknowledged his ignorance of tax law as it related to his tax liability. The likelihood of a recurrence of similar security concerns is minimal, given his appreciation of the potential employment consequences, and extensive history in law enforcement.

Overall, the record evidence leaves me without questions as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising from 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:

Paragraph 1, Guideline F: FOR APPLICANT

Subparagraphs 1.a through 1.f: For Applicant

Conclusion

In light of all 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.

SHARI DAM
Administrative Judge