



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 07-12374
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Daniel Crowley, Esquire, Department Counsel
For Applicant: *Pro Se*

July 14, 2008

Decision

LYNCH, Noreen A., Administrative Judge:

Applicant submitted his Security Clearance Application (SF 86), on December 11, 2006. On March 5, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guidelines F, and E for 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 requested a hearing before an Administrative Judge. I received the case assignment on April 10, 2008. DOHA issued a notice of hearing on April 14, 2008, and I convened the hearing as scheduled on May 7, 2008. The hearing was continued on June 19, 2008. The Government offered Exhibits (GE 1-7), which were received without objection. Applicant testified in his own behalf, and presented the testimony of one witness. He submitted Exhibits (AE A-D), without objection. DOHA received the first

transcript on May 15, 2008 and the final transcript on June 27, 2008. Based upon a review of the record, eligibility for access to classified information is granted.

Findings of Fact

In his Answer to the SOR, dated March 14, 2008, Applicant admitted the factual allegations in ¶¶ 1.a-1.o of the SOR. He also admitted the two answers on his security clearance application were incorrect as indicated in ¶ 2.a-2.b of the SOR but denied any intentional falsification. He provided additional information to support his request for eligibility for a security clearance.

Applicant is a 24-year-old employee of a defense contractor. He graduated from high school in June 2002. He has worked for his current employer since December 2004 (GE 1). Applicant held a security clearance from 2004 until the present (Tr. 40).

Applicant married in 2006. He and his wife have one infant son, aged eight months (Tr. 19). His wife had many medical problems before her pregnancy. She had surgery due to these medical conditions. The couple incurred many medical bills due to the hospitalizations and treatments of his wife. They have incurred medical bills from the birth of their child. His wife had a difficult pregnancy and more problems after the birth of her son.

Applicant has diligently worked in an apprenticeship program for his current employer for the past four years. He is almost at the completion of the program. He enjoys the work and will get an increase in salary as soon as he finishes the apprenticeship. This will be very soon. His wife has returned to work recently.

Applicant explained that he was the sole earner for his family for the past two years. He had unexpected medical bills, doctor bills and various expenses involved with the birth of his son. He also acknowledged that some of the delinquent accounts stem from his ex-fiancée who charged things on his accounts without his permission. He acknowledges he was not responsible enough at that time in his life. He is adamant that now that he has worked very hard in his apprenticeship program and is so near to his goal that he would not do anything to jeopardize his future with his employer. He is also concerned about providing for his wife and infant son (Tr. 19). In fact, he has paid his wife's previous medical bills that are not really reflected in the SOR.

The SOR alleges 15 delinquent debts, including two judgments for \$160 (medical) and \$875 and a truck repossession. The total amount of debt that Applicant owes is approximately \$20,000 (GE7). Some of the debts are medical in nature. The largest debt is \$7,112 for a truck repossession in 2005. Applicant turned the car back to the dealer when he could no longer afford the payments. His counselor is trying to negotiate the amount for settlement without interest and fees which would greatly reduce the amount owed (Tr. 25). The next largest debt is \$2,817 for a credit card. His former fiancée used his credit card to charge items that he was not aware of at the time. Applicant does not recognize the debt of \$520 for a collection account. His counselor is

disputing this account. The furniture account for \$1,093 is also being investigated by his credit counselor because Applicant does not recognize it and he is paying on another furniture account now (AE B).

Applicant admitted owing the debts listed in the SOR. The following account is in repayment status: ¶ 1.b for a computer that he purchased in 2005. The amount of the debt at present is \$2,206. Applicant has paid \$25 a month on that account since 2006. He provided proof of that automatic debit from his bank account at the hearing (AE A). The other debts have not been paid. Applicant is working with a counselor to prepare a plan for payments or settlement. In addition, the income that his wife is generating now will go toward paying all the smaller debts (Tr. 39).

Applicant and his wife are receiving financial counseling with Hall Enterprises. His counselor is negotiating with various creditors that he contacted in the past few months. Applicant had not looked at his credit report prior to the security investigation. He does not recognize some of the debts. The counselor is investigating some larger accounts that might settle for a lower amount or have the interest and fees reduced. The counselor told Applicant that she discovered "violations" or duplications on his credit report (GE 6) He has deferred to her judgment since she has experience in this area (Tr. 24). As noted above some of the accounts may be duplicates.

Applicant's current monthly net income is \$3,848.36. After monthly expenses of \$1,610.26, he has a net remainder of approximately \$1,1610 (AE C). He is paying on a furniture bill that is not listed in the SOR. That account will be paid in full very soon (AE B). He and his wife are current on their expenses. They do not have any current debt. They are in the process of relocating to find a more affordable rent which would give them more discretionary income to apply to the remaining debts (Tr. 22).

Applicant completed his December 26, 2006 security application. In that application he answered "no" to section 28(a) and (b) which asks for information on debts either 180 days delinquent in the last seven years or 90 days currently delinquent (GE 1).

Applicant explained that he did not complete the security questionnaire by himself in 2006. He indicated that someone at the computer filled in the information that Applicant provided by pencil. Applicant believed he answered "yes" to debts delinquent for 180 and not 90 days. However, the SF 86 does not have anything checked for either section 28(a) or (b). Applicant testified that he did not see the completed questionnaire. He did sign the document. He said it was a misunderstanding. He was credible in his testimony that he had no intent to deceive the government. He is looking forward to a career with the shipyard and providing for his family.

In May 2007, Applicant was interviewed as part of the security clearance process. He explained his financial status and his delinquencies. He indicated that some of the debt occurred in 2004 and most recently in 2006 due to his wife's medical problems and the birth of their son. He reiterated that he was the sole support for the

past two years. Applicant acknowledged that he bought a car at an auction and that he became delinquent because he was irresponsible at that time (2003). He also believed that some of the bills may have been paid but he is not sure. He did not receive a bill for the cable account and he had moved. He could not afford the payments on his vehicle and he returned the car to the dealership (GE 4).

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 over-arching adjudicative goal is a fair, impartial and common sense decision. According to AG ¶ 2, 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

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^o is potentially disqualifying. Similarly under AG & 19(c), a history of not meeting financial obligations^o may raise security concerns. Applicant accumulated delinquent debts on numerous accounts and judgments and did not meet some of his financial obligations from 2004 until the present time. His credit reports confirm the debts. 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.^o Applicant-s financial worries arose in 2004 and in 2006. He accumulated some delinquent debt due to his ex-fiancee. He later accumulated debt due to his wife’s medical problems and the birth of his son. He could not pay his bills on his salary alone. While those circumstances may have precipitated the debt, the inquiry does not end at that point. He admits that he was irresponsible prior to 2004. His conduct over the last six months with his creditors and the financial counselor removes security concerns or doubts about his current reliability, trustworthiness, and good judgment. However, he made payments on one debt in the SOR and has 13 outstanding delinquent debts. This potentially mitigating condition applies in part.

Under AG & 20(b), it may be mitigating where 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.@ Applicant has been steadily employed during the past five years. His wife's medical problems and the birth of their son combined with her inability to work until very recently contributed to his financial difficulties but he also admitted that he was irresponsible prior to his marriage. Applicant was not as aggressive as he should have been in initially addressing or resolving his delinquent debts. I find this potentially mitigating condition partially applies.

Evidence that 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@ is potentially mitigating under AG & 20(c). Similarly, AG & 20(d) applies where the evidence shows the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.@ Applicant is receiving financial counseling. He is investigating his credit report through his debt counselor. He has been paying on one debt since 2006. He is also paying on a furniture debt that is not listed in the SOR. He is current on his daily expenses. His wife has recently returned to work. He is looking for a new place to live which he hopes will increase his monthly net remainder. I find his efforts are sufficient to carry his burden in this case. I conclude these potentially mitigating conditions apply.

AG ¶ 20(e) applies where the evidence shows "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." In this case, Applicant stated that his counselor had identified some problems or possible duplications on his credit report. He presented a letter from his counselor. I conclude this potentially mitigating condition partially applies.

Guideline E, Personal Conduct

The security concern relating to the guideline for Personal Conduct is set out in AG ¶ 15:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to cooperate with the security clearance process.

The guideline notes several conditions that could raise security concerns. Under AG ¶ 16(a), "deliberate omission, concealment, or falsification of relevant facts from any personnel questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities" is potentially disqualifying.

In this case, when Applicant completed his 2006 security application, he did not list any debts that were 90 or 180 days delinquent. He explained that he did not complete the security application himself. I found his testimony credible that he believed he told the person at the computer that he did have debts more than 180 days delinquent and believed that encompassed the 90-day question. Despite the fact that the questionnaire was not checked 'yes" on either section, I found him credible. The allegation of falsification is unsubstantiated. He loves his job and the opportunity to provide for his family and would not do anything to jeopardize that position. I do not find that he deliberately provided false information on his SF 86 in 2006.

Thus, Applicant's allegation of deliberate omission is mitigated under AG 17(f) "the information was unsubstantiated or from a source of questionable reliability."

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 common sense 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 and conclude they are sufficient to overcome the government's case. Applicant has worked very hard for the past five years in his apprenticeship program. He is nearing completion and has a promotion ahead of him. He is now married and has an infant son. His wife appeared with him at the hearing and testified in his behalf. He was credible in that he realizes he was immature after high school and made mistakes in financial responsibility. He is receiving counseling and his wife is helping with the family expenses by her return to work. Applicant was very adamant in his resolve to clear his credit and pay all his bills. He is current on his daily expenses and is looking for a way to increase his discretionary income which he promises to apply to payment of his creditors. He works hard and believes he has a good future with the shipyard.

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 has mitigated the security concerns arising from his financial considerations and personal conduct.

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:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	For Applicant
Subparagraph 1.e:	For Applicant
Subparagraph 1.f:	For Applicant
Subparagraph 1.g:	For Applicant
Subparagraph 1.h:	For Applicant
Subparagraph 1.i:	For Applicant
Subparagraph 1.j:	For Applicant
Subparagraph 1.k:	For Applicant
Subparagraph 1.l:	For Applicant
Subparagraph 1.m:	For Applicant
Subparagraph 1.n:	For Applicant
Subparagraph 1.o:	For Applicant

Paragraph 2, Guideline E: FOR APPLICANT

Subparagraph 2.a:	For Applicant
Subparagraph 2.b:	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. Eligibility for access to classified information is granted.

NOREEN A. LYNCH
Administrative Judge