



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



In the matter of:)
)
-----) ISCR Case No. 07-06694
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Candace Le'i, Esquire, Department Counsel

For Applicant: *Pro se*

June 11, 2008

Decision

ROSS, Wilford H., Administrative Judge:

Applicant submitted his Electronic Questionnaires for Investigations Processing (e-QIP), on July 25, 2006 (Government Exhibit 1). On October 31, 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline F concerning the 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 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 filed an Answer to the SOR on December 19, 2007, and requested a hearing before an Administrative Judge. Department Counsel was prepared to proceed on January 24, 2008. I received the case assignment on January 25, 2008. DOHA issued a notice of hearing on February 6, 2008, and I convened the hearing as scheduled on March 4, 2008. The government offered Government Exhibits 1 through

4, which were received without objection. Applicant testified on his own behalf and submitted Applicant's Exhibits A through C, without objection. DOHA received the transcript of the hearing, and the record closed, on March 14, 2008. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

Findings of Fact

The Applicant is 46, single and is a retired non-commissioned officer in the Armed Forces. He is employed by a defense contractor and seeks to retain a security clearance previously granted in connection with his employment.

Guideline F, Financial Considerations

The Applicant retired from the Armed Forces in November 2001 as an E-7. He worked for a Defense contractor until July 2002. During 2002 and 2003 the Applicant attempted to make a living as a real estate agent. During this time he incurred the majority of the debt discussed below, but was able to maintain at least minimum payments using his retirement pay and savings he had accumulated during his military career.

In 2004 the Applicant was not making any money as a realtor and he had also exhausted his savings. At this point he stopped incurring new debt and attempted to find full-time employment. He worked at several part time jobs from December 2003 to June 2006. None of these jobs paid well or matured into full-time employment. During this period he was able to maintain his monthly expenses, but was unable to make any payments on his now past-due indebtedness. (Transcript at 33-39; Government Exhibit 2 at 1, 6-8.)

The Applicant began work as a full-time employee for a Defense contractor in June 2006. Almost immediately upon beginning work, the Applicant began paying off his past-due indebtedness. In July 2006, he paid off his smallest bill, to his cable company, in the amount of \$104.14. Next, he began paying off his American Express bill. This debt, in the amount of \$4,043.07, was paid off in February 2007. (Government Exhibit 2 at 17-20, and Government Exhibit 3 at 2.)

Subparagraph 1.a. The Applicant admits that he owes approximately \$15,635.00 on this credit card account. This debt was incurred during the time he was working full-time in real estate. His financial situation has improved to the point where he can make payment arrangements on this debt. In order to facilitate this, the Applicant has entered into an agreement with a debt resolution company (Company). The payments to the Company begin in March 2008 and the Applicant expects this debt to be paid within a year. His current income allows him to complete the payments set forth under subparagraph 1.c., below, and make the required payments to the Company. (Transcript at 51-55; Applicant's Exhibits A, B, and C at 1-13.)

Subparagraph 1.b. The Applicant admits that he owes approximately \$36,397.00 on this credit card account. His financial situation has improved to the point where he can make payment arrangements on this debt. In order to facilitate this, the Applicant has entered into an agreement with a debt resolution company (Company). The payments to the Company begin in March 2008 and the Applicant expects this debt to be paid within 18 months. His current income allows him to complete the payments set forth under subparagraph 1.c., below, and make the required payments to the Company. (*Ibid.*)

Subparagraph 1.c. The Applicant admits that he originally owed \$21,997.00 on this past due credit card debt. Once he completed paying American Express in February 2007 the Applicant immediately began paying \$1,542.25 per month on this account. As of the date of the hearing his balance was approximately \$9,200. The collection agency debits the amount automatically from the Applicant's account every month. (Transcript at 49-51; Applicant's Exhibit C at 1, 15-29.)

As of the date of the hearing he had paid \$18,447.36 towards this particular debt. Since June 19, 2006, when he obtained permanent employment, the Applicant has paid off \$22,594.57 towards all of his past due debts.

Mitigation

The Applicant had a very successful military career. He submitted his resume, which showed that he was a respected non-commissioned officer. (Government Exhibit 2 at 9-13.)

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 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 over-arching 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. In addition, the Administrative Judge may also rely on his own common sense, as well as his 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 “[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. 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 by President Eisenhower in Section 7 of Executive Order 10865, “Any determination under this order . . . 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

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. The Applicant admits that he owed the debts set forth in SOR subparagraphs 1.a., 1.b. and 1.c. The evidence is sufficient to raise these potentially disqualifying conditions, requiring a closer examination.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Under AG ¶ 20(a), the disqualifying condition 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.” The Applicant attempted to begin a career in real estate after leaving the Armed Forces. For a time he was able to use credit cards, his retirement pay, and his savings to pay his debts. When he was unable to make his payments he stopped using the credit cards, and when he obtained full time employment he immediately went to work paying them off. I find the behavior occurred under such unusual circumstances that it is unlikely to recur, and it does not raise concerns about his current reliability, trustworthiness, or good judgment. The evidence raises this potentially mitigating condition.

AG ¶ 20(c) applies if “there are clear indications that the problem is being resolved or is under control.” Evidence that “the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts” is also mitigating under ¶ 20(d). The Applicant is able to pay his current bills and also pay close to \$3,000.00 a month towards the older debts. He has control over his current indebtedness and, for a year and a half, has paid a substantial amount of money towards the arrearage. I conclude these potentially mitigating conditions 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 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) 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 the facts and circumstances surrounding this case. The Applicant attempted to succeed in the real estate business after he left the military. For reasons not of his making he was unsuccessful. For several years he was unemployed or underemployed and unable to make payments on his past due debts. Once he was employed full time he

immediately began to pay his debts and has already paid a substantial amount towards them. He has a plan to pay all of his debts and is fulfilling it. He has behaved reasonably and appropriately in trying to resolve them, thereby AG ¶ 2(a)(6) applies. Under the particular circumstances of this case, I find that there is little to no potential for pressure, coercion, exploitation, or duress (AG ¶2(a)(8)), and that the likelihood of recurrence is close to nil (AG ¶2(a)(9)).

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.

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 THE APPLICANT

Subparagraphs 1.a through 1.c.: For the 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