



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 08-00159
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Braden M. Murphy, Esquire, Department Counsel
For Applicant: *Pro Se*

December 10, 2009

Decision

HOWE, Philip S., Administrative Judge:

On May 4, 2006, Applicant submitted his electronic Security Clearance Application (e-QIP). On March 11, 2009, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F (Financial Considerations). 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 March 18, 2009. He answered the SOR in writing on April 3, 2009, and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on June 1, 2009, and I received the case assignment on June 5, 2009. DOHA issued a Notice of Hearing on June 26, 2009. I convened the hearing as scheduled on July 14, 2009. The Government offered

Exhibits 1 through 5, which were received without objection. Applicant testified on his own behalf and submitted Exhibits A through I, without objection. DOHA received the transcript of the hearing (Tr.) on July 23, 2009. I granted Applicant's request to keep the record open until July 31, 2009, to submit additional matters. On July 31, 2009, he submitted Exhibits J to S, without objection. The record closed on July 31, 2009. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

Findings of Fact

In his Answer to the SOR, dated April 3, 2009, Applicant admitted 19 factual allegations in the SOR, with explanations. He denied the four factual allegations in ¶¶ 1.g 1.i, 1.j, and 1.k of the SOR. He also provided additional information to support his request for eligibility for a security clearance.

Applicant is 59 years old. He is widowed, his wife dying of heart problems in 2005. He has two adult sons from that marriage. Applicant has custody of a 14-year-old foster child. He has a boarder in his home that has two minor children. The boarder helps take care of the foster child because of Applicant's extensive business travels. She does not pay rent or any other expenses, and does not work outside the home. Applicant rents a home. He works for a defense contractor beginning in March 2006. (Tr. 30-32, 41-46; Exhibits 1, A)

Applicant has had a security clearance at the Secret level since 1972. Applicant also served in the National Guard from 1972 to 1978. He has not had any security violations or compromises of classified information during those 37 years. He has been a courier and a facility security officer at times for various employers. Applicant worked for a defense contractor until 1995, when he volunteered to terminate his employment with a buy-out when his employer merged with another defense contractor. He did independent consulting work from 1995 to 1998 while also working for a defense contractor. In 1998, Applicant again was employed by a third defense contractor. That employment ended in October 2004 when he was laid off when a contract was not renewed. Applicant was unemployed from 2004 to March 2006. (Tr. 18, 22, 32-36, 48, 49, 80; Exhibits 1, B, C)

Applicant and his wife lived separately from 1999 to 2002 after she moved back to a neighboring state to be able to care for her sick mother. Applicant had a residence in their original state, while renting another one in the state in which they lived together until 1999. Applicant believes his family financial problems started during that time period. His wife managed the family finances during their marriage which started in 1972. His wife used their money to supplement her mother's income to pay for medical necessities, which Medicare did not pay. Applicant's household debts were not being paid regularly because of his wife's diversion of funds to care for her mother and her spending habits with their credit cards. Applicant's wife also suffered from depression over her mother's medical condition and her own health problems. Applicant became aware of the situation in 2002, and attempted to repay some creditors. Applicant gave

his wife \$60,000 from his employment separation package in 1995 to pay the debts. His wife spent \$15,000 buying a time-share arrangement. He does not know how she spent the other \$45,000. (Tr. 36-41, 47, 48, 50, 80, 99; Exhibits 1, 4, A)

After his job loss in October 2004, Applicant withdrew funds from his Internal Revenue Code, Section 401(k), retirement account. He lived on those funds for 16 months of his 18-month period of unemployment. During that time period and into late 2006, Applicant attempted to negotiate debt repayment plans with various creditors. According to him, none of them would accept monthly payments without sizeable down payments. After being employed in March 2006, Applicant decided to concentrate his available funds on his monthly expenses and paying the education costs at a state college for his second son. His expenses were \$350 monthly for tuition costs not covered by the Pell grants his son received, which paid for two-thirds of his tuition, and another \$300 monthly for the son's car and cell phone. Applicant attributes his lack of action towards debt resolution from 2006 to the present to his business travel schedule, and a sense of depression after the death of his wife in 2005. (Tr. 48, 49, 54, 59-62, 66, 78, 79, 87; Exhibits 1, 4, 5, A)

Applicant earns a \$76,000 annual salary. His take home pay after taxes is \$3,800 monthly. He has no credit cards. His rent is \$1,200. He pays \$400 monthly on a car loan for a car, which was stolen from him at his apartment. The amount owed is \$12,000. His utilities are \$250 monthly, cable television is \$105 monthly, his monthly food costs are \$400, his auto insurance is \$67, and his gasoline cost is \$120 monthly. His net remainder is \$958, less the \$400 monthly for the stolen car. He has an older car he uses to go to work that is fully paid. From the \$558 remainder, Applicant is also subject to a \$1,250 monthly garnishment order. Because that order took more money than Applicant had available each month, he negotiated a monthly payment plan to replace it by paying \$150 monthly starting in July 2009. The creditor took \$327 from Applicant's bank account pursuant to a non-wage garnishment. The garnishment order pertains to SOR ¶ 1.u for \$3,328.85. Applicant, when he could not negotiate installment payment plans with some of his creditors, decided to let the cases go to court because he thought the court would "arbitrate" the amounts and give him a reasonable repayment plan. Instead, the same collector obtained two garnishment orders against his income to collect their two debts. Those debts were the SOR ¶ 1.u debt and the SOR ¶ 1.m debt for \$5,612. (Tr. 71-76, 81-96; Exhibits 2, 3, D, E, O)

Applicant has 23 delinquent debts with a total value of \$43,383. These debts became delinquent in 2005 and thereafter. They arose earlier than that year, because his wife incurred most of the debt from 2000 to 2005 when she failed to pay the family debts while spending that money on her mother's care. After the July 14th hearing, Applicant developed a repayment plan for all of his debts. The repayments started in July or August 2009, and the longest repayment schedule is 53 months, ending in January 2014. Most of the debts will be repaid in 2010 and 2011. Applicant is actively paying nine delinquent debts listed in the SOR, with a total value of \$18,830. Almost all of Applicant's delinquent debts are credit card debts. (Tr. 52-58, 63-69, 111; Exhibits 2-5, J - S)

The debts Applicant is actively paying now according to his plan are:

1. A credit card debt for \$5,201 on a \$100 monthly installment plan, starting in July 2009 (Para. 1.d). (Exhibits 3, O-5, S)
2. A repossessed automobile in the amount of \$3,339, starting in July 2009 for \$100 monthly (Para. 1.f) (Exhibits 2, 3, O-5, S)
3. A lease deposit which he co-signed for one of his foster children, now an adult, in the amount of \$418. The debt was supposedly resolved in 2002 with no obligation by Applicant. He denied his liability on this debt (Para. 1.j). (Exhibits 2, 3, J, S)
4. A credit card debt in the amount of \$5,612, the subject of a garnishment order on a judgment rendered in April 2008. Applicant pays \$150 monthly starting in July 2009 (Para. 1.m). (Exhibits 2, 3, E, O, S)
5. A bank overdraft being collected by a creditor in the amount of \$114. The account was closed in 2005. Applicant settled the debt for \$34.34 and paid that amount on July 25, 2009, by a money order (Para. 1.o). (Exhibits 2, Q, S)
6. Applicant paid a cellular telephone bill on July 30, 2009, for a settlement amount of \$25.39. The original debt was \$50 (Para. 1.q) (Exhibits 2, 3, Q, S)
7. Applicant paid \$59 for a "bounced" check in the amount of \$58 paid to a pizza establishment. Applicant denied he owed the debt, but paid it anyway on July 30, 2009, with a money order (Para. 1.s). (Exhibits R, S)
8. Applicant owes a mail order catalog company \$642. He denied this debt. Applicant pays \$27 monthly on this account. He has made three payments (Para. 1.t). (Exhibits 2, P, S)
9. Applicant owes the same creditor as listed in SOR Para. 1.m (see paragraph 4 in this list) for another debt of \$3,396. A garnishment order was issued on this account. The judgment was rendered in February 2009. Applicant pays \$150 monthly on this account, starting in July 2009 (Para. 1.u). (Exhibits 2, 3, D, O-3, S)

Applicant's repayment plan for the remaining 14 debts has his monthly payments for several months being \$1,320 during 2010 and 2011. As the delinquent debts are repaid, he will have additional funds to dedicate to repaying the remaining debts in 2011 and 2012. Those debts are set forth in SOR Para. 1.a to 1.c, 1.e, 1.g to 1.i, 1.k. to 1.l, 1.n, 1.p, 1.r, 1.v and 1.w. (Exhibit S)

Applicant submitted four character letters from two co-workers and two supervisors from his current employer. They all state Applicant is a very hard-working employee with an excellent character and possessing the highest integrity. The letters also state Applicant acted as a mentor to the writer or to other persons in the organization. Applicant made forthright and credible presentation of his financial history

and family situation. He did not make excuses for his actions, but testified that the problems were his fault and his to fix by repaying the debts. (Tr. 18, 60, 66, 87; Exhibits F to I)

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 overarching adjudicative goal is a fair, impartial, and commonsense 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.

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, an "applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel, and 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 nine disqualifying conditions that could raise security concerns. Of these nine conditions, three are potentially applicable.

Under AG ¶ 19(a), an “inability or unwillingness to satisfy debts” is potentially disqualifying. Applicant admitted he could not negotiate reasonable repayment plans with the 23 creditors between 2006 and 2009, and he then gave up the effort.

Similarly under AG ¶ 19(c), “a history of not meeting financial obligations” may raise security concerns. Applicant accumulated \$43,383 of delinquent debt in 23 separate debts since 2002 and was unable to pay these obligations regularly since then. Applicant’s debts date from 2005 at least. They remain unresolved, except for three he settled for lesser amounts than originally owed.

Finally, under AG ¶ 19 (e), “consistent spending beyond one’s means, which may be indicated by excessive indebtedness, significant negative cash flow, high debt-to-income ratio, and/or other financial analysis” applies because of the magnitude of Applicant’s delinquent debt attributable to excessive spending. He has been unable to repay the debt since 2005 because of insufficient income. The evidence is sufficient to raise these potentially disqualifying conditions, requiring a closer examination.

The same guideline also includes six conditions that could mitigate security concerns arising from financial difficulties. Of these mitigating conditions, three conditions are potentially applicable.

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 2000 and 2001, but first came to his attention in 2002. He accumulated delinquent debt due to his wife's spending on her mother and credit card purchases she made when she lived separate from Applicant between 1999 and 2002 before she died in 2005, and his unemployment from 2004 to 2006. Almost all of the debt arose because of his wife's imprudent spending and neglect of their financial obligations. She took out many credit cards, and charged purchases on them, while not making regular payments. Depression, resulting from her mother's death, and her subsequent heart illness, deterred Applicant's wife from faithfully executing her household financial management duties. These circumstances are no longer extant. 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.

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." As noted above, most of the financial problems arose from his wife's medical problems and her spending habits, her desire to take care of her mother before she died in 2000, and Applicant's 18-month period of unemployment from 2004 to 2006. Applicant relied, to his detriment, on his wife to continue her usual practice of paying their debts in a regular and timely fashion. He gave her \$60,000 in 2001 to make payments on the debts. Instead, she spent it on a time share property and various purchases. In 2002, he discovered she was not paying the family debts, and assumed the responsibility to try to make payments. He was meeting those obligations until his unemployment in 2004. He acted responsibly in identifying and resolving these debts. I find this potentially mitigating condition is a factor for consideration in this case.

AG ¶ 20(d) applies where the evidence shows "the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts." Applicant has a repayment plan which he devised by July 31, 2009. He is paying on the debts. His commitment expressed at the hearing, coupled with his credibility and character statements, show he has the intent to effectuate his repayment plan. Applicant's net income without the garnishment orders can tolerate that outlay monthly if he closely monitors his expenses. 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) 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.

AG ¶ 2(c) requires each case must be judged on its own merits. 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. Applicant was a mature adult when the delinquent debts became due. But for the 30-year duration of his marriage he trusted his wife to pay the monthly debts. They lived separately in two different states as he earned the income necessary for the family to live. He had two sons to educate in colleges. He trusted his wife, and she betrayed that trust. Perhaps she did not do so intentionally, because she suffered from her own physical ailments while her aged mother was also ill. Applicant's wife devoted their income to caring for her mother, and making herself feel better by incurring debt as she made various purchases. Applicant does not seem to have been the spender in the family.

When Applicant discovered the problem, he attempted to rectify it by paying the debts from 2002 onward. The loss of his job in October 2004 compounded and complicated his repayment plans at that time. He drained his retirement account to sustain himself and his family, and finally found employment in March 2006. By then, his wife had died, and he felt obligated to pay for his second son's college education as he had for his first son. Applicant also had a foster child and three other persons for whom he cared. He attempted again to negotiate repayment plans with his creditors, but they wanted large down payments before agreeing to monthly installment payments, because the debts had aged so much. At that point in the discussions, Applicant gave up his efforts and did not renew them until recently. He acted reasonably under the circumstances of his traveling for business, his wife's death, and the burdens of supporting his foster child, natural children, and his boarder with her two children. The evidence supports a finding that he will not renege on his payment plan, as he is aware that future financial issues could have an adverse effect on his employment.

Applicant is not a security risk based on his 37 years of having a security clearance. During that time there have been no breaches of security or violations of protocols by Applicant. 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. I conclude the "whole-person" concept in his favor.

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

Subparagraphs 1.a to 1.w: 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.

PHILIP S. HOWE
Administrative Judge