



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 07-13433
SSN: -----)
)
Applicant for Security Clearance)

Appearances

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

For Applicant: *Pro se*

July 29, 2008

Decision

ROSS, Wilford H., Administrative Judge:

Applicant submitted his Questionnaire for Sensitive Positions, on January 10, 2007. (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 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 March 3, 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.

The hearing was convened on May 13, 2008. The Government offered Government Exhibits 1 through 6, which were received without objection. Applicant testified on his own behalf and submitted Applicant's Exhibits A through F, without objection. The Applicant requested that the record remain open for the submission of additional documents. The Applicant submitted Applicant's Exhibit G on May 29, 2008, and it was received without objection. DOHA received the transcript of the hearing on May 22, 2008. The record closed on May 30, 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 29, and he lives with his girlfriend and their two children. 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 began working in the Defense industry in January 2007. His financial problems began in approximately 2001, when he was injured on the job at the same time his partner had a child. Subsequent to that time, he went through a period of underemployment, he moved, and was the victim of identity theft and fraud committed by a former roommate. (Transcript at 33, 42, 46-48, 65-66.)

When the Applicant began working for the Defense industry, he also began working to clean up his credit report. Some of the debts on his report were fraudulent, some had been paid but not removed and some were past due and had to be paid. The Applicant made a point by saying that the three credit reporting firms are not always consistent in their timing or in what they report. (Transcript at 71-72.)

Subparagraph 1.a. The Applicant admits that he owed approximately \$191.00 for a cable box he did not return. The Applicant testified that he made a payment arrangement with this creditor to pay \$50.00 a month for four months. (Transcript at 32, 62-64.) The Applicant subsequently submitted emails showing that he had attempted to contact this creditor to complete the transaction without success. (Applicant's Exhibit G at 4-7.)

Subparagraph 1.b. The Applicant denies this debt in the amount of \$439.00. He submits that this debt was fraudulently incurred in his name by his former roommate in another state. He has attempted to find the collection agency without success for several months. (Transcript at 33, 64-68.) In addition, the Applicant has filed a dispute with the credit reporting agencies, as reflected in Government Exhibit 4 at 1 and Applicant's Exhibit F at 2.

Subparagraph 1.c. The Applicant denies this debt in the amount of \$64.00. He submits that this debt was fraudulently incurred in his name by his former roommate in

another state. The Applicant testified that he filed a dispute with the credit reporting agencies, and the debt was removed. His April 1, 2008, credit report reflects this. (Applicant's Exhibit F.) The Government's most recent credit report, dated May 13, 2008, still reflects the debt. (Government Exhibit 6 at 2.)

Subparagraph 1.d. The Applicant admits that he owed approximately \$164.00 to a credit union. He paid this debt in full in approximately February 2006, as confirmed by his credit report. (Transcript at 34-35; Government Exhibit 2 at 12; Applicant's Exhibits B, D and Exhibit F at 3.)

Subparagraph 1.e. The Applicant admits that he may owe a hospital \$244.00 in medical expenses. He further submits that he had insurance at the time, which should have paid this debt. He has not yet investigated the circumstances but, if his insurance will not cover it, he will pay the debt. The Applicant further testified that he disputed this debt with the credit reporting service he was working with, but he does not have any proof of that. (Transcript at 35-36, 72-73.)

Subparagraphs 1.f. and 1.g. The Applicant admits that he owes a bank at least \$1,222.00 for a past due credit card. The Applicant submits that this debt is a duplicate of that set forth in Subparagraph 1.g. and that, after he contacted his credit reporting agency, this debt is only set forth once. (Transcript at 36, 73-75; Applicant's Exhibit F at 1-2.) The Government's most recent credit report shows both debts. (Government Exhibit 6 at 2.) The Applicant intends to settle this debt as soon as he can.

Subparagraph 1.h. The Applicant admits that he owes a telephone company a past due debt in the amount of \$541.00. This creditor will not work with the Applicant and he has been unable to reach a payment arrangement with them. He intends to pay this debt as soon as he can. (Transcript at 37, 75-77.)

Subparagraph 1.i. The Applicant denies this debt to a telephone provider in the amount of \$325.00. He submits that this debt was fraudulently incurred in his name by his former roommate in another state. The Applicant testified that he filed a dispute with the credit reporting agencies, and the debt was removed. This account was deleted from his credit report effective May 14, 2008. (Transcript at 37, 77-79, 96-97; Applicant's Exhibit G at 8.)

Subparagraph 1.j. The Applicant admits that he owes a telephone company a past due debt in the amount of \$1,238.00. The Applicant testified that he is in negotiations with this creditor, and intends to pay this debt as soon as he can. (Transcript at 37, 81-82.)

Subparagraph 1.k. The Applicant admits that he may owe a hospital \$267.00 in medical expenses. He further submits that he had insurance at the time, which should have paid this debt. He has not yet investigated the circumstances but, if his insurance will not cover it, he will pay the debt. He has been in contact with the creditor, but he has not yet worked out any payment arrangement. (Transcript at 37-38, 82-83.)

Subparagraph 1.l. The Applicant admits that he owed approximately \$3,303.00 to a bank for an automobile loan. He paid this debt in full in approximately December 2006, as confirmed by credit reports submitted by the Applicant and the Government. (Transcript at 38, 83-85, 87, 101-102; Government Exhibit 2 at 19-20, Exhibit 3 at 4 and Exhibit 4 at 2.)¹

Subparagraph 1.m. The Applicant admits that he may owe money to this collection agency for a DirecTV bill, however he denies that the amount is \$255.00. He testified that every time he requests information on the account, it is removed from his credit report. (Transcript at 38-39, 86-88, 98-99.) He submitted evidence showing that he had been in touch with DirecTV in November 2007 in an attempt to figure out the bill. (Government Exhibit 2 at 7.) This debt appears in both 2007 credit reports in the record; one provided by the Government (Government Exhibit 3 at 4) and one from the Applicant (Government Exhibit 2 at 17). However, the debt does not appear in any of the 2008 credit reports submitted by the Government or the Applicant. (Government Exhibits 4, 5 and 6; Applicant's Exhibit F.)

Subparagraph 1.n. The Applicant admits that he owed approximately \$116.00 to a law firm for a non-sufficient funds check. He paid this debt in full in approximately April 2005. The law firm has a history of shady dealing, and he had to get another law firm involved in order to get the entry removed from his credit reports. (Transcript at 39, 88-90; Government Exhibit 2 at 8.) The Applicant was unable to provide proof of payment, other than the fact that the debt has been removed from his credit report. This debt appears in both 2007 credit reports in the record; one provided by the Government (Government Exhibit 3 at 6) and one from the Applicant (Government Exhibit 2 at 19). However, the debt does not appear in any of the 2008 credit reports submitted by the Government or the Applicant. (Government Exhibits 4, 5 and 6; Applicant's Exhibit F.)

Subparagraph 1.o. The Applicant originally denied he owed this debt to an insurance company in the amount of \$82.00. However, after he determined he could not supply information to the insurance company showing that he did not owe the debt, he made arrangements to pay it electronically. (Transcript at 39-41, 90-93; Applicant's Exhibits E and F at 2.)

The Applicant submitted that his current financial situation is stable. He is able to pay his current debts and work towards resolving his past due indebtedness. In addition, his credit reports show that he has successfully paid off two automobile loans in the recent past. His financial difficulties were over a limited time, and he is working to pay those debts that are his and have removed from his credit report those that are not.

As of the date the record closed, he had paid \$3,665.00 towards his debts in the SOR. In addition, he is disputing in good faith an additional \$1,579.00 worth of debt and \$828.00 of debt had been removed as fraudulent. His current admitted indebtedness stands at \$3,703.00.

¹It is noted that the Applicant paid this debt, his largest, more than a year before the SOR was issued.

Mitigation

The Applicant submitted letters from supervisors and co-workers. They describe the Applicant as “trustworthy, responsible and clearly an asset to his job.” (Applicant’s Exhibit A.)

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(c), "a history of not meeting financial obligations" may raise security concerns. There is evidence in the record that the Applicant may have owed approximately \$9,775.00 to the creditors named in the SOR. The evidence is sufficient to raise this potentially disqualifying condition, 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." In addition, AG ¶ 20(b) states that it may be mitigating if "the conditions that resulted in the financial problems were largely beyond the person's control (e.g., loss of employment, . . . unexpected medical emergency), and the individual acted responsibly under the circumstances."

The majority of the Applicant's past due indebtedness was incurred in 2001 when the Applicant was injured on the job, lost his job and his girlfriend had a child. As described at length above, once the Applicant was employed in the Defense industry, he had a plan to pay off his past due indebtedness and, for over one year, has been successfully fulfilling it. 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). Finally, it can also mitigating if “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.” (AG ¶20(e).)

The Applicant has shown by the use of email trails with several creditors that he has been attempting to resolve his indebtedness for some time. He has successfully disputed some of his debts as being fraudulent or otherwise not valid. In addition, the Applicant is able to pay his current bills and also pay off his older debts.² His admitted past due indebtedness has been reduced to less than \$4,000.00. He has control over his current indebtedness, has paid a substantial amount of money towards the arrearage, and has shown a more than credible willingness to continue paying off his past due indebtedness. 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, by his own admission, ran into a “bad patch” in 2001. Rather than avoid them, once he obtained steady and well-paying employment in the Defense industry, he immediately began to pay his debts once he knew their full extent, 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

²Department Counsel correctly states that the mere absence of an entry on a credit report is not, standing alone, evidence that the debt has been paid. However, here the Applicant has shown by documentary evidence his proactive attempts to work towards paying his bills. In addition, as the Applicant correctly says, each of the three credit reporting agencies have different policies and may not post items at the same time.

