



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
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-----) ISCR Case No. 14-00455
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)
Applicant for Security Clearance)

Appearances

For Government: Fahryn Hoffman, Esquire, Department Counsel
For Applicant: *Pro se*

10/30/2014

Decision

HOWE, Philip S., Administrative Judge:

On September 25, 2013, Applicant submitted his Electronic Questionnaire for Investigations Processing (e-QIP). On March 20, 2014, 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 March 27, 2014. He answered the SOR in writing on April 17, 2014, and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on June 16, 2014, and I received the case assignment on June 19, 2014. DOHA issued a Notice of Hearing on June 26, 2014, and I convened the hearing in person as scheduled on July 24, 2014. The Government offered Exhibits 1 through 3, which were received without objection.

Applicant testified and submitted Exhibits A through L, without objection. DOHA received the transcript of the hearing (Tr.) on August 4, 2014. I granted Applicant's request to keep the record open until August 7, 2014, to submit additional matters. He later asked for additional time to submit his documents. Without objection, I granted him until August 21, 2014, to send his additional exhibits. On August 21, 2014, he submitted Exhibits M to T without objection from Department Counsel. The record closed on August 21, 2014. 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, with explanations. He also provided additional information to support his request for eligibility for a security clearance.

Applicant is 43 years old and married to his second wife with whom he has a young child. He is divorced from his first wife. They had three children who are now teenagers. Applicant works for a defense contractor and earns over \$60,000 annually. With a security clearance he could apply for other jobs that would pay him more money. He received a college degree in 2009. He served in the U.S. Navy from 1989 until 2000 and held a security clearance without any violations during that time. (Tr. 22-27, 65; Exhibits 1, 3; Answer)

Applicant owes 12 delinquent debts listed in the SOR. The 12 debts total \$72,051. These debts include a student loan, various personal loans, and other bank or credit cards. The hearing elicited information that two debts are duplicates of two other debts, so there are actually 10 delinquent debts. The debts started to accumulate in 2008 and thereafter. A 13th allegation refers to Applicant's Chapter 7 bankruptcy in 2003. (Tr. 34-58, 85; Exhibits 2, B-T; Answer)

Applicant owes child support to his former wife. That alleged amount is \$8,330 (Subparagraph 1.a). Applicant was unemployed for three months and was unable to make the payments. He departed from his prior residence to move to his present location for a new job, but failed to complete his paperwork in the proper order so his prospective employer withdrew the job offer. This series of events occurred in approximately 2010. Applicant then had to find other employment to support his family. Now he has been offered new employment requiring this security clearance. The money for his current and back child support is being garnished from his paycheck in the amount of \$800 monthly. He has paid \$5,600 this year on this debt. Applicant expects his arrearages to be repaid by December 2015 while his regular child support obligations continue to be paid and are current. As of April 2014 the state department collecting the child support from Applicant calculates the debt is \$10,598.34. This debt is being resolved. (Tr. 28-38; Exhibits 2, A, K, L; Answer)

Applicant owes a collector \$681 for a debt owed to a bank (Subparagraph 1.b). This debt was paid and resolved in 2014. (Tr. 38-40, 85; Exhibits 2, H, K, L; Answer)

Applicant owes a credit card company \$1,414 (Subparagraphs 1.c). This debt is owed since 2008. Applicant entered an installment agreement with the collector to pay \$519 each month starting in June 2014 for three months. Applicant submitted documents showing two payments were made for June and July 2014. The third payment would be made after the hearing in August 2014. It is resolved. (Tr. 43, 44, 85; Exhibits 2, C, K, L, S; Answer)

Applicant owes \$126 on a medical account (Subparagraph 1.d). This debt is paid on July 9, 2014. (Tr. 44, 45, 85; Exhibit D, K, L; Answer)

Applicant owes \$7,837 to a bank for a student loan (Subparagraph 1.e). Applicant wants to rehabilitate this debt along with the debt in the following paragraph. He entered an agreement to do that rehabilitation. The June 2014 agreement requires monthly payments of \$105 for at least nine months. He made his first payment in February 2014 and monthly since then. This debt is being resolved. (Tr. 45-48, 85; Exhibits 2, E, K, L, P; Answer)

Applicant owes another student loan debt to a bank in the amount of \$10,556 (Subparagraph 1.f). He entered a loan rehabilitation agreement with the lender in February 2014 and is paying the debt on the installment payment basis combined with the previous debt. This debt is being resolved. (Tr. 45-48, 85; Exhibits 2, E, K, L, P; Answer)

Applicant owes \$657 to a credit card issuer (Subparagraph 1.g). This debt is the same account as found in Subparagraph 1.j. This debt is resolved by payment of \$406.49 on June 6, 2014. (Tr. 39, 40, 48, 85; Exhibits 2, B, K, L; Answer)

Applicant owes \$1,172 to a credit card issuer for an unpaid debt (Subparagraph 1.h.). This debt was settled for \$1,114 with two payments of \$557 being made in June and July 2014. Applicant submitted a letter from the collector, dated August 12, 2014, showing the balance is zero. This debt is resolved. (Tr.48-50, 85; Exhibits F, K, L, N; Answer)

Applicant owes \$864 on a medical account that is paid (Subparagraph 1.i). Applicant submitted two documents from the hospital showing the debts were paid. (Tr. 50-51, 85; Exhibits 2, G, K, L, T; Answer)

Applicant owes \$582 on a credit card account (Subparagraph 1.j). This debt is the same as that in Subparagraph 1.g and is resolved by payment of \$406.49 on June 6, 2014. (Tr. 39, 40, 48; Exhibits 2, B, K, L; Answer)

Applicant owes \$3,828 to a credit card issuer (Subparagraph 1.k). Applicant contends this debt is the same as that alleged in Subparagraph 1.b. He claims to have paid it in full in the amount of \$3,828 to the collector. Applicant testified his payments were \$200 for at least eight months. This debt is resolved. (Tr. 52-56, 85; Exhibits 2, H, K, L; Answer)

Applicant owes student loans totaling \$36,004 from his college education (Subparagraph 1.l). Applicant's brother, a co-signer for these loans, borrowed from his Section 401(k) retirement account and paid the debt in full on a settled amount. This debt is resolved. Applicant repays his brother \$200 each month to return the money to his brother's retirement account. (Tr. 56-59, 85; Exhibits 2, K, L, R; Answer)

Applicant filed a Chapter 7 bankruptcy in April 2003 (Subparagraph 1.m). He was discharged in bankruptcy in August 2003. The amount of the bankruptcy was about \$10,000. Applicant filed bankruptcy to remove debts remaining from his first marriage. After receiving the discharge, Applicant incurred more debt that is now the subject of the SOR. These debts resulted from his move to another state, seeking better paying jobs, a period of unemployment as a result of the move, and other conditions. All the debts have been resolved or are being paid at the time of the hearing. Applicant inherited \$5,000 from his grandmother and used that money to resolve many of these debts. (Tr. 59-64; Exhibits 2, A-T; Answer)

Applicant owes a large tax debt that is not listed on his SOR. Applicant moved from another state to his present state of residence in 2010 when he thought he had a job commitment from an employer. However, his interim security clearance was denied and Applicant was unemployed for a while. Applicant owes the federal Internal Revenue Service (IRS) about \$8,000 from when he moved to from his condominium in his previous state of residence. Applicant received a home credit on his income taxes for the purchase of the condominium and did not live in it for the required minimum of three years. Applicant retained ownership of the condominium when he moved to his present location and rented it. Applicant will enter a repayment agreement with the IRS in the future. He made a payment and reduced his monthly withholding from his paycheck to one exemption to allow the IRS to take more money, which they will use each year to reduce this tax debt. This debt is being resolved by these withholding changes and refund collections by the IRS. (Tr. 64, 65, 85)

Applicant submitted one character letter from a co-worker at his present position. That person stated Applicant is trustworthy and his integrity and performance are above reproach. (Exhibit O)

Applicant submitted a one page budget. It documents his income, his payments to his current creditors, and monthly expenses. The budget shows Applicant has \$369 remaining after all expenses are paid, which he can use for other family expenses. (Exhibit Q)

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 \$72,051 in delinquent debt from 2008 to the present time that was unpaid. Applicant has 12 alleged delinquent debts listed in the SOR. A Chapter 7 bankruptcy from 2003 was also alleged in the SOR. Applicant started resolving his debts in 2012.

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

(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; and

(f) the affluence resulted from a legal source of income.

Applicant was unemployed for a three month period in approximately 2010. This situation adversely affected his ability to pay child support. It also made it difficult to support his family. Applicant moved to a new state for a better paying job. The job offer was withdrawn because he had no security clearance. Applicant finally found jobs and worked his way up to his present position. Now he seeks another job. Those conditions were largely beyond his control and caused his inability to pay his student loans and other debts in a timely manner. Now he has paid or is resolving on an installment basis all listed debts. AG ¶ 20 (b) applies.

Applicant paid or is paying his debts in an orderly manner. All the delinquent debts have been addressed. Therefore, there are clear indications from the evidence he presented that the financial problems are under control and being resolved. AG ¶ 20 (c) applies.

Applicant has focused his efforts to pay all debts in some manner. At the same time he is paying a garnishment for child support from his first marriage. Applicant paid all of his debts, including student loans with the help of his brother. He is repaying his brother for that loan. AG ¶ 20 (d) applies because of Applicant's good-faith efforts to repay his delinquent debts. He has resolved in some way all of the debts listed in the SOR. He will arrange an installment payment plan with the IRS to pay the tax debt resulting from his move to another state and failing to live in his former home for at least three years to obtain the tax benefit.

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 addressed all his

delinquent debts in a responsible manner. He used his inheritance of \$5,000 to pay many of the debts. He negotiated a settlement and entered installment payment agreements. His brother resolved the student loan debt because, as a co-signer of the loan, its delinquent status was adversely affecting his credit score. Applicant now repays his brother for that loan. All debts are resolved or will be within the next year. Applicant acted responsibly under the circumstances.

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. I conclude the whole-person concept for Applicant.

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

Subparagraph 1.a to 1.m: 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