



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



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| In the matter of: |) | |
| |) | |
| |) | ISCR Case No. 07-18679 |
| SSN: |) | |
| |) | |
| Applicant for Security Clearance |) | |

Appearances

For Government: Gina Marine, Esquire, Department Counsel
For Applicant: Pro Se

July 25, 2008

Decision

HENRY, Mary E., Administrative Judge:

Based upon a review of the case file, pleadings, exhibits, and testimony, I conclude that Applicant's eligibility for access to classified information must be granted.

Applicant submitted his Security Clearance Application (SF 86), on July 17, 2007. On April 16, 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 April 22, 2008. He answered the SOR in writing on April 28, 2008, and requested a hearing before an administrative

judge. DOHA received the request in May 2008. Department Counsel was prepared to proceed on May 16, 2008, and I received the case assignment on May 20, 2008. DOHA issued a notice of hearing on June 9, 2008, and I convened the hearing as scheduled on June 30, 2008. The government offered five exhibits (GE) 1 through 5, which were received and admitted into evidence without objection. Applicant and one witness testified on his behalf. He submitted 12 exhibits (AE) A through L, which were received and admitted into evidence without objection. DOHA received the transcript of the hearing (Tr.) on July 11, 2008. I held the record open until July 15, 2008, for Applicant to submit additional matters. On July 14, 2008, he submitted nine additional documents, which have been marked as AE M through U and admitted without objection. The record closed on July 15, 2008.

Procedural and Evidentiary Rulings

Notice

The file indicates that Applicant received the hearing notice on June 20, 2008, less than 15 days before the hearing. (Tr. at 10.) I advised Applicant of his right under ¶ E3.1.8 of the Directive to receive notice of the hearing 15 days prior to the hearing. Applicant affirmatively waived his right to the 15 days notice. (Tr. at 10-11.)

Findings of Fact

In his Answer to the SOR, dated April 28, 2008, Applicant admitted the factual allegations in ¶¶ 1.a to 1.f of the SOR, with explanations. He denied the factual allegations in ¶¶ 1.g and 1.h of the SOR and the concern. He also provided additional information to support his request for eligibility for a security clearance.

Applicant, who is 38 years old, works as warehouse specialist and tire inspector for a Department of Defense contractor. He began this job in October 2005. His co-workers describe him as honest, reliable and hard-working. He is a very responsible employee, charged with the responsibility of managing millions of dollars of equipment inventory. His most recent performance evaluation was a commendable, the second highest rating for employees. He completed his security clearance application in July 2007.¹

Applicant and his wife married 17 years ago. They have three children, ages 16 to 7. In 1994, Applicant started a carpet and flooring business, which he did not incorporate. He paid cash for all his supplies and any necessary subcontractor work. He did not keep receipts or good financial books. He did set aside money for personal income taxes. When he prepared his tax return for 1994, he based his income on an estimate of the business income and his wife's documented income. He filed his tax

¹GE 1 (Security clearance application, dated July 17, 2007) at 11; AE A (Letter, dated June 23, 2008); AE B (Letter, dated June 18, 2008); AE C (Letter, dated June 26, 2008); AE D (Letter, signed June 26, 2008), Tr. 33; AE G (Letter, dated June 28, 2008); AE L (Performance appraisals).

return under his and his wife's social security numbers, but did not file a separate return for the business. After computing his tax liability, he determined that he did not have enough money for all the taxes he owed.²

In 1995, Applicant worked towards paying the remaining taxes owed for 1994. At the same time, he failed to set aside money for his 1995 taxes. He experienced problems with earning enough money to pay the 1994 taxes and meet his household expenses. He continued to experience this financial problem each year while operating his business. Each year he filed his income as personal taxes and each year he lacked sufficient money to pay his entire tax bill. He closed his business in January 2003, and started working for a dry cleaners.³

When Applicant did not pay his taxes due, the Internal Revenue Service (IRS) filed liens to collect the outstanding taxes. The initial liens covered the tax years 1994 through 1998. In 2002, the IRS suggested Applicant and his wife file for bankruptcy as a way to eliminate their tax debt. They followed the advice of the IRS. The court discharged their debts in 2002, including their tax debts for the years 1994 through 1998. The IRS released these tax liens in 2006.⁴

In 2002, the IRS filed a tax lien for the tax year 1999, in 2003 for the tax years 2000 and 2001, and in 2006 for the tax year 2002. At one point, Applicant and his wife made an offer of compromise to the IRS on these tax debts. The IRS rejected their offer of compromise.⁵

In 2001, Applicant shattered his ankle. Although he sought medical treatment on several occasions, physicians did not diagnose a problem until one year after his injury. His ankle injury required four surgeries between December 2002 and July 2004. He developed a severe infection following his April 2004 surgery, which resulted in two additional surgeries. He missed work from January 2003 through July 2003, and April 2004 through September 2004. He did not have disability insurance to cover his lost income. He did have medical insurance, which paid most, but not all, of his medical expenses related to his medical care. His co-pays for his medical care totaled about \$5,000. During this time, his wife worked full-time, earning \$9 an hour. Her income was insufficient to pay all the household expenses, the taxes, and medical bills.⁶

In 2006, Applicant owed approximately \$30,670 on his federal tax debt for the four years 1999 through 2002, including interest and penalties. In April 2006, he and his

²GE 1, *supra* note 1, at 18, Tr. 41, 49-59, 63.

³GE 1, *supra* note 1, at 13; Tr. 49-52, 93.

⁴GE 3 (Bankruptcy court documents); Tr. 53-56, 103.

⁵GE 5 (Credit report, dated May 16, 2008); AE Q (Tax liens for 1999 and 2002); Tr. 60, 74, 83.

⁶Tr. 43-49, 66-72, 89-91.

wife made a second offer of compromise to the IRS. After discussions, they reached an agreement with the IRS to repay the above tax debt. They agreed to pay the IRS \$125 a month. In addition, the IRS would apply any tax refund to their debt and Applicant agreed not to operate another business. Their tax withholding amount from their paychecks is more than is necessary to pay their taxes each year. Thus, each year their tax refund is applied to their tax debt. The IRS also applied their 2008 economic stimulus to their outstanding tax debt.⁷

Applicant has paid the IRS, as agreed, since August 2006. He reduced the tax debt for the year 1999 by more than \$7,000. In 2007, the IRS provided information to a potential mortgagor, which allowed them to purchase their current home.⁸

The SOR reflects two unpaid medical bills, totaling \$432. These bills are the remaining debt from his ankle injury. In December 2005, Applicant started paying \$30 a month on these bills, which totaled almost \$1,000. He paid the bill in full on June 21, 2008. They intend to add this \$30 payment to their monthly IRS payment.⁹

Applicant and his wife earn approximately \$4,300 in gross monthly income. Their net monthly income is approximately \$3,765 and their monthly expense total \$3,700, including their payments to the IRS. They developed a budget, live within their monthly income, and do not spend excessively. Family and friends describe Applicant as honest, hardworking and trustworthy.¹⁰

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(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,

⁷AE I (IRS documents 2008); AE O (IRS documents); AE P (IRS documents); Tr. 60-62, 77-87.

⁸AE R (Letter IRS, dated June 5, 2007); AE S (IRS payment notices and status - August 2006 through December 2007); GE 2, (Interrogatories, answer with attachments); Tr. 61, 77.

⁹GE 2, *supra* note 8; AE (Payments); AE N (payments); AE T (Cancelled check); Tr. 64-66, 72.

¹⁰GE 2, *supra* note 8, attachments; AE E (Letter, dated June 25, 2008); AE F (Letter, dated June 24, 2008); AE H (Letter, signed June 26, 2008) Tr. 34; Tr. 24-29, 101-103.

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” is potentially disqualifying. Similarly under AG ¶ 19(c), “a history of not meeting financial obligations” may raise security concerns. Applicant accumulated significant unpaid federal tax debt when he operated his business. He also accumulated some unpaid medical expenses from his ankle injury. 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 tax problems arose from his business operations and poor financial management of business income and expenses. He stopped operating his business five and one-half years ago and has no intent to operate another business. Thus, he is no longer accumulating more tax debt. Yearly tax monies are withheld from his paycheck and are sufficient to cover his taxes and entitle him to a refund, which is applied to his debt. With the close of his business, his tax issues are not going to continue or reoccur in the future. His past tax issues do not raise concerns about his current reliability, trustworthiness, or good judgment. The evidence raises this potentially mitigating condition.

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.” Some of the financial problems arose from his medical problems, including the substantial medical bills and lengthy periods of unemployment. By faithfully making monthly payments on his medical bills for two and one-half years, he acted responsibly in identifying and resolving these debts. I find this potentially mitigating condition is a factor for consideration in this case.

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.” While did not Applicant received financial counseling, he paid his outstanding medical bills in full. He and his wife also initiated and negotiated a resolution of their tax problems with the IRS in 2006. They have made the required monthly payment for the last two years and the IRS has applied their tax refunds and economic stimulus to their debt. They are resolving this delinquent debt. He is now financially sound and lives within his budget. I conclude these potentially mitigating conditions apply.¹¹

¹¹The remaining mitigating conditions are not applicable in this case.

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 tax problems arose, not because he did not file his tax returns, but because he managed his business finances poorly. He did not incorporate his business nor did he keep good financial records. He treated his business income the same as personal income for taxes. This decision led to tax issues with the IRS because he failed to save sufficient income to pay his personal taxes. From the beginning, he did not avoid his taxes; rather, he attempted to pay the taxes he owed. He, however, did not earn sufficient income to pay the past taxes owed and his current taxes, causing his tax liability to increase each year. He eliminated five years of tax debts through bankruptcy, at the suggestion of the IRS. He is paying the remaining four years of debt and has for the last two years. He paid his outstanding medical bills over a period of two and one-half years. He did not avoid this bill; instead, he made small monthly payments until he paid the bills in full.

Applicant and his wife developed a budget and follow it. They pay their bills monthly. Applicant does not violate the law and lives a modest live style. He has always accepted responsibility for his debts and tried to pay them. He is married and has three children. As a result, he has focused his attention on providing a stable domestic environment for his family. Most significantly, he has taken affirmative action to pay or resolve the delinquent debts raising security concerns. (See AG ¶ 2(a)(6).) He has not been able to pay his tax bill in full, but has remained faithful to the repayment agreement. This debt cannot be a source of improper pressure or duress. Of course, the issue is not simply whether all his debts are paid—it is whether his financial circumstances raise concerns about his fitness to hold a security clearance. While tax debt is not paid in full, it is insufficient to raise security concerns because he assumed

responsibility for the debt long before he applied for a security clearance. (See AG ¶ 2(a)(1).)

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:

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|---------------------------|---------------|
| 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 |

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.

MARY E. HENRY
Administrative Judge