



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



In the matter of:)
)
) ISCR Case No. 13-00740
)
Applicant for Security Clearance)

Appearances

For Government: Tovah A. Minster, Esquire, Department Counsel
For Applicant: *Pro se*

10/18/2013

Decision

HENRY, Mary E., Administrative Judge:

Based upon a review of the pleadings and exhibits, Applicant's eligibility for access to classified information is granted.

Statement of the Case

Applicant completed and certified an Electronic Questionnaire for Investigations Processing (e-QIP) on December 20, 2012. The Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) on July 19, 2013, 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; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the *Adjudicative Guidelines For Determining Eligibility for Access to Classified Information* (AG), implemented on September 1, 2006.

Applicant received the SOR. He submitted a notarized, written response to the SOR allegations dated August 2, 2013, and requested a decision on the written record in lieu of a hearing.

Department Counsel prepared a file of relevant material (FORM) and mailed Applicant a complete copy on August 22, 2013. Applicant received the FORM on September 3, 2013. He had 30 days from receipt of the FORM to file objections and submit material in refutation, extenuation, or mitigation. He timely submitted a response. DOHA assigned this case to me on October 10, 2013. The Government submitted nine exhibits, which have been marked as Items 1-9 and admitted into the record. Applicant's response to the SOR has been marked and admitted as Item 3, and the SOR has been marked as Item 1. His written response to the FORM is admitted into the record as Applicant Exhibit A (AE A).

Findings of Fact

In his Answer to the SOR, Applicant admitted the factual allegations in ¶¶ 1.a - 1.m of the SOR. His admissions are incorporated herein as findings of fact. He also provided additional information to support his request for eligibility for a security clearance. After a complete and thorough review of the evidence of record, I make the following findings of fact.

Applicant, who is 38 years old, works as a quality assurance specialist for a DOD contractor. He began his current employment in October 2012. From October 2009 until October 2012, Applicant worked in quality assurance for other companies. He worked in the painting industry from 2000 until October 2009, He operated his own painting business from 2000 until 2008. He left the paint industry when work declined.¹

Applicant graduated from high school. He and his wife married in June 2008, and they separated in May 2012. Applicant filed for divorce because his wife spent all their money and because she "poorly" treated his older children. He has a three-year-old daughter from this marriage. He also have two daughters, ages 18 and 16, and 15-year-old twins, a son and daughter, from a previous marriage.²

Applicant earns \$4,590 a month in gross income and he receives \$2,532 in net monthly income. From his gross income, child support of \$607 and health insurance of \$299 a month are deducted. His June 2013 personal financial statement showed monthly expenses of \$550 for rent, \$320 for food, \$186 for utilities, \$378 for gasoline and car insurance, \$30 for clothes, and \$441 for a truck payment. His total monthly expenses are \$1,905. His net monthly remainder is \$627.³

¹Item 1.

²Item 1; Item 5.

³Item 5; AE A.

Applicant filed a Chapter 13 bankruptcy petition on July 13, 2013. His listed gross income is the same as shown on his earnings statement and personal financial statement. He also showed the same payroll deductions including his child support and health insurance and a net monthly income of \$2,532. He identified the following monthly expenses: \$550 for rent, \$185 for utilities, \$400 for food, \$50 for clothing, \$40 for laundry and dry cleaning, \$300 for transportation, \$300 for medical, \$106 for auto insurance and tags, and \$151 for school expenses for his children. His expenses totaled \$2,082, leaving a net remainder of \$450. Since filing his bankruptcy petition, Applicant has reduced his living expenses to help pay for his divorce and meet his bankruptcy payments+. He now lives with an uncle who is not charging him rent, which saves \$550 a month in rent plus some of his utility costs. In calculating his utility costs, he did not identify the individual monthly cost for gas, oil, electric, water, and/or telephone.⁴

The bankruptcy court directed Applicant to pay \$450 a month for 60 months. The court required him to make his initial \$450 payment within 30 days of filing his petition. He made his first \$450 payment on August 22, 2013. The court scheduled a creditors meeting for September 19, 2013 and set December 18, 2013 as the deadline for creditors to file claims and January 26, 2014 for the government to file claims. Based on these dates, Applicant's bankruptcy plan will not be finalized until early 2014. Applicant filed a Chapter 7 bankruptcy petition in February 2003, and the court discharged his debts in June 2003.⁵

The SOR identifies 11 unpaid debts and one judgment totaling \$30,167. Applicant included the 11 unpaid debts in his bankruptcy petition. Although he said he would resolve the judgment through bankruptcy, he did not include it in his bankruptcy petition. The January 2013 and May 2013 credit reports reflect that Applicant's last payments on his SOR debts occurred between July 2008 and 2011. The credit reports also show that Applicant pays his current bills, paid several unpaid debts, and has not incurred additional unpaid debts. Applicant completed the credit counseling course required by the bankruptcy court on July 19, 2013.⁶

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 list potentially disqualifying conditions and mitigating conditions, which are used in evaluating an applicant's eligibility for access to classified information.

⁴Item 6; AE A.

⁵Item 3; Item 6; Item 9.

⁶Item 1; Item 3; Items 6-8.

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 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.

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 applicant or proven by Department Counsel. . . ." An applicant has the ultimate burden of persuasion for 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 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.

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.

AG ¶ 19 describes the disqualifying conditions that could raise security concerns. I have considered all the conditions, and the following are potentially applicable:

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

Applicant developed significant financial problems since his marriage in 2008 because of his wife's spending habits. Most of the debts have not been resolved. These two disqualifying conditions apply.

The Financial Considerations guideline also includes examples of conditions that can mitigate security concerns. I have considered mitigating factors AG ¶ 20(a) through ¶ 20(f), and the following are potentially 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
- (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.

With the economic decline in 2007 and 2008, Applicant's paint business lost customers and income. He closed the business in 2008 and sought full-time employment in industry. He has worked steadily since 2008. He married in 2008. His financial problems began shortly after his marriage when his wife would not cease excessive spending. He is currently in the process of finalizing his divorce, an expense beyond his control. He recently filed for Chapter 13 protection and reduced his monthly living expenses to pay his debts. He completed the financial counseling requirement of the bankruptcy court. These mitigating conditions are partially 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 an 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.

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. The decision to grant or deny a security clearance requires a careful weighing of all relevant factors, both favorable and unfavorable. In so doing, an administrative judge must review all the evidence of record, not a single item in isolation, to determine if a security concern is established and then whether it is mitigated. A determination of an applicant's eligibility for a security clearance should not be made as punishment for specific past conduct, but on a reasonable and careful evaluation of all the evidence of record to decide if a nexus exists between established facts and a legitimate security concern.

In assessing whether an Applicant has established mitigation under Guideline F, the Appeal Board provided the following guidance in ISCR Case No. 07-06482 at 3 (App. Bd. May 21, 2008):

In evaluating Guideline F cases, the Board has previously noted that the concept of "meaningful track record" necessarily includes evidence of actual debt reduction through payment of debts." See, e.g., ISCR Case No. 05-01920 at 5 (App. Bd. Mar. 1, 2007). However, an applicant is not required, as a matter of law, to establish that he has paid off each and every debt listed in the SOR. See, e.g., ISCR Case No. 02-25499 at 2 (App. Bd. Jun. 5, 2006). All that is required is that an applicant demonstrate that he has ". . . established a plan to resolve his financial problems and taken significant actions to implement that plan." See, e.g., ISCR Case No. 04-09684 at 2 (App. Bd. Jul. 6, 2006). The Judge can reasonably consider the entirety of an applicant's financial situation and his actions in evaluating the extent to which that applicant's plan for the reduction of his outstanding indebtedness is credible and realistic. See Directive ¶ E2.2(a) ("Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination.") There is no requirement that a plan provide for payments on all outstanding debts simultaneously. Rather, a reasonable plan (and concomitant conduct) may provide for the payment of such debts one at a time. See, e.g., ISCR Case No. 06-25584 at 4 (App. Bd. Apr. 4, 2008). Likewise, there is no requirement that the first debts actually paid in furtherance of a reasonable debt plan be the ones listed in the SOR.

