



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 08-04807
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Tom Coale, Esquire, Department Counsel
For Applicant: *Pro Se*

May 26, 2009

Decision

LYNCH, Noreen A., Administrative Judge:

Applicant submitted his Security Clearance Application (SF 86), on March 2, 2006. On December 10, 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 January 6, 2009. He requested a hearing before an Administrative Judge. I received the case assignment on April 2, 2009. DOHA issued a notice of hearing on April 15, 2009, and I convened the hearing as scheduled on May 12, 2009. The Government offered Exhibits (Ex.) 1-7, which were received without objection. Applicant testified in his own behalf and presented the testimony of one witness. He submitted Exhibits (AE) A-E which were admitted into the

record. I held the record open until May 19, 2009 for any documents that Applicant wished to submit. Applicant timely submitted three documents, which were marked as (AE) F-H and entered into the record without objection. DOHA received the transcript of the hearing (Tr.) on May, 20, 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 March 9, 2009, Applicant admitted the factual allegations in ¶¶ 1.a, 1.d, 1.f, and 1.g of the SOR. He denied the other allegations. He provided additional information to support his request for eligibility for a security clearance.

Applicant is a 35-year-old employee of a defense contractor. He graduated from college in 1997 and obtained a Master's Degree in computer science in 2000. he has worked for his current employer for one year (Tr. 32). He has held a security clearance since 1997 (Tr.33).

Applicant married in 2001. The couple separated and his marriage ended in divorce in 2008. Applicant has one daughter, age seven years (Tr. 34.) Applicant's wife had many medical problems during the marriage. In 2003, she could not work any longer due to her medical condition. Suddenly, Applicant's family was reduced to living on one income and also having a financial strain with additional medical bills. His income alone was not sufficient to pay the bills. Applicant's savings were depleted due to his 2001 home purchase and upkeep on the house (Tr. 36). He eventually completed a "short sell" for the house.

Applicant explained that his wife did not have good credit when they married and all the credit accounts were in Applicant's name. He also paid approximately \$5,000 to the Government for back taxes that his wife owed when they married. He acknowledged that she spent money without considering if the family could afford the additional debt.

Applicant listed in his budget a "hobby" that accounts for an expenditure in his budget. Applicant was candid and acknowledged that he has for some years been involved with collectible card games. He had a very large collection at one point in time. He now has a smaller one and sells items on E-bay (Tr. 55).

The SOR alleged eight (8) delinquent debts, including a judgment, and credit card bills. Applicant admitted the majority of the debts and his credit reports confirmed them. He explained that as a result of the November 28, 2007 Separation Agreement, the medical bills are the responsibility of his ex-wife (AE G, H).The total amount of delinquent debt is approximately \$48,925.

In 2005, Applicant obtained counseling and enrolled in the Debt Relief Network plan (GE 5). He consolidated his debt and originally paid \$450 a month for the repayment plan (Tr. 30). He now pays \$700 a month. Applicant has addressed his

delinquent debts. The plan prioritizes debts that can be settled and the money that Applicant has in the escrow account is applied (Tr. 37). Applicant expects that in less than two years, the debts will be paid with the network plan (Tr. 74).

The debt alleged in SOR ¶ 1.a for \$10,310 is pending settlement; the debt alleged in SOR ¶ 1.b for \$12,305 was initially disputed because Applicant did not recognize the account name. He has since realized that it is a duplicate of the debt alleged in 1.f. The original account is in the process of settlement (AE C). The debt alleged in SOR ¶ 1.c for \$8,507 was settled in September 2008 (AE B). The debt alleged in SOR ¶ 1.d for \$4,094 is a judgment for medical accounts that belong to his wife per the divorce decree (Tr. 44). The debt alleged in SOR ¶ 1.e for \$251 has been paid (AE A). The debt alleged in SOR ¶ 1.f for \$7,753 is pending final settlement in November 2009 (Tr. 48). The debt alleged in SOR ¶ 1.g for \$1,605 is pending settlement as part of the consolidation plan. The debt alleged in SOR ¶ 1.h has been settled for \$837 (AE A). The settlement accounts are being paid under Applicant's Debt Relief Network Plan.

Applicant's current net monthly income is \$4,531. After his monthly expenses, including child support, he has a net remainder of \$150-\$200. His car is paid in full. He is current with his student loans. He is hoping to gain custody of his daughter soon and that his wife will then pay child support to him. He follows a budget and is continually looking for ways to reduce his expenditures. He has a small retirement account.

Applicant's former facility security officer, who submitted Applicant for a top secret clearance, has known him professionally and personally for eleven years. Applicant has never had any incidents involving a security problem. He characterized Applicant as a family man who was deeply committed to his marriage. His wife and daughter were his priority and he struggled for many years with his wife's medical issues and the financial strain that ensued. Applicant discussed his financial situation with his security officer during the initial paperwork for the clearance. He explained that he was trying to keep his family together and please his wife. Applicant acknowledged that he made some financial mistakes and has been actively trying to rectify them. His former security officer highly recommends Applicant and has no doubt as to his ability to maintain a clearance (Tr. 62).

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, 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 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 debts⁶ is potentially disqualifying. AG ¶ 19(b) "indebtedness caused by frivolous or irresponsible spending and the absence of any evidence of willingness or intent to pay the debt or establish a realistic plan to pay the debt" is another disqualifying condition. Similarly under AG & 19(c), Aa history of not meeting financial obligations⁶ may raise security concerns. Applicant accumulated delinquent debts on numerous accounts for a period of time. The evidence is sufficient to raise these disqualifying conditions.

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 Athe 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.⁶ Applicant's financial difficulties are actively being addressed. This potentially mitigating condition applies in part.

Under AG & 20(b), it may be mitigating where Athe 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.⁶ Applicant's separation, divorce and his wife's medical problems all contributed to his financial difficulties. He did his best to support his family with one income and provided for his family. He helped his wife pay on her taxes when they were married. He sought guidance and help through a debt network plan in 2005. He acted responsibly given his difficult situation. I find this mitigating condition applies.

Evidence that Athe 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 control⁶ is potentially mitigating under AG & 20(c). Similarly, AG & 20(d) applies where the evidence shows Athe individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.⁶ Applicant completed financial counseling. He is following a budget and changing his financial habits. He addressed the delinquent debt as soon as he was able. He has continued to follow a plan and keep current with his bills. I conclude these 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." 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 a mature, intelligent man. He has worked in his field for many years and has held a security clearance since 1997. He has received praise for his dedication to his work and his family.

Applicant was candid and forthright at the hearing. He was organized in his presentation. He is on the right track and is resolving his debts. He had circumstances in his marriage with his wife's illness that were beyond his control. He acted responsibly and continues to maintain his firm resolve to pay his debts. He acknowledges that he has student loans and other debt that he is paying on at this time. He has gone to great lengths in the past years to rectify his financial situation.

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 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:

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 national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

NOREEN A. LYNCH
Administrative Judge