



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
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)
SSN:) ISCR Case No. 07-06530
)
)
Applicant for Security Clearance)

Appearances

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

March 28, 2008

Decision

TUIDER, Robert J., Administrative Judge:

Applicant has mitigated security concerns pertaining to Financial Considerations. Clearance is granted.

Statement of the Case

Applicant submitted his Security Clearance Application (SF 86), on November 9, 2004. On September 28, 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing security concerns under Guideline F for Applicant. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1990), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive), and the revised adjudicative guidelines (AG) promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant answered the SOR in writing on October 31, 2007, and requested a hearing before an Administrative Judge. DOHA received the response on November 7, 2007. Department Counsel was prepared to proceed on December 5, 2007, and I received the case assignment on December 6, 2007. DOHA issued a notice of hearing on December 18, 2007, scheduling the hearing for January 9, 2008. The hearing was held as scheduled.

The government offered Government Exhibits (GE) 1 through 3, which were received without objection. Applicant offered Applicant Exhibits (AE) A through I, which were received without objection, and he testified on his own behalf. I held the record open until January 25, 2008 to afford the Applicant the opportunity to submit additional documents. Applicant timely submitted AE J through Q without objection, which were forwarded to me by Department Counsel by letter dated January 28, 2008 (Exhibit I). DOHA received the transcript of the hearing (Tr.) on January 17, 2008. The record closed on January 28, 2008.

Findings of Fact

Applicant admitted all of the SOR allegations. His admissions are incorporated herein as findings of fact. After a thorough review of the evidence, I make the following additional findings of fact:

Applicant is a 38-year-old steamfitter foreman, who has worked for his defense contractor employer since January 2000. He previously held a security clearance from 1990 to 1999 while employed as a pipefitter for a defense contractor. Tr. 18-20, GE 1. Applicant has held and maintained an interim top secret clearance since 2005. Tr. 21-22, AE F.

Applicant graduated from high school in June 1987. Tr. 17. Applicant has been married since June 1995. He and his wife have a four-year-old son. GE 1, Tr. 22.

Applicant's background investigation addressed his financial situation and included the review of his February 2007 credit bureau report, and Response to DOHA Financial Interrogatories dated July 10, 2007. GE 3, GE 2.

Applicant's SOR identified five separate line items to include a chapter 13 bankruptcy filed in July 2007, a past due primary mortgage in the amount of \$345,118, a past due secondary mortgage in the amount of \$88,763, a past due credit union account in the amount of \$3,541, a past due automobile loan in the amount of \$1,061, and a 2005 non-federal income tax debt arrearage in the amount of \$12,452. SOR ¶¶ 1.a. through 1.f.

Applicant's financial problems began in the latter part of 2006. He purchased a new vehicle and used an existing vehicle as a trade-in. The unpaid balance on his trade-in vehicle was not paid off by the automobile dealer in a

timely manner requiring Applicant to make unplanned car payments for two vehicles. Applicant was also faced with an unplanned property tax increase, which required timely payment. Added to this, Applicant purchased a business and rented machinery with money he expected to receive from overtime from his existing job. The overtime did not occur as planned. In short, Applicant's budget was sufficiently strained to the point that he was unable to make any unplanned adjustments. Tr. 62-69.

With the exception of the past due automobile loan for \$1,061 (SOR ¶ 1.e.), the other four debts listed in SOR are included in Applicant's chapter 13 bankruptcy repayment plan. With regard to SOR ¶ 1.e., Applicant paid that debt off as of June 28, 2007. Tr. 32-35, 40, AE E.

Applicant is on a five-year chapter 13 repayment plan. For the first three months following approval of his repayment plan which began in August 2007, Applicant paid \$890 by check or money order to the bankruptcy trustee. Beginning in November 2007, Applicant's monthly payments to the bankruptcy trustee decreased to \$850 per month, which he is making and will continue to make for the duration of his repayment plan by automatic payroll deductions. He submitted post-hearing documentation verifying that fact. AE J, AE K.

Applicant stated he was current on his debts until he ran into financial difficulty in 2006 as evidenced by his credit report. Tr. 74, AE H. Applicant conceded he made some "bad decisions." Rather than seek chapter 7 bankruptcy, he chose chapter 13 bankruptcy because he "[does] have a willingness to satisfy debts." Tr. 87-90.

Applicant is also making monthly mortgage payments of \$2,287 to his primary mortgage of \$345,118 and \$867 to his secondary mortgage of \$88,763. Applicant fell behind on these two payments following the approval of his chapter 13 repayment plan as a result of bankruptcy attorney legal fees. He submitted budget documentation during his hearing and post-hearing that he is current with his late monthly mortgage payments as of March 2007. Tr. 29-32, 71-73, AE B, AE G, AE P.

As part of Applicant's chapter 13 bankruptcy, he was required to undergo financial counseling, which he completed in July 2007. AE O.

Applicant provided three work-related reference letters from supervisory personnel. The letters describe Applicant as a "valuable asset," "ambitious to learn," "[having a] willingness to go the extra distance," "honest," "hard working," and "ambitious, dependable, trustworthy and willing to work the long and odd hours . . . to keep the facilities running during government business hours." AE L, AE M, AE N. His post-hearing budget reflects he has a net remainder of \$678 after he pays all his monthly bills. AE P.

Policies

When evaluating an Applicant's suitability for a security clearance, the Administrative Judge must consider the revised 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. The Administrative Judge's overarching adjudicative goal is a fair, impartial and common sense 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, the Applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." The Applicant has the ultimate burden of persuasion as to 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 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

Under Guideline F (Financial Considerations),¹ the Government's concern is that an Applicant's

“[f]ailure 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.”

Applicant acknowledged he made some poor financial decisions. Part of his problems were due, in part, to anticipated overtime not materializing and his automobile dealer failing to pay off the note on his trade-in vehicle. These events created a financial tailspin from which Applicant was unable to recover. When faced with significant financial problems, Applicant made reasonable efforts to confront and resolve his financial problems. Rather than seeking a chapter 7 discharge, he sought to repay his debts through a chapter 13 repayment plan. As of March 2008, he is current on his mortgage arrearages and has always been current on his payments to his chapter 13 trustee. He began his five-year repayment plan in August 2007. Since November 2007, these payments have been made to the bankruptcy trustee by payroll deduction. Applicant also sought counseling as required by the bankruptcy process.

¶ 19. Conditions that could raise a security concern and may be disqualifying include:

- (a) inability or unwillingness to satisfy debts;
- (b) indebtedness caused by frivolous or irresponsible spending and the absence of any evidence of willingness or intent to pay the debt or establish a realistic plan to pay the debt.
- (c) a history of not meeting financial obligations;
- (d) deceptive or illegal financial practices such as embezzlement, employee theft, check fraud, income tax evasion, expense account fraud, filing deceptive loan statements, and other intentional financial breaches of trust;

¹ Guideline ¶ 18.

(e) consistent spending beyond one's means, which may be indicated by excessive indebtedness, significant negative cash flow, high debt-to-income ratio, and/or other financial analysis;

(f) financial problems that are linked to drug abuse, alcoholism, gambling problems, or other issues of security concern;

(g) failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same;

(h) unexplained affluence, as shown by a lifestyle or standard of living, increase in net worth, or money transfers that cannot be explained by subject's known legal sources of income; and

(i) compulsive or addictive gambling as indicated by an unsuccessful attempt to stop gambling, "chasing losses" (i.e. increasing the bets or returning another day in an effort to get even), concealment of gambling losses, borrowing money to fund gambling or pay gambling debts, family conflict or other problems caused by gambling.

Of the nine Financial Considerations Disqualifying Conditions (FC DC) listed *supra*, two are applicable: ¶ 19(a): inability or unwillingness to satisfy debts; and FC DC ¶ 19(c): a history of not meeting financial obligations.

¶ 20. Conditions that could mitigate security concerns include:

(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;

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

Considering the record evidence as a whole,² I conclude three of the six Financial Considerations Mitigating Conditions (FC MC) are applicable: ¶ 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; ¶ 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; and ¶ 20(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant's financial history before he encountered difficulty and favorable evidence supports a finding that he has established a track record of financial responsibility, and has taken control of his financial situation. Noteworthy is the fact Applicant has a 12-year history of successfully holding a security clearance.

To conclude, Applicant presented sufficient evidence to explain, extenuate, or mitigate the financial considerations security concerns. Applicant met his ultimate burden of persuasion to obtain a favorable clearance decision. In reaching this conclusion, the whole person concept was given due consideration and that analysis does support a favorable decision.

I take this position based on the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), my "careful consideration of the whole person factors"³ and supporting evidence, my application of the pertinent factors under the Adjudicative Process, and my interpretation of my responsibilities under the Guidelines. Applicant has mitigated or overcome the government's case. For the reasons stated, I conclude he is eligible for access to classified information.

² See ISCR Case No. 03- 02374 at 4 (App. Bd. Jan. 26, 2006) (citing ISCR Case No. 02-22173 at 4 (App. Bd. May 26, 2004)). When making a recency analysis for FC MC 1, all debts are considered as a whole.

³ See ISCR Case No. 04-06242 at 2 (App. Bd. June 28, 2006).

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

Subparagraph 1.a. – 1.f.: For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with national security to grant Applicant eligibility for a security clearance. Clearance is granted.

ROBERT J. TUIDER
Administrative Judge