



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 08-01113
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Caroline H. Jeffreys, Department Counsel
For Applicant: *Pro Se*

August 21, 2008

Decision

TESTAN, Joseph, Administrative Judge:

On March 16, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to applicant detailing the 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 for SORs issued after September 1, 2006.

Applicant answered the SOR in writing on April 9, 2008, and requested an Administrative Decision by an Administrative Judge (AJ). Department Counsel issued a File of Relevant Material (FORM) on May 15, 2008. Applicant filed a response to the FORM in June 2008. The case was assigned to me on June 23, 2008. Based upon a review of the case file, pleadings, and exhibits, eligibility for access to classified information is granted.

Rulings on Procedure

In the FORM, Department Counsel moved to amend the SOR by deleting allegations 1.a. and 1.b. and replacing them with the following:

You are indebted to the Department of Education on a defaulted student loan account, in the approximate amount of \$47,002.97. As of March 25, 2008, this debt has not been paid.

The motion is granted and the SOR is so amended.

Findings of Fact

Applicant is a 37 year old employee of a defense contractor. He is married with five children.

As of February 21, 2008, applicant was indebted to U.S. Department of Education (DOE) on account of a defaulted student loan in the amount of \$47,159.85.

In February 2008, prior to the issuance of the SOR, applicant contacted the DOE about establishing a repayment plan. An agreement was reached, effective March 17, 2008, requiring applicant to make monthly payments of \$385.00. As of June 10, 2008, applicant has, pursuant to the agreement, made three monthly payments of \$385.00.

In an October 2007 Questionnaire For Sensitive Positions (QFSP), applicant indicated he incurred the debt in June 2003 and stated the following:

I have been paying consistently on my student [loan] for two years and currently I have been informed that I'm still in default. Have worked out payment plan and have been paying for two year[s] straight out of my check.

From the evidence in the FORM, it appears that applicant incurred the student loan debt well before 2003. Since 2003, he has made sporadic payments, either voluntarily or through wage garnishment, to the student loan creditor.

During an October 2007 interview with an OPM investigator, applicant stated his unemployment and/or underemployment prevented him from repaying his student loan.

Before he joined his current employer in August 2007, applicant had been employed as a public school teacher where his final annual salary was \$34,339.00. He currently earns \$62,500.00 from his defense contractor employer. In addition, he has two part time jobs which provide him with at least an additional \$10,000.00 in annual income.

Numerous individuals submitted letters in support of applicant. In general, applicant is described as an honest, hard working family man.

Policies

The President has “the authority to . . . control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to occupy a position that will give that person access to such information.” (*Department of the Navy v. Egan*, 484 U.S. 518,527 (1988).) In Executive Order 10865, *Safeguarding Classified Information Within Industry* (February 20, 1960), the President set out guidelines and procedures for safeguarding classified information within the executive branch. The President authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.” (Exec. Ord. 10865, Section 2.)

To be eligible for a security clearance, an applicant must meet the security guidelines contained in the Directive. Enclosure 2 of the Directive sets forth personnel security guidelines, as well as the disqualifying conditions and mitigating conditions under each guideline.

Initially, the Government must present evidence to establish controverted facts in the SOR that disqualify or may disqualify the applicant from being eligible for access to classified information. (Directive, Paragraph E3.1.14.) Thereafter, the applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate the facts. (Directive, Paragraph E3. 1.15.) An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.” (ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002).) “Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security.” (Directive, Paragraph E2.2.2.)

A person granted access to classified information enters into a special relationship with the government. The government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to classified information. The decision to deny an individual a security clearance is not a determination as to the loyalty of the applicant. (Exec. Ord. 10865, Section 7.) It is merely an indication that the applicant has not met the strict guidelines the President has established for issuing a clearance.

Analysis

Guideline F, Financial Considerations

The security concern relating to Financial Considerations is set forth in Paragraph 18 of the new AG, and is as follows:

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 AG note several conditions that could raise security concerns. Under Paragraph 19.a., an “inability or unwillingness to satisfy debts” is potentially disqualifying. Under Paragraph 19.c., “a history of not meeting financial obligations” may raise security concerns. The evidence shows applicant has a history of being unable to pay his student loan debt. Accordingly, these disqualifying conditions are applicable.

The guidelines also set out mitigating conditions. Paragraph 20.a. may apply 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.” This mitigation condition is not applicable.

Under Paragraph 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.” Applicant presented credible evidence that from about 2001 to about August 2007, his income was insufficient to repay his student loan and support his wife and children. It appears that this was not due to a lack of trying as his QFSP indicates he worked two other jobs while employed as a public school teacher. This mitigating condition is applicable.

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 Paragraph 20.c. This mitigation condition applies as applicant has reached a repayment agreement with the creditor, has lived up to that agreement, and now appears to have sufficient income to continue with the agreed upon payments until the debt is satisfied.

Paragraph 20.d. applies where the evidence shows “the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.” Although applicant could have reached out to the DOE sooner than he did, he did establish a repayment plan acceptable to the creditor. This mitigating condition is applicable.

“Whole Person” Analysis

Under the whole person concept, the AJ must evaluate an applicant’s security eligibility by considering the totality of the applicant’s conduct and all the circumstances. An AJ should consider the nine adjudicative process factors listed at AG Paragraph 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 Paragraph 2.c., the ultimate

determination of whether to grant 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 has had great difficulty repaying a student loan debt. This does not appear to be a case where an applicant took the money and decided to just ignore the obligation to repay it. Rather, it appears that his failure to repay the debt as he had agreed was based on the simple fact that, after providing the necessities for his wife and children, he did not have the funds to repay it. Since being hired by his current employer in 2007 at a salary almost twice as much as his previous school teacher salary, he has had the financial means to repay his student loan debt, and he has begun to do so. Based on his excellent work ethic, and the very favorable character reference letters received into evidence, I conclude that in all likelihood, applicant will continue to make his regular payments to the DOE until his debt is satisfied. Under the circumstances, I conclude applicant successfully mitigated the security concerns arising from Guideline F.

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

Conclusion

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

JOSEPH TESTAN
Administrative Judge