



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 14-00839
)
Applicant for Security Clearance)

Appearances

For Government: Jeff Nagel, Esquire, Department Counsel
For Applicant: *Pro se*

October 10, 2014

DECISION

ROSS, Wilford H., Administrative Judge:

Applicant submitted his Electronic Questionnaire for Investigations Processing (e-QIP), on November 23, 2013. (Government Exhibit 1.) On April 24, 2014, the Department of Defense issued a Statement of Reasons (SOR) detailing the security concerns under Guideline F (Financial Considerations) concerning Applicant. 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 answered the SOR in writing on May 19, 2014 (Answer), and requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). Department Counsel was prepared to proceed on July 2, 2014. This case was assigned to me on July 11, 2014. DOHA issued notices of hearing on July 25, and August 25, 2014. I convened the hearing as scheduled on September 9, 2014. The Government offered Government Exhibits 1 through 5, which were admitted without objection. Applicant testified on his own behalf, and submitted Applicant Exhibits A through F, also without objection. Applicant asked that the record remain open for the

receipt of additional documents. Applicant submitted Applicant Exhibit G on September 10, 2014, and it was admitted without objection. DOHA received the transcript of the hearing (Tr.) on September 18, 2014, and the record closed. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

Findings of Fact

Applicant is 35, single and has a Bachelor of Arts degree. He is employed by a defense contractor and seeks to retain a security clearance in connection with his employment.

Paragraph 1 (Guideline F, Financial Considerations)

The Government alleges in this paragraph that Applicant is ineligible for clearance because he is financially overextended and therefore potentially unreliable, untrustworthy, or at risk of having to engage in illegal acts to generate funds. Applicant admitted subparagraphs 1.c and 1.d. in the SOR under this paragraph. Those admissions are findings of fact. He denied the remaining allegations. He also submitted additional information to support his request for a security clearance.

The SOR lists four delinquent debts, totaling approximately \$16,021. The existence and amount of the debts is supported by a credit report dated December 10, 2013. (Government Exhibit 3.)

The current status of the debts is as follows:

1.a. and 1.b. Applicant denies that he is currently delinquent on two of his student loans. He admits that he did fall behind on these loans in approximately 2012. He entered a rehabilitation program, which required him to make twelve monthly payments to the state education assistance authority of the state where he attended college. He successfully completed that process in May 2014. Subsequent to that he has been paying the affected student loans directly to the lender. Applicant has obtained ten student loans. Records from the lenders show that Applicant has paid off three of the loans, and is current with his payments for the others. The most recent credit reports in the record indicate that all of Applicant's student loans are current. (Government Exhibits 4, and 5; Applicant Exhibits B, and G at 3; Tr. 45-61.) These debts have been resolved.

1.c. Applicant admits that he was indebted for a medical bill in the amount of \$342. Applicant provided documentation showing he paid this bill on May 12, 2014. (Applicant Exhibit G at 2, 4; Tr. 37-40.)

1.d. Applicant admits that he was indebted for a cable bill in the amount of \$88. Applicant provided documentation showing he paid this bill on May 9, 2014. The most

recent credit reports in the record show this debt as paid. (Government Exhibits 4 and 5; Applicant Exhibit G at 2, 4; Tr. 40-45.)

Mitigation

Applicant submitted documentation showing that he is a highly respected person and employee. He served honorably in the United States Air Force for five years, leaving the service in 2005. For his service he received an Air Force Achievement Medal, as well as other recognition. (Applicant Exhibits A, and C at 1, 3, 5, 7 through 12.)

Applicant has worked for his current employer since 2011. Records from his employer indicate that he is a valued employee, who receives high marks for his abilities. His current supervisor states that Applicant's conduct indicates that he has values "like trust, excellence, teamwork, integrity and passion." (Applicant Exhibits C at 2, 4, 6, D, E, and F.)

Applicant testified that his current financial situation is stable. He is able to pay all of his current debts and repay his student loans without trouble. (Tr. 28-31, 61-62.)

Policies

Security clearance decisions are not made in a vacuum. 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 to be used as appropriate 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 describing the adjudicative process. The administrative judge's over-arching 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. In addition, the administrative judge may also rely on his or her own common sense, as well as knowledge of the law, human nature, and the ways of the world, in making a reasoned 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." 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, “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, 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. Security clearance decisions include, by necessity, consideration of the possible risk that 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.

Finally, as emphasized in Section 7 of Executive Order 10865, “Any determination under this order adverse to an applicant shall be a determination 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

Paragraph 1 (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 notes several conditions that could raise security concerns. Under AG ¶ 19(a), an “inability or unwillingness to satisfy debts” is potentially disqualifying. Similarly under AG ¶ 19(c), “a history of not meeting financial obligations” may raise security concerns. Applicant, by his own admission, and supported by the documentary evidence, had four delinquent debts that he formerly could not resolve. The evidence is sufficient to raise these potentially disqualifying conditions.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Under AG ¶ 20(a), disqualifying conditions may be mitigated where “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." In addition, based on the particular facts of this case, I find that he has "initiated a good-faith effort to repay overdue creditors or otherwise resolve debts," as required by AG ¶ 20(d).

The evidence shows that both of the above mitigating conditions apply to Applicant. Applicant fell behind on resolving two of his student loans, and two small debts. Applicant has not tried to avoid this situation, but has worked hard to resolve it. He entered and successfully completed a rehabilitation program regarding his student loans, and he is making current, timely payments. The small debts have been resolved.

Applicant has not received financial counseling. However, as found above, his current financial situation is stable. I find that "there are clear indications that the problem is being resolved or is under control," as required by AG ¶ 20(c). All of these mitigating conditions apply to the facts of this case. Guideline F is found for Applicant.

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 the relevant circumstances. 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 administrative judge must 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.

I considered the potentially disqualifying and mitigating conditions in light of all the relevant facts and circumstances surrounding this case. The discussion under Guideline F, above, applies here as well. While Applicant has had financial problems in the past, they have been resolved, and he has the knowledge and ability to avoid such problems in the future.

Under AG ¶ 2(a)(2), I have considered the facts of Applicant's debt history. Based on the record, I find that there have been permanent behavioral changes under AG ¶ 2(a)(6). Accordingly, I find that there is little to no potential for pressure, coercion, exploitation, or duress (AG ¶ 2(a)(8)); and that there is a low likelihood of recurrence (AG ¶ 2(a)(9)).

Overall, the record evidence leaves me with no questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has mitigated the security concerns arising from his financial situation. Accordingly, the evidence supports granting his request for a security clearance.

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

Subparagraphs 1.a. through 1.d.: 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.

WILFORD H. ROSS
Administrative Judge