



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ISCR Case No. 08-03146
)
) SSN:)
)
)
) Applicant for Security Clearance)

Appearances

For Government: Richard Stevens, Esquire, Department Counsel
For Applicant: *Pro se*

August 29, 2008

Decision

MASON, Paul J., Administrative Judge:

Applicant submitted his Security Clearance Application (SCA), on November 15, 2007. On May 23, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing security concerns under financial considerations (Guideline F). The action was taken pursuant to 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 made effective within the Department of Defense for SORs issued on or after September 1, 2006. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

Applicant's undated answer to the SOR was notarized by a notary public whose commission expires on August 23, 2010. The answer was not time-stamped as having been received by DOHA, so it is officially accepted. DOHA issued a notice of hearing on July 18, 2008, and the hearing was held on August 7, 2008. At the hearing, three exhibits (GE 1 through 3) were admitted in evidence without objection to support the

government's case. Applicant's four exhibits (AE A through AE D) were received in evidence without objection. He also testified. In the time allowed for Applicant to submit additional documentation, he submitted AE E (a performance evaluation), AE F (a second payment to SOR 1.b. creditor), and AE G (a savings account printout). DOHA received the transcript, and the record closed on August 15, 2008.

Findings of Fact

Applicant essentially admitted the three allegations under the financial considerations guideline of the SOR. He denied two of the allegations because he had settled with or established payment plans with the creditor.

Applicant is 29 years old. He is divorced, and presently lives with his soon-to-be wife and their three-month-old baby. He began working as a welder for his current employer in September 2007. He seeks a security clearance.

Applicant completed high school in 1997 with a high school diploma. His security clearance application (SCA, GE 1) reflects he was employed with more than 20 employers between 1997 and September 2007, when he landed his current employment. Most of the jobs involved welding, with a few jobs handling heavy equipment. In February 2005, Applicant enrolled in vocational college. In May 2005, he received his degree as a certified welder. Though he did not provide a simple explanation for numerous job changes in a short period of time, I find immaturity and financial irresponsibility played a large part in not remaining at a job for a sufficient time period.

SOR 1.a., 1.b., 1.c. GE 3 show that Applicant opened three credit card accounts in 2001 and 2002. He made the minimum monthly payments for about three or four years, but occasionally fell behind as indicated by the credit report (CR, AE 3). In 2004, he stopped paying SOR 1.a. altogether. The debt is currently more than \$12,500.00 because of the penalties and interest that have accrued. He fell behind in payments due to his changing job situation, low paying jobs, and marital problems. The total delinquent amount for the three accounts is \$22,000.00.

Applicant met his former wife in approximately December 2006 at a motor bicycle race. In May 2006, Applicant began working as an independent contractor, where he would hire out his services. Three to four days in a week, he would work on contracts. In the last few days of the week he would search and negotiate new contracts for the upcoming week. As an independent contractor, he earned between \$1,500.00 and \$3,000.00 a month, depending on the job requirements and the type of heavy equipment he would have to rent for the contract. Sometimes, he was unsuccessful in obtaining new jobs, which meant unemployment on a sporadic basis for different periods of time.

In August 2006, Applicant discontinued working for himself, married his girlfriend, and began employment with her father as a heavy equipment operator. Applicant did not know his bride had a drug problem, and did not want to work for a living. As the sole means of support for his wife and her stepchild, Applicant struggled to make ends meet,

and was unable to maintain any payments on increasing number of delinquent debts, including those listed in the SOR.

After three months of marital trouble, Applicant obtained a divorce from his wife. Shortly thereafter, Applicant lost his job with her father. Applicant believes he was terminated because her father was disgruntled over his divorce.

Between November 2006 and March 2007, Applicant was unemployed. During the unemployment, Applicant sold his racing motorcycle. Realizing he was having financial problems, his mother decided to provide him financial and moral support.

After returning to one of his previous jobs for about four months, Applicant began welding for his current employer in September 2007. Since then, Applicant has settled with the SOR 1.b. and 1.c. creditors. See, AE B and AE C. On June 13, 2008, he launched a repayment plan with SOR 1.a. and has made two payments pursuant to the plan. See, AE D and AE F.

Character Evidence

Applicant's mother is proud of her son's accomplishments in the past year. Taking a keen interest in his job, paying his bills as AE D and AE F show, and taking care of his future wife and young child, Applicant convinces his mother that he is becoming financially responsible. Since June 2008, he has been paying his mother about \$200.00 a month for the money she lent him to settle SOR 1.b. and 1.c.

Applicant's performance evaluation for September 2007 through June 28, 2008 indicates that he is a hard-working employee who is knowledgeable about his profession. AE G shows that Applicant has opened a savings account.

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 flexible rules of law. Recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The Administrative Judge's ultimate adjudicative goal is a fair, impartial and common sense decision. According to the AG, the entire process is a careful, thorough evaluation 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 ¶ 2b. 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 is not restricted to normal duty hours. Rather, the relationship is an-around-the-clock responsibility between an applicant and the federal government. 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

18. *The Concern.* “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. 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.”

The SOR identifies three delinquent debts totaling approximately \$22,000.00. The debts became delinquent between 2004 and 2007. financial considerations (FC) disqualifying condition (DC) 19.a. (*inability or unwillingness to satisfy debts*) and FC DC 19.c. (*a history of not meeting financial obligations*) apply.

There are five mitigating conditions (MC) that are potentially applicable to the circumstances. They are: FC MC 20.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*); FC MC 20.b. (*the conditions that resulted in the financial problems were largely beyond the*

person's control, and the individual acted reasonably under the circumstances); FC MC 20.c. *(the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is resolved or under control)*; and FC MC 20.d. *(the individual initiated a good-faith effort to repay creditors or otherwise resolve debts)*. FC MC 20.a. applies in part. Though the financial irresponsibility occurred in the last four years, the number of past due debts were few in number. Applicant, with the help of his mother, has taken substantial steps to pay off/settle the accounts, while establishing documented job security to support his application for a security clearance.

Applicant is entitled to substantial mitigation from FC MC 20.b. based on the extenuating marital problems he encountered in 2006, and good-faith repayment efforts. He exercised poor judgment by not ascertaining the full picture of his former wife before he married her. However, he displayed good judgment for officially ending the relationship after only three months, rather than compounding his emotional and financial problems by trying to make an unsuccessful marriage work. Within six months of his divorce in November 2006, he began to turn his life in a positive direction that his mother is proud of.

Because of the timely help of his mother, Applicant receives mitigation under FC MC 20.c. The lifestyle Applicant led before November 2006 shows that he needed the proactive financial help of his mother. Because of her assistance, he is more concerned about his future now, and realizes that financial responsibility is an essential part of continued stability in his future. By settling with two creditors and establishing a payment plan with the third creditor, Applicant has adduced documented evidence of bringing his financial obligations under control. His settlements demonstrate good faith efforts to repay overdue creditors. The FC guideline is resolved in Applicant's favor.

Whole Person Concept (WPC)

The AG indicates 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 whole person concept. The WPC is made of nine general policy factors:

- (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 the participation is voluntary;
- (6) the presence or absence of rehabilitation and other 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.

Applicant's short history of financial problems has provided a much clearer picture of his immaturity and irresponsibility over the last 10 years. However, he fully recognizes that his divorce in November 2006, and subsequent period of unemployment was a

defining moment in his life. Since that time, his life has undergone some striking changes. With the help of his mother in paying off his debts, Applicant has reestablished stability in his lifestyle by mitigating the financial concerns. Having viewed the evidence as a whole, I find for Applicant under the FC guideline.

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 (Financial Considerations, Guideline F): FOR APPLICANT

Subparagraph 1.a.	For Applicant
Subparagraph 1.b.	For Applicant
Subparagraph 1.c.	For Applicant

Conclusion

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

Paul J. Mason
Administrative Judge