



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 07-12813
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Jennifer I. Goldstein, Esquire, Department Counsel

For Applicant: *Pro se*

October 27, 2008

Decision

ROSS, Wilford H., Administrative Judge:

Applicant submitted his Electronic Questionnaires for Investigations Processing (e-QIP) on December 15, 2005 (Government Exhibit 1). On February 8, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline F 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 acknowledged receipt of the SOR on February 20, 2008, and requested a hearing before an Administrative Judge. Department Counsel was prepared to proceed on April 1, 2008. I received the case assignment on April 8, 2008.

DOHA issued a notice of hearing on April 18, 2008, setting the hearing for May 13, 2008. The Applicant requested a continuance to serve on jury duty, which I granted. An amended notice of hearing was issued on May 22, 2008, and I convened the hearing as scheduled on June 20, 2008. The Government offered Government Exhibits 1 through 7, which were received without objection. Applicant testified on his own behalf and submitted Applicant's Exhibits A through H, without objection. DOHA received the transcript of the hearing on June 30, 2008. I granted Applicant's request to keep the record open until July 7, 2008, to submit additional matters. On July 1, July 3 and July 7, 2008, he submitted Applicant's Exhibits I, J and K, without objection. The record closed on July 7, 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 57, married and has a high school diploma plus career training. He is employed by a defense contractor and seeks to obtain a security clearance in connection with his employment.

Guideline F, Financial Considerations

The Applicant married his current wife in 1999. For several years after they got married, the Applicant's wife did not have enough taxes withheld from her pay check. (Applicant's Exhibit I at 15-17; Transcript at 43-47.) This resulted in the Applicant and his wife owing several years of back taxes to the state and Federal tax authorities. In addition, the Applicant's wife had tax problems that pre-dated their marriage. (Government Exhibit 2 at page 6.)

Because of these problems, the Internal Revenue Service and the state filed various levies and tax liens against the Applicant and his wife. The Applicant and his wife owed approximately \$25,000.00 in taxes, interest and penalties by 2008. (Government Exhibit 2 at 12-13 and Government Exhibit 5 at 1.)

The Applicant and his wife retained a tax attorney in 2004 to assist them in resolving the tax problems. (Government Exhibit 2 at 9-10; Transcript at 48-51.) The attorney began negotiating agreements with the state and Federal taxing authorities. (Government Exhibit 2 at 11, 14.) Beginning in 2007, the Applicant began paying state back taxes through garnishment. (Government Exhibit 2 at 7; Applicant's Exhibit G.) The state tax lien was successfully paid off in May 2008. (Applicant's Exhibit A; Transcript at 51-52.)

The Applicant and his wife entered into an Installment Agreement with the IRS on December 24, 2007. This agreement stated that they would pay \$683.00 per month to the IRS for their joint back taxes of \$18,413.66, starting March 28, 2011. (Applicant's Exhibit F.) The Applicant subsequently elected to amend that agreement, so that

payments of \$300.00 a month on back taxes would start three years earlier, on July 28, 2008. He credibly testified that payments would be made in accordance with this agreement. (Applicant's Exhibit K at 11-17; Transcript at 57-62.)

The Applicant's wife has also been paying an IRS garnishment for her separate back taxes. (Government Exhibit 2 at 8.) This tax indebtedness pre-dated her marriage. On December 24, 2007, she entered into a separate agreement with the IRS concerning these taxes. (Applicant's Exhibit I at 4-7.) The Applicant's wife made payments according to this agreement. (Applicant's Exhibit I at 10-14, 19.) This agreement was also modified. (Applicant's Exhibit K at 4-9.) **(Is his wife able to pay her own tax debt without her husband's financial assistance?)**

The Applicant testified and submitted evidence that he is able to pay his current indebtedness, and pay his tax debt. (Government Exhibit 2 at 3; Transcript at 62-65.) His most recent credit bureau report, dated April 1, 2008, reveals no past due debt, other than the tax debt. (Government Exhibit 7.)

Mitigation

The Applicant submitted documentation showing that he is a highly respected employee. (Applicant's Exhibit I at 20-23.) A former supervisor describes the Applicant as, "a good man, an excellent asset to the government, and a true American." (Applicant's Exhibit C.) The Applicant's performance reviews from 2004 through 2008 show that he is consistently rated as "Meets/Occasionally Exceeds Expectations" or "Exceeds Expectations." (Applicant's Exhibits D and J.)

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©, 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©, “a history of not meeting financial obligations” may raise security concerns. The Applicant was unable to pay his tax debts for several years, resulting in the filing of state and Federal tax liens. 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.” Applicant’s financial worries arose between about 1999 and 2004. There is no evidence that he has been unable to pay his taxes in a timely manner since then. The evidence shows that the tax problems were based, to a great extent, on his wife’s actions before they were married. Those problems have been resolved. 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.

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©. Similarly, AG ¶ 20(d) applies where the evidence shows “the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.” The Applicant never denied he owed these tax debts. For the past several years, he has been negotiating with the state and Federal taxing authorities to resolve the situation. The state tax debt has been completely paid off. The Applicant and his wife have entered into reasonable payment arrangements with the IRS that he will be able to pay without serious problems. Therefore, the tax debt has been successfully resolved. 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 ¶ 2c, 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, by his own admission, took several years to decide to resolve his tax situation. Since 2004, his taxes have been paid in a timely fashion and he is current on all of his other indebtedness. Of course, the issue is not simply whether all the Applicant’s debts are paid - it is whether his financial circumstances raise concerns about his fitness to hold a security clearance. Under AG ¶ 2(a)(3), this conduct is not recent. While it would have been better if he had paid his tax debt earlier, he has paid the state off now. The situation regarding his Federal taxes has been resolved to the Government’s satisfaction. 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)8)).

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
Subparagraph 1.a:	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