



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ISCR Case No. 13-00369
)
Applicant for Security Clearance)

Appearances

For Government: Philip J. Katauskas, Esquire, Department Counsel
For Applicant: *Pro se*

01/10/2014

Decision

METZ, John Grattan, Jr., Administrative Judge:

Based on the record in this case,¹ Applicant's clearance is granted.

On 5 April 2013, the Department of Defense (DoD) sent Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, Financial Considerations.² Applicant timely answered the SOR, requesting a hearing before the Defense Office of Hearings and Appeals (DOHA). DOHA assigned the case to me 31 July 2013 and I convened a hearing 29 August 2013. DOHA received the transcript 5 September 2013.

¹Consisting of the transcript (Tr.), Government exhibits (GE) 1-5, and Applicant exhibit (AE) A.

²DoD acted under Executive Order 10865, *Safeguarding Classified Information Within Industry* (February 20, 1960), as amended; DoD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the DoD on 1 September 2006.

Findings of Fact

Applicant admitted the SOR financial allegations except for SOR 1.a and SOR 1.c-e. He is a 67-year-old vice president for operations for a U.S. defense contractor since May 2012. He previously retired from the U.S. military after 20-years service in paygrade E-8.

The SOR alleges, and Government exhibits substantiate, nine delinquent accounts totaling nearly \$117,000. Nearly \$107,000 of that debt is for delinquent first and second mortgages. Applicant admits five debts totaling about \$3,500.

The \$6,500 tax lien at SOR debt 1.a was released in April 2008, before the SOR was issued (AE A). Applicant made arrangements with the creditor at SOR debt 1.b to satisfy the debt by September 2013. He received a mortgage modification from the lender for SOR debts 1.c and 1.d in August 2012 and has been current in his payments since. He paid SOR debt 1.e in June 2009. SOR debt 1.f was a medical bill improperly coded by the provider to exclude insurance coverage. Applicant paid SOR debt 1.h in May 2013, and made arrangements to pay SOR debts 1.i and 1.g in August and September 2013 respectively.

Applicant's financial problems were largely related to periods of unemployment he experienced from September 2002 to March 2003, March to September 2006, May to September 2007 and December 2007 to May 2012. In each instance, he began addressing his debts as soon as he was re-employed.

Policies

The adjudicative guidelines (AG) list factors for evaluating a person's suitability for access to classified information. Administrative judges must assess disqualifying and mitigating conditions under each issue fairly raised by the facts and situation presented. Each decision must also reflect a fair, impartial, and commonsense consideration of the factors listed in AG ¶ 2(a). Any one disqualifying or mitigating condition is not, by itself, conclusive. However, specific adjudicative guidelines should be followed where a case can be measured against them, as they represent policy guidance governing access to classified information. Considering the SOR allegations and the evidence as a whole, the relevant adjudicative guideline is Guideline F (Financial Considerations).

Security clearance decisions resolve whether it is clearly consistent with the national interest to grant or continue an applicant's security clearance. The Government must prove, by substantial evidence, controverted facts alleged in the SOR. If it does, the burden shifts to applicant to refute, extenuate, or mitigate the Government's case. Because no one has a right to a security clearance, the applicant bears a heavy burden of persuasion.

Persons with access to classified information enter into a fiduciary relationship with the Government based on trust and confidence. Therefore, the Government has a

compelling interest in ensuring each applicant possesses the requisite judgement, reliability, and trustworthiness of those who must protect national interests as their own. The “clearly consistent with the national interest” standard compels resolution of any reasonable doubt about an applicant’s suitability for access in favor of the Government.³

Analysis

The Government established a case for disqualification under Guideline F, but Applicant mitigated the security concerns. Applicant’s four periods of unemployment between September 2002 and May 2012 created financial problems for him.⁴

The mitigating factors for financial considerations give Applicant substantial aid. While his financial difficulties are both recent and multiple, Applicant’s employment is now stable; so the circumstances that caused them are less likely to recur.⁵ Further, his financial problems were largely due to circumstances beyond his control, and he began addressing his delinquent debts once he obtained stable employment in May 2012. He has continued to address his other delinquent debts since then.⁶ While there is no evidence that Applicant has had any financial counseling, he has clearly acted to get his finances under control.⁷ The only debts not completely resolved total under \$2,500 and are expected to be resolved by September 2013. Having addressed his other financial obligations, I am confident these final obligations will also be addressed. Overall, substantial progress has been made addressing his delinquent debt.⁸ The Appeal Board has stated that an Applicant need not have paid every debt alleged in the SOR, need not pay the SOR debts first, and need not be paying on all debts simultaneously. Applicant need only establish that there is a credible and realistic plan to resolve the financial problems, accompanied by significant actions to implement the plan.⁹ Applicant’s efforts to date constitute such a plan, and his consistent payments reflect significant actions. I conclude Guideline F for Applicant.

³See, *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

⁴¶ 19 (a) inability or unwillingness to satisfy debts; (c) a history of not meeting financial obligations;

⁵¶ 20 (a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur . . .

⁶¶ 20 (b) the conditions that resulted in the financial problem were largely beyond the person’s control . . . and the individual acted responsibly under the circumstances;

⁷¶ 20 (c) the person has received or is receiving counseling for the problem and there are clear indications that the problem is being resolved or is under control;

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

⁹ISCR Case No. 07-06482 (App. Bd. 21 May 2008).

Formal Findings

Paragraph 1. Guideline F: FOR APPLICANT

Subparagraphs a-i: For Applicant

Conclusion

Under 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 Applicant. Clearance granted.

JOHN GRATTAN METZ, JR.
Administrative Judge