



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 14-01078
)
Applicant for Security Clearance)

For Government: Eric Borgstrom, Esq., Department Counsel
For Applicant: *Pro se*

10/30/2014

Decision

MARSHALL, Jr., Arthur E., Administrative Judge:

Applicant mitigated the Government’s security concerns under Guideline F. Applicant’s eligibility for a security clearance is granted.

Statement of the Case

On May 12, 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; 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 September 1, 2006.

In a letter dated May 21, 2014, Applicant admitted all five allegations raised and requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). I was assigned the case on June 30, 2014. DOHA issued a notice of hearing on August 14, 2014, setting the hearing for September 11, 2014. The hearing was convened as scheduled.

The Government offered four documents, which were accepted without objection as exhibits (Exs.) 1-4. It also introduced an evidentiary schematic as a hearing exhibit,

which was accepted without objection as HE1. Applicant offered testimony and 11 documents, which were accepted as Exs. A-K. He was given until September 22, 2014, to submit any additional materials. On September 18, 2014, the Government forwarded a 17-page packet of materials from Applicant. The transcript of the proceeding (Tr.) was received on September 25, 2014. Noting no objection, I accepted the packet as Ex. L and the record was closed. Based on my review of the testimony and materials, Applicant met his burden in mitigating Guideline F security clearances. Security clearance is granted.

Findings of Fact

Appellant is a 58-year-old senior electrical technician who has been with the same defense contractor since October 2013. He has a high school diploma and an associate's degree in electronic engineering. He has been married since 1981. Applicant and his wife have three adult children. Applicant served in the United States Marines from 1974 until he was honorably discharged in 1994. During that time, he held a security clearance.

Applicant has endured a series of layoffs. He worked as a machinist from October 2003 to January 2005, then quickly found work later that month until he was laid off again in October 2006. To secure a new job, he relocated away from his family in November 2006, where he was employed as a maintenance supervisor at a plant until January 2013, earning between \$90,000 and \$100,000 a year. The plant then closed and Applicant quickly accepted work as an electronics mechanic at another company making just under \$45,000. That job lasted until October 2013, when he began his present position. He currently earns approximately \$62,000 a year. He is now seeking a security clearance, his first since his honorable discharge from military service. His wife, who used to earn a salary and bonus compensation package of about \$48,000 as a store manager, has been on disability for the past four years. She is currently drawing about \$1,247 in monthly disability income. Tr. 27.

At issue are the following delinquent debts, as noted in the SOR:

1.a \$514 delinquent since July 2013. **Paid.** This account was closed when Applicant relocated in 2006. Applicant guesses that an automatic withdrawal went through after he closed this account and before his new account elsewhere was established. Tr. 28-29. Applicant was unaware of the debt until he was interviewed by investigators in January 2014. The lender admitted it sent the bill to a wrong address and reduced the debt to the actual amount owed (\$309). Ex. A; Tr. 30-31. Applicant's evidence does not reflect the same account number as the one noted in Applicant's credit report, but collection account numbers often vary. Moreover, Applicant's evidence otherwise indicates a debt with this same lender for \$513.68 was resolved for \$309. Further, Applicant has had only one account with that lender. Tr. 31-32. I find that there is sufficient evidence to conclude that this debt was recently resolved.

1.b \$1,301 delinquent since December 2010. **Satisfied.** This debt is associated with a timeshare Applicant and his wife owned before she became disabled. When they could no longer make payments on the timeshare due to her lack of income and his fluctuating salary, they cancelled their timeshare contract and surrendered their benefit to the development company. Applicant provided evidence of this transfer of timeshare benefit back to the developer, which notes that collections activities have been stopped. Ex. B. This account has the same number as the one noted in the credit report. Tr. 33-35.

1.c/1.d \$3,696 delinquent since December 2010 and \$9,127 delinquent since December 2013. **Formally Disputed.** Applicant persuasively argued that these two debts are for the same obligation. They arise from a debt related to another timeshare. Applicant cancelled this timeshare when his wife became disabled. Tr. 36. This should have left him with a debt to the timeshare company of about \$3,600, which Applicant agrees to satisfy. One of the company's other financing arms, however, pursued its own claim after Applicant for \$9,127, which Applicant formally disputed 2010. Tr. 37-44; Ex. C. After the hearing, Applicant submitted materials reinforcing his argument that these are two claims for the same debt, and noting questionable practices by the second lender pursuing the higher claim against him. Tr. 41-43; Ex. L. Applicant will pay the \$3,696 balance after the claim for \$9,127 is resolved. Tr. 41, 46.

1.e \$1,414 state tax obligation delinquent since April 2013. **In repayment.** Applicant learned of this tax year 2011 underpayment as he struggled to pay his son's state college tuition in early 2013, just after Applicant's salary hit its nadir. Tr. 53. His son resorted to taking student loans to help with the state school bills, and got an on-campus job, to lessen the financial burden on Applicant. Applicant then sought financial counseling and worked with a community tax advisor to set up a repayment plan with the state. Tr. 54. Applicant has not yet received a copy of the agreement from the state. He did, however, provide evidence of his first two payments. The first payment for \$350 is noted at Ex. D. His second payment is reflected in Ex. L at 2. Consequently, to date, he has satisfied at least half of the obligation. See *also* Ex. D. The entire bill should be satisfied in the next two months. Applicant is committed to completing this agreement and has the financial resources to do so expediently. Tr. 54-56; 59.

Applicant is living within his means and applying what he learned in financial counseling. He recently renegotiated his mortgage terms with his lender. Their monthly home payment has been reduced to \$1,700 from almost \$2,100. Tr. 57. Applicant is eliminating a manageable balance on his last remaining credit card. Once satisfied, his only regular monthly debts will be his home mortgage and utilities. He noted, "[b]asically right now we're in better shape . . . We're probably in the best shape now. Now that we've gotten a loan modification, we have quite a bit of money we've saved." Tr. 62. He reiterated his commitment to eschew the unnecessary use of credit. Tr. 62-63. At present, Applicant has a net monthly remainder of about \$1,500.

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.

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. Likewise, I have not drawn 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 applicant or proven by Department Counsel and has the ultimate burden of persuasion to obtain 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 the applicant may deliberately or inadvertently fail to safeguard 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

Guideline F, AG ¶ 18 states that the security concern under this guideline is that 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 engaging in illegal acts to generate funds.

Here, the Government introduced credible evidence showing Applicant was delinquent on five debts, including one tax-related obligation. Such facts are sufficient to invoke two of the financial considerations disqualifying conditions:

AG ¶ 19(a): inability or unwillingness to satisfy debts, and

AG ¶ 19(c): a history of not meeting financial obligations.

Five conditions could mitigate these finance related security concerns:

AG ¶ 20(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;

AG ¶ 20(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;

AG ¶ 20(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;

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

AG ¶ 20(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.

Over the past decade, Applicant experienced multiple periods of unemployment due to layoffs. His string of positions varied wildly in salary, from the low \$40,000s to about \$100,00. In the interim, his wife became disabled and withdrew from the

workforce. As a result of these incidents, four obligations became delinquent, two of which represent the same obligation and most of which Applicant was not aware of their existence until well after they had been incurred and become past due. Otherwise, Applicant was generally able to manage his finances through sensible actions, such as returning timeshare interests to the corporate owners and accepting his son's efforts to help pay for his education. Whenever he discovered a delinquent debt, he has addressed it directly. With regard to 1.c and 1.d, he has formally disputed what looks like are competing collections on one timeshare, which Applicant is willing to pay once the conflict between the collections is resolved through dispute. Since receiving financial counseling, Applicant has done much to improve his overall finances, including the elimination of unnecessary credit and the modification of his home loan. Today, he lives within his finances. All debts at issue have been addressed. The tax issue is half repaid at present, and should be completely repaid in the next two months. In light of these considerations, I find Financial Considerations Mitigating conditions AG ¶ 20(a)-¶ 20(e) 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). 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. I incorporated my comments under the three guidelines at issue in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but some warrant emphasis or additional comment.

Applicant is a 58-year-old senior electrical technician who has been with the same defense contractor since October 2013. He has an associate's degree in electronic engineering, is married, and the father of three grown children. He has been married since 1981. Applicant and his wife have three adult children. Applicant served in the United States Marines for 20 years before he was honorably discharged.

Despite a series of layoffs and his wife becoming disabled, Applicant has minimized the debt he has incurred. Most of the debt at issue had eluded him, and he quickly moved to address the debts as they were revealed. Financial counseling and hard work have restructured his personal finances. He lives modestly within his means, with a newly modified home loan and increased net monthly remainder. The debts at issue are addressed and largely satisfied. His tax repayment plan is half satisfied, with two modest payments yet to be made in the next 60 days. He is committed to completely honoring that balance and any debt found to be owed that is currently being

disputed; importantly, he has the motivation and the financial resources to do so. He has devised a workable plan for addressing his obligations, implemented it, and all indicators at this point indicate success. Therefore, I conclude Applicant mitigated security concerns arising under Guideline F.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F: FOR APPLICANT

Subparagraphs 1.a-1.e: 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 a security clearance. Eligibility for access to classified information is granted.

Arthur E. Marshall, Jr.
Administrative Judge