



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



In the matter of:)	
)	
)	ISCR Case No. 08-05350
)	
Applicant for Security Clearance)	

Appearances

For Government: Paul M. DeLaney, Esquire, Department Counsel
For Applicant: *Pro Se*

June 17, 2009

Decision

DAM, Shari, Administrative Judge:

Based upon a review of the case file, pleadings, and exhibits, eligibility for access to classified information is granted.

On January 3, 2008, Applicant submitted an Electronic Questionnaires for Investigations Processing (e-QIP). On February 13, 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 answered the SOR on or about March 13, 2009, and requested a hearing. DOHA assigned the case to me on April 17, 2009, and issued a Notice of Hearing on April 28, 2009. The case was heard on May 12, 2009 as scheduled. Department Counsel offered Government Exhibits (GE) 1 through 5 into evidence without objection. Applicant testified and offered Applicant Exhibits (AE) A through C into evidence without objection. At the conclusion of the hearing, I left the record open until May 28, 2009, to give Applicant an opportunity to submit additional information. Applicant timely submitted AE D and E that were admitted into the record without objection from the Government. DOHA received the hearing transcript (Tr.) on May 22, 2009.

Findings of Fact

Applicant admitted the four allegations contained in Paragraph 1 of the SOR and provided some explanations. Those admissions are incorporated herein.

Applicant is 46 years old and married. They have five children, two of whom are still in high school. He enlisted in the U.S. Army in June 1980 and retired in January 2002 as a 1st Sergeant (E-8). He earned a Bronze Star for Desert Shield and was a member of the Army's elite Audie Murphy Team and Army's Sergeant Morales Club. He has held a Secret security clearance for about 15 years.

After retiring from the Army, Applicant started working for the Army as a leader of "a civilian group on the battlefield simulating war efforts to help train soldiers that were going to Iraq and Afghanistan." (Tr. 16) In 2006, he became a range inspector for the Army. In December 2007, he started a position with a federal contractor in which he trains soldiers in the use of computer systems on the battlefield. In March 2007, he earned a Bachelor of Arts in Human Services. He also serves as a minister for his local community.

Some of Applicant's financial problems occurred in 1999, 2001 and 2003 when his wife, who operates a home day care center, lost a large number of the children because families relocated, as a result of deployments. (Tr. 76) In 1999, they filed a Chapter 7 bankruptcy and discharged about \$12,000 of debt, but maintained their home and cars. (Tr. 62) Each time her child population decreased, so did the family income. For example in 2003, her monthly income went from about \$2,400 (\$30,000 annually) to \$900 monthly. In 2006, his salary went from \$48,000 annually to \$28,000 because he changed positions. (Tr. 49-50) He acknowledged that some of his previous financial problems resulted from overspending and mismanaging the home budget. (Tr. 65-66)

The SOR alleges four delinquent debts, totaling \$34,679. The status of the debts is as follows:

1. SOR ¶ 1.a is a medical bill for \$110 that was incurred for one of his children. It was originally for \$95.00. Applicant paid it on March 9, 2009. He thought Tricare paid it. (GE 3 at 1; AE D; Tr. 31-32)

2. SOR ¶ 1.b and ¶ 1.c for \$972 and \$10,597 are both associated with the purchase of a vehicle for Applicant's wife. The balance as of May 29, 2009, is \$14,148. He has paid \$600 over the past couple months and intends to continue making monthly payments. He stopped making payments in November 2006. He has attempted to work out a repayment plan with the creditor, but has been unable to do so. He then decided to make monthly payments regardless. This debt was charged off sometime in late 2007. (Tr. 35-42; AE A at 1-4; GE 5 at 6-7)
3. SOR ¶ 1. d for \$23,000 is an automobile repossession. Applicant resolved the debt with a \$2,000 payment on May 26, 2009. He was unaware of this debt until he was contacted by a government investigator regarding his e-QiP. He knew the car had been sold. (AE B; Tr. 47-52)

In summary, Applicant paid three of the delinquent debts and is making payments on the remaining \$14,148 debt. According to his budget, he has a net monthly income of \$6,700. After paying expenses of \$2,018 and making payments on debts of \$2,168, he has approximately \$1,900 remaining. (GE 2 at 15) He and his wife work within that budget. (Tr. 75) He does not use credit cards, but his wife has one. She is aware of the potential effect that their financial issues are having on his employment. (Tr. 77) Since learning of these delinquent debts in November 2007, he sought credit counseling with a law firm. The firm has disputed several debts. (AE E) He pays \$42 per month for their assistance. (AE E; Tr. 79) He is managing the household budget now. (Tr. 85)

Applicant presented his case in a very forthright and candid manner. He has an impressive background of superior leadership and is humbled and apologetic for his current financial situation. He realized in November 2007 that he needed help managing his finances and obtained it. He has worked diligently to resolve his debts. (Tr. 84) He loves his job of training soldiers. (Tr. 83)

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 commonsense decision. According to AG ¶ 2(a), 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.

Directive ¶ E3.1.14 requires the Government to 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 and has the ultimate burden of persuasion as to obtaining a favorable security decision.” 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.”

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.

Analysis

Guideline F, Financial Considerations

The security concerns relating to the guideline for financial considerations are 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.

AG ¶ 19 describes two conditions that could raise a security concern and may be disqualifying in this case:

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

Applicant has a history of not meeting his financial obligations that began in 1999 when he filed a Chapter 7 bankruptcy. Those problems continued until approximately November 2007, when he started to resolve them. The evidence is sufficient to raise these potentially disqualifying conditions.

After the Government produced substantial evidence of those two disqualifications, the burden shifted to Applicant to produce evidence and prove mitigation of the resulting security concern. AG ¶ 20 includes six conditions that could mitigate security concerns arising under this guideline:

- (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;
- (b) 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;
- (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;
- (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; and
- (f) the affluence resulted from a legal source of income.

AG ¶ 20(a) cannot apply because Applicant's problems have been ongoing since 1999, are not isolated and relate to financial mismanagement to some degree. AG ¶ 20(b) has limited application. Some of Applicant's delinquent debts arose as a result of his wife's loss of income and at one point his reduction in salary. Those circumstances were beyond his control; however, there is no evidence that during those periods when his income was reduced, he took steps to responsibly manage his financial obligations, which is necessary for establishing the full application of this condition. AG ¶ 20(c) is

applicable. After learning of the problems in November 2007, he consulted a credit counseling firm to begin resolving his problems. At this time, there are “clear indications that the problem is being resolved or is under control.” He has made a good-faith effort to pay three of the four debts and is making monthly payments on the last debt, such that AG ¶ 20(d) is applicable. The credit counseling company has filed disputes on some of the debts over the past year, in an attempt to resolve them, warranting the application of AG ¶ 20(e). There is no record evidence pertinent to the application of AG ¶ 20(f).

The Appeal Board in ISCR Case No. 06-12930 at 2 noted “that an applicant is not required to show that she completely paid off her indebtedness, only that she has established a reasonable plan to resolve her debts and has “taken significant actions to implement that plan.’ ISCR Case No. 04-0684 at 2-3 (App. Bd. Jul. 6, 2006).” In this instance, Applicant presented sufficient credible evidence that he established a plan to pay the remaining delinquent debt and took steps to resolve the other three debts listed in the SOR.

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 an applicant’s conduct and all the circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a). They include the following:

- (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 include 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 is a 46-year-old veteran, who honorably and significantly served in the U.S. Army for more than 20 years. He takes full responsibility for his financial problems and is humbled by them. He was a very credible witness and is aware of the importance of managing his obligations, as is his wife. There is no other derogatory information in the record that would lead me to believe that his current financial situation would create future security concerns or that he will renege on his current repayment obligations. To the contrary, I am convinced

that he has the financial ability to continue resolving his financial obligations and establishing a solid financial track record.

Overall, the record evidence leaves me without questions as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising under 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

Subparagraphs 1.a through 1.d: For Applicant

Conclusion

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

SHARI DAM
Administrative Judge