



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



In the matter of:)
)
) ISCR Case No. 08-03327
)
)
Applicant for Security Clearance)

Appearances

For Government: Stephanie C. Hess, Esq., Department Counsel
For Applicant: *Pro Se*

March 26, 2009

Decision

LOUGHRAN, Edward W., Administrative Judge:

Applicant has mitigated the Financial Considerations security concerns. Eligibility for access to classified information is granted.

On June 19, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing the 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 answered the SOR on July 14, 2008, and elected to have the case decided on the written record in lieu of a hearing. Department Counsel submitted the government's written case on January 13, 2009. A complete copy of the file of relevant material (FORM) was provided to Applicant, who was afforded an opportunity to file

objections and submit material to refute, extenuate, or mitigate the security concerns. Applicant received the FORM on January 26, 2009. He responded with a letter dated February 23, 2009, and six attachments. Department Counsel did not object to his response. The attachments are marked Applicant Exhibits (AE) AA through FF using the lettering provided by Applicant. The case was assigned to me on March 9, 2009. I asked Department Counsel to contact Applicant to provide him the opportunity to submit additional documentation. Applicant submitted a fax cover sheet with four attached documents. The four attached documents are marked AE A through D. The fax cover sheet is marked AE E. AE A through E and AA through FF are admitted. Department Counsel's memorandum is marked File Exhibit (FE) I.

Findings of Fact

Applicant is a 32-year-old employee of a defense contractor. He has a Bachelor of Science degree in computer science awarded in 2000. He has worked for the same employer since shortly after he graduated college. He and his wife married while he was in college. They have two children, ages 12 and 7.¹

The SOR alleges six delinquent debts totaling \$20,898. Applicant admitted all the allegations, with the exception of the \$2,529 and \$563 debts alleged in SOR ¶¶ 1.d and 1.f. He also provided additional information to support his request for eligibility for a security clearance.

Applicant attributed his financial issues to a period of financial hardships in 2005 and 2006, when his family's expenses began to exceed their income. His wife handled the finances and neither of them had a complete grasp of their financial situation. They juggled payments for several months but then permitted other debts to go unpaid in an effort to catch up on their mortgage payments. Their finances eventually stabilized. Applicant borrowed \$15,500 from his 401(k) in May 2008, in order to repay his delinquent debts.² Individual debts are addressed below.

Applicant admitted owing a delinquent debt of \$2,440 to a collection company collecting on behalf of a bank, as alleged in SOR ¶ 1.a. He stated in his response to the SOR that he reached a settlement with another collection company that obtained the debt, and that the debt would be reported as paid in full by July 31, 2008. Documents from the collection company showed the balance of the debt at exactly \$2,440.25. Applicant reported in his response to the FORM that the debt was paid in full. The debt was removed from his credit reports. He submitted additional documentation showing that \$2,440.25 was withdrawn from his checking account on July 30, 2008. Applicant has submitted sufficient documentation to prove that this debt has been paid in full.³

¹ Item 4.

² Items 3, 5; Applicant's response to FORM; AE A-E.

³ Items 3, 5; Applicant's response to FORM; AE A-E, AA, BB.

SOR ¶ 1.b alleges a debt of \$2,713 to a collection company collecting a debt on behalf of a department store. The balance on the debt had risen to \$3,172 as of February 2009. Applicant settled the debt in full for \$1,650 on February 10, 2009.⁴

Applicant owed \$12,603 to a collection company collecting a debt on behalf of a financial institution, as alleged in SOR ¶ 1.c. He stated in his response to the FORM that the debt was settled in full. The debt was removed from his credit reports but the response did not contain documentation from the creditor that the debt was paid. He submitted additional documentation showing that \$7,545.15 was withdrawn from his checking account on July 30, 2008. Applicant has submitted sufficient documentation to prove that this debt has been settled in full.⁵

The debt of \$2,529 to a collection company, as alleged in SOR ¶ 1.d, is a duplicate of the debt alleged in SOR ¶ 1.a.⁶

Applicant admitted owing the \$50 medical debt alleged in SOR ¶ 1.e, but stated the debt was paid in full. The debt is not listed on the four most recent credit reports in evidence. I find this debt has been paid.⁷

SOR ¶ 1.f alleges a debt of \$563 to a collection company, on behalf of a telephone services provider. Applicant provided a copy of a letter sent to the telephone services company disputing the amount of the debt. He submitted a letter from the telephone company dated February 16, 2009, adjusting the balance of his account by \$237. The letter also noted that the company received a payment of \$326 from Applicant on February 13, 2009, and there was a zero balance on the account.⁸

Applicant has not received formal financial counseling but he enlisted the aid of family, friends, and co-workers in working out a new method of handling family finances. About two years ago, Applicant and his wife sat down and performed a “what went wrong” analysis and identified the key factors that went into their situation, one being the lack of communication about their finances, and the other being the lack of a concrete budget. They worked out a comprehensive, flexible, long-term family budget and he reports that it has worked out very well for them. He has not incurred new delinquent debts in several years. His financial situation is now well in order.⁹

⁴ Applicant’s response to FORM; AE CC.

⁵ Items 3, 5; Applicant’s response to FORM; AE A-E, AA, BB.

⁶ Items 3, 5-8; Applicant’s response to FORM; AE AA, BB.

⁷ Items 3, 5-8; Applicant’s response to FORM; AE AA, BB.

⁸ Applicant’s response to FORM; AE EE, FF.

⁹ Items 3, 5; Applicant’s response to FORM.

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 to be used 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, administrative judges apply the guidelines 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, 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 the 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 adverse 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 *a/so* 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 lists several conditions that could raise security concerns under AG ¶ 19. Two are potentially applicable in this case:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant accumulated a number of delinquent debts and was unable or unwilling to pay his obligations for a period of time. The evidence is sufficient to raise both of the above potentially disqualifying conditions.

Three mitigating conditions under ¶¶ 20(c) through 20(e) are potentially applicable in this case:

- (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;
- (d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and
- (e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

Applicant has resolved all his financial issues. The debts that were his responsibility have been paid or settled in full. He has not received formal financial counseling but he turned to others for advice in handling his finances. He is now financially solvent. Applicant has made a good-faith effort to repay his overdue creditors. His financial problems have been resolved and are under control. AG ¶¶ 20(c) and 20(d) are applicable.

AG ¶ 20(c) is applicable to that part of the debt in SOR ¶ 1.f that was adjusted in Applicant's favor by the creditor.

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 is 32 years old. He married while he was in college and he has two children. He obtained his current job shortly after he graduated college. It is clear that he let his finances slip away from him for a period. His wife was mostly handling the finances and neither one of them had a full grasp of their situation. Debts became delinquent. About two years ago, he and his wife sat down, talked about what went wrong, and developed a comprehensive plan and budget for correcting the situation. He has resolved all his delinquent debt and has not accrued any new delinquent debt in several years. Applicant has clearly matured in the last several years. His finances are now in very good shape.

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 has mitigated the Financial Considerations security concerns.

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-1.f: 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.

Edward W. Loughran
Administrative Judge