



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----, -----) ISCR Case No. 07-17632
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Jeff A. Nagel, Esquire, Department Counsel
For Applicant: *Pro Se*

March 31, 2009

Decision

WHITE, David M., Administrative Judge:

Applicant had some delinquent debts incurred more than four years ago that he was prevented from repaying by unforeseen medical problems. All these debts were finally discharged in bankruptcy in October 2008. He is now solvent and debt-free. Based upon a thorough review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

Applicant submitted his Electronic Questionnaires for Investigations Processing (e-QIP), on May 10, 2007. On May 21, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F. 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 (DoD) for SORs issued after September 1, 2006.

Applicant acknowledged receipt of the SOR on May 28, 2008. He answered the SOR in writing on June 9, 2008, and originally requested a decision without a hearing before an administrative judge. After preliminary discussions with Department Counsel, he changed his mind and requested a hearing. (Tr. at 17-20.) Department Counsel was prepared to proceed on October 27, 2008, and DOHA assigned the case to me on October 29, 2008.

DOHA issued a notice of hearing on December 2, 2008, and I convened the hearing as scheduled on January 7, 2009. Department Counsel offered Government Exhibits (GE) 1 through 11, which were admitted without objection. Applicant testified on his own behalf, and offered Applicant's Exhibits (AE) A through C, which were also admitted without objection. I granted Applicant's and Department Counsel's joint request to leave the record open until January 14, 2009, to permit Applicant to obtain and submit additional documents concerning his bankruptcy. This evidence was submitted and admitted as AE D, without objection by Department Counsel, on January 8, 2009. DOHA received the transcript of the hearing (Tr.) on January 26, 2009.

Findings of Fact

Applicant is a 60-year-old employee of a federal contractor, where he has worked for several months as an employee and three preceding years as a subcontractor employee. He is a stock clerk. He was married from 1974 to 1979, and again from 1984 to 1989, and lived in a common-law relationship with a third woman from about 1994 to 2002. He has no children. In his answer to the SOR, he admitted to all of the allegations in SOR ¶¶ 1.a through 1.k, describing 11 delinquent debts totaling \$51,367. Those admissions are incorporated in the following findings.

Applicant moved to his current state of residence in 2004, in order to reduce his living expenses by moving in with his brother and sister-in-law. He had terminated an eight-year living arrangement with a woman in another state about a year earlier because, contrary to his wishes, she continued incurring debts they could not afford to repay with their combined income. All of the SOR-listed debts date from this period in Applicant's life. Upon their separation, he agreed to assume responsibility for their debts because she could not afford to repay any of them and he thought that he could. The debts at that time were considerably less, having since increased through the addition of interest and collection agency fees. (Tr. at 25-26, 41-42, 75-78.)

Shortly after Applicant moved in with his brother and was starting a job, he was diagnosed with a disabling disease that required him to undergo a hip replacement. He had to apply for state assistance to afford the surgery, which was eventually approved. He has recently recovered fully from this medical condition, but it prevented him from working for about 14 months. Once he found work again, he contacted his creditors, and paid a few of his smaller debts. The creditors holding the larger debts were unwilling to negotiate an affordable repayment plan, however, so he finally sought counsel from an attorney who recommended that he file for Chapter 7 bankruptcy relief. (Tr at 25-26, 42-45, 57-61.)

Applicant's bankruptcy case was filed in July 2008, and the court ordered all of his dischargeable debts discharged under Chapter 7 in October 2008. (AE A; AE D.) Applicant was not certain, and it could not be determined by examination of the credit reports submitted into evidence, whether the two debts listed in SOR ¶¶ 1.h and 1.i were different debts or duplicate listings of the same underlying debt by two collection agencies. Just in case they did reflect different debts, both were listed in Schedule F of his bankruptcy filing (AE D), which listed a total of \$54,795 of dischargeable, unsecured debt. Comparing this schedule with the SOR showed that all the debts except the one listed in SOR ¶ 1.g, a \$79 cell phone bill, were discharged in the bankruptcy. The evidence submitted by Department Counsel shows that this \$79 debt was reported as being paid in full to a successor credit agency in May 2007. (*Compare* GE 4 at 4; GE 5 at 7; GE 6 at 8, 12; no longer listed on GE 9 -11.) Thus, all Applicant's of debts have been finally resolved.

Applicant submitted letters from two supervisors who have worked with him in his present position over the past several years. They both praised his good character, loyalty, and dedication to his work. His testimony during the hearing was forthright and credible. He displayed a thorough knowledge and reasonable approach to his current situation. He lives modestly and has incurred no new debt since moving to live with his brother. He has no outstanding loans and no credit cards. He has established a retirement savings program with his monthly surplus earnings now that his outstanding debt has been fully resolved. (AE B; AE C; Tr. at 61-65, 73-75.)

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 used to evaluate 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(a) and 2(c), the entire process is a conscientious scrutiny of applicable guidelines in the context 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 "Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the 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 the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision.” Section 7 of Executive Order 10865 provides that “Any determination under this order adverse to an applicant 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.”

A person applying for access to classified information seeks to enter 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.

Analysis

Guideline F, Financial Considerations

AG ¶ 18 expresses the security concern pertaining to financial considerations:

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 over-extended is at risk of having to engage in illegal acts to generate funds. Compulsive gambling is a concern as it may lead to financial crimes including espionage. Affluence that cannot be explained by known sources of income is also a security concern. It may indicate proceeds from financially profitable criminal acts.

AG ¶ 19 describes conditions that could raise a security concern and may be disqualifying. Applicant's admissions and the Government evidence raised two of these potentially disqualifying conditions: “(a) inability or unwillingness to satisfy debts;” and “(c) a history of not meeting financial obligations.” There was neither any allegation nor proof of frivolous or irresponsible spending on Applicant's part. Nor was there any evidence of gambling, drug abuse, alcoholism, tax evasion, or illegal financial practices. Simply, Applicant assumed responsibility for the joint debts largely incurred by his partner in a long-term relationship that ended because of her continued irresponsible financial behavior and his decision to no longer condone it. He was willing to satisfy

those debts, but unable to do so because of a medical situation that he has since resolved. This caused him to undergo a period of unemployment, however, during which the larger debts grew to the point that bankruptcy became his only option. He availed himself of that lawful manner to resolve his delinquent indebtedness, and incurred no new debts since returning to work in late 2005. Accordingly, AG ¶ 19(a) no longer applies to Applicant, leaving only potential concern under AG ¶ 19(c). He is no longer at any risk of having to engage in illegal acts to generate funds, since his income more than meets his regular living expenses, and all of his former debt has been lawfully discharged. Only if his history of not meeting financial obligations indicates poor self-control, lack of judgment, or unwillingness to abide by rules and regulations should that history support present security concerns.

AG ¶ 20 provides conditions that could mitigate security concerns arising from a history of unpaid debt. Since Applicant did not dispute the legitimacy of any SOR-listed debt, the four potentially pertinent conditions are:

- (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; and
- (d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant's formerly delinquent debts all arose more than four years ago, as a result of a relationship he terminated in order to get the situation under control. He has taken all possible measures to minimize his regular living expenses and maintain gainful employment to remain self-supporting. His original plan to pay off the debts was derailed by an unforeseeable medical condition requiring major surgery and resulting in 14 months of unemployment. By the time he could resume work and contacted his creditors about repayment arrangements, they were not interested except on terms beyond his possible means. Accordingly, he sought and received resolution of all his outstanding debt through Chapter 7 bankruptcy proceedings, discharged in October 2008. These actions by Applicant establish mitigation under AG ¶ 20(a), since the debts arose long ago and under circumstances he terminated to resolve them, reflecting his good judgment and trustworthiness. The debt resolution was delayed, and ultimately prevented, by medical circumstances beyond his control, not through any irresponsible

conduct on his part. He acted as responsibly as the circumstances permitted, establishing mitigation under AG ¶ 20(b).

Applicant sought the counsel of an attorney, and followed the advice given that filing for Chapter 7 bankruptcy relief was his best option, given his age and financial circumstances. He saved enough money to do so, and his debts were successfully and fully resolved through bankruptcy effective October 2008. This establishes mitigation and resolves any remaining security concern under AG ¶¶ 20(c) and (d).

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) the 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. Applicant's conduct of potential concern involves formerly delinquent debts for which he accepted responsibility, with every intent to pay them, after terminating the relationship with the woman on whose behalf they were largely incurred. An unforeseen major medical problem prevented him from earning the money to repay these debts, after he moved in with his brother's family to minimize living expenses so he could do so. He then paid off several of the smaller debts, but was unable to negotiate repayment programs with the creditors to whom he owed larger amounts including significant charges for interest and collection fees. He sought and followed the advice of an attorney to resolve his situation lawfully through bankruptcy. He has incurred no new debt for almost five years, and is living in a frugal and solvent manner on his current income. There is little likelihood of recurrence of this problem, based on his past responses to such troubles and his current desire to avoid any repeat of them. His bankruptcy discharge has completely alleviated any potential for pressure, coercion, exploitation or duress from his former debt situation.

On balance, Applicant presented sufficient evidence to fully mitigate reliability and trustworthiness security concerns arising from his former failure to satisfy debts, and brief history of not meeting financial obligations. Overall, the record evidence leaves no doubts as to Applicant's present eligibility and suitability for a security clearance. For all these reasons, Applicant has 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:	AGAINST 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

Conclusion

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

DAVID M. WHITE
Administrative Judge