



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



In the matter of:)
)
) ISCR Case No. 14-00542
)
Applicant for Security Clearance)

Appearances

For Government: Braden M. Murphy, Esq., Department Counsel
For Applicant: *Pro se*

06/27/2014

Decision

COACHER, Robert E., Administrative Judge:

Applicant mitigated the financial considerations security concerns. Eligibility for access to classified information is granted.

Statement of the Case

On March 12, 2014, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations. The DOD acted under Executive Order (EO) 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) implemented by the Department of Defense on September 1, 2006.

Applicant answered the SOR on April 4, 2014, and requested a hearing. The case was assigned to me on May 6, 2014. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on May 12, 2014, setting the hearing for June 3, 2014. The hearing was held as scheduled. The Government offered exhibits (GE) 1 through 3, which were admitted into evidence without objections. The Government's

exhibit list was marked as hearing exhibit (HE) I. Applicant testified and offered exhibits (AE) A through E, which were admitted into evidence without objection. DOHA received the hearing transcript (Tr.) on June 11, 2014.

Findings of Fact

Applicant is 43 years old and has worked for a government contractor for 12 years. He has an associate's degree. He is married and has two adult children. He served in the Army for four years from 1989 to 1993. He deployed during Operation Desert Storm. He was honorably discharged in the pay grade of E-4. He currently holds a secret security clearance.¹

The SOR alleges Applicant was indebted on four accounts. The debts were listed on a credit report dated November 2013. Applicant admitted all the debts in his answer to the SOR (during his testimony he provided documentary evidence showing that SOR ¶¶ 1.b and 1.d were the same debt).²

Applicant's financial troubles started in about 2009 or 2010. His wife owned and operated a small business that was adversely impacted by the slow economy at the time. In order to make ends meet, the family began using credit cards to help pay for necessary items such as groceries. The air conditioning unit for Applicant's house broke down and had to be replaced. At this point, he knew he needed assistance to deal with his mounting debt. He contacted a debt consolidation company who advised him to stop paying his credit cards (up to that point he was making payments), pay their service \$800 monthly, and they would begin settling his debts once enough money was accumulated in his account to do so. His total debt reached the point of about \$53,000. Slowly, he began paying off the debt, which was down to about \$26,000 when the SOR was issued. Applicant borrowed funds from his work-related retirement fund (called a salaried savings plan (SSP) under Internal Revenue Code 401(k)) and used those proceeds to pay all the SOR-related debts. He will pay back the loan over the course of the next four and a half years and the monthly payment (\$122.12) will come directly out of his pay check.³

Applicant presented documentation showing the debts listed in SOR ¶¶ 1.a through 1.c were all settled in May 2014. He also established that the debt listed in SOR ¶ 1.b is a duplicate debt with SOR ¶ 1.d).⁴

Applicant's current income is about \$51,000 annually and he is current on all his other debt. He has a mortgage on his home, which is current, and he has no car payments. He has no tax issues. His wife's business has recovered and makes a profit,

¹ Tr. at 6, 28, 33-34, 50; GE 1.

² Tr. at 29; Answer; AE E.

³ Tr. at 28-31, 39-40 41-42; AE A-B.

⁴ Tr. at 29-30, 42-43; AE C-E.

at times. Other than hiring a debt consolidation company, he has not received credit counselling. He no longer uses credit cards.⁵

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 that are to be used 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, administrative judges apply the guidelines 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, the 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." The applicant has the ultimate burden of persuasion to obtain a favorable 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 safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that adverse decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the

⁵ Tr. at 32-33, 43-49.

applicant concerned.” See also Executive Order 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline F, Financial Considerations

The security concern for Financial Considerations is set out in AG ¶ 18 as follows:

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 notes several conditions that could raise security concerns under AG ¶ 19. Two are potentially applicable in this case:

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

Applicant had multiple delinquent debts. The evidence is sufficient to raise the disqualifying conditions stated in AG ¶¶ 19(a) and 19(c).

Several Financial Considerations mitigating conditions under AG ¶ 20 are potentially 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; and
- (d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

The delinquent debts attributed to Applicant were recent. He has paid all debts. Since he has made a concerted effort to repair his financial position, it is reasonable to conclude that these types of debts will not recur, nor do they cast doubt on his reliability, trustworthiness, and good judgment. AG ¶ 20(a) partially applies.

Applicant became indebted when his wife's small business was negatively impacted by the national recession in 2009 and 2010, and he incurred unexpected expenses in the form of having to replace his home air conditioning unit. These were conditions beyond his control and once he was able to do so, he acted responsibly by first contacting a debt consolidation company, and second, settling the debts. AG ¶ 20(b) applies.

Although there is no evidence of credit counseling, there is ample evidence showing all the debts have been paid. He made a good-faith effort to resolve all the debts listed on the SOR. He supplied documentary evidence showing all of the settlement payments. AG ¶ 20(c) and ¶ 20(d) apply.

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.

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 relevant facts and circumstances surrounding this case. I have incorporated my comments under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

I considered Applicant's military service, particularly his deployment during Operation Desert Storm. I found Applicant to be honest and candid about the circumstances that led to his debts. He found a way to settle all of his outstanding SOR-related debts as well as some additional debts. I found nothing to indicate a likelihood that Applicant would find himself in a similar future situation.

