



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ISCR Case No. 08-05817
)
)
Applicant for Security Clearance)

For Government: Melvin A. Howry, Esquire, Department Counsel
For Applicant: David Canfield, Personal Representative

February 10, 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 October 23, 2007, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP). On October 22, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant 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 in writing on November 27, 2008, and requested a hearing before an administrative judge. On December 4, 2008, DOHA assigned the case to me. A Notice of Hearing was issued December 16, 2008, and the case was

heard on January 13, 2009, as scheduled. Department Counsel offered Exhibits (GE) 1 through 6 into evidence without objection. Applicant testified and offered Exhibits (AE) A through E into evidence without objection. At the conclusion of the hearing, I left the record open until January 23, 2009, to give Applicant an opportunity to submit additional information. Applicant timely submitted four exhibits that were marked AE F through I and admitted into the record without objection by the Government. On January 26, 2009, DOHA received the hearing transcript (Tr.)

Findings of Fact

In his Answer to the SOR, Applicant admitted the debts contained in ¶¶ 1.a through 1.j, but denied that they were not being addressed.

Applicant is 26 years old and unmarried. After graduating from high school in June 2000, he enlisted in the U.S. Navy. He served the next five and a half years on a naval ship, as an information system specialist. He was deployed to the Persian Gulf three times, for eight month stints. He received enlisted evaluations that recommended he be promoted early throughout his naval career and held a secret and interim Top Secret clearance. At one point, he had 17 people working for him. In March 2006, he received an Other than Honorable Discharge for using marijuana in January 2006. He was an E-5 at the time, earning about \$42,000 annually.¹ (GE 1 at 29; Tr. 36)

Applicant's financial difficulties began occurring after he left the Navy. Upon his discharge, he was required to repay a \$16,000 bonus he had received from the Department of Defense (DoD) for reenlisting, which monies he did not have. From March 2006 until November 2007, he worked about eight months, on and off, and was unemployed the rest of the time, until he obtained his current position. He went from \$42,000 per year to no income for almost two years. (Tr. 98) Although he managed to stay current with all of his financial obligations while in the Navy, he could no longer pay his debts, which included two automobile loans and three credit cards. As the debts started accruing large interest costs, his total indebtedness began to rise. (Tr. 82-84) At a certain point, he decided to move in with his parents to avoid filing bankruptcy. (Tr. 61)

In November 2007, Applicant started working for a federal contractor, having completed an e-QIP in October 2007. In that e-QIP, he disclosed the debts he knew had become delinquent. During a subsequent interview with a governmental investigator, he was informed of others. (Tr. 43) He then obtained a credit bureau report (CBR) for the first time, and learned of the magnitude of his debts. (Tr. 103) In December 2007, he contacted a debt consolidation company. On December 15, 2007, he made an initial \$750 payment on a plan to resolve 11 debts, totaling \$28,601. (AE B at 2-3) Under the terms of the agreement, he will continue to pay \$600 per month into a trust account toward the balance of the accounts while the company pays off the debts after it renegotiates the accounts. To-date, he has paid \$8,700 to the company, which settled a \$5,447 debt for \$3,264 owed to a creditor, not listed on the SOR. He has accrued

¹The Government did not raise any security concerns under Drug Abuse or Criminal Conduct.

\$1,838 in the trust account that will be used to resolve and pay additional accounts. According to the plan, all of his debts will be resolved by July 2010. He will have paid about \$20,000 to resolve approximately \$28,601 of delinquent debt.² (AE B)

The SOR alleged that Applicant has 10 delinquent debts, totaling \$20,497, all of which are included in the repayment plan he established in December 2007.³ The status of the 10 delinquent debts is as follows:

1. The debt in SOR ¶ 1. a \$1,984 debt is owed to a credit card company. It is included in the repayment plan and is listed as No. 10. (AE B at 2; Tr. 53).
2. The debt in SOR ¶ 1.b for \$1,999 debt is owed on a defaulted car loan. It is included as Nos. 8 and 9 on the repayment plan. (AE B at 2; Tr. 56)
3. The debt in SOR ¶ 1.c for \$1,381 debt is included as No. 9 on the repayment plan. (AE B at 2)
4. The debt in SOR ¶ 1.d for \$33 is included in the repayment plan and is listed as No. 7. (AE B at 2; Tr. 57)
5. The debt in SOR ¶ 1.e for \$210 debt was paid in full on July 17, 2008, for \$223. (AE E: 6/26/07-7/25/08 Bank Statement; Tr. 58)
6. The debt in SOR ¶ 1.f for \$1,690 debt owed to a credit card company for a laptop computer is included in the repayment plan as No. 1. (AE B at 2; Tr. 58)
7. The debt in SOR ¶ 1.g for \$3,220 is owed to a credit card company and is included in the repayment plan as No. 6. (AE B at 2; Tr. 58)
8. The debt in SOR ¶ 1.h for \$4,559 is included in the repayment plan as No. 2. (AE B at 2; Tr. 59)
9. The debt in SOR ¶ 1.i for \$3,368 is owed on an automobile loan is included in the repayment plan as No. 11. (AE B at 2; Tr. 59)
10. The debt in SOR ¶ 1.j for \$2,053 is included in the repayment plan as No. 5. (AE B at 2; Tr. 59)

In addition to resolving the above 10 debts, Applicant repaid \$3,200 of the \$16,000 debt owed to DoD with the help of a \$4,800 loan from his parents. (Tr. 52) As

² This amount is the total of the payments Applicant has made and will make as listed on the repayment plan under the Transaction columns.(AE B) It appears that a large portion of Applicant's payments are going to the company as settlement fees. (AE D)

³The plan includes 11 delinquent debts, one of which is not listed in the SOR, but is listed as No. 4 in the repayment plan.

of the hearing date, he reduced that balance to \$10,500 and \$1,011 to his parents.⁴ He submitted a revised budget that lists his net monthly income as \$2,883. His monthly living expenses are \$1,238. He spends \$1,100 a month on his debt reduction plan, which consists of \$600 to the debt consolidation company, \$400 to DoD, and \$100 to his parents, for a total of \$1,100. He has a net remainder of \$545. (AE C at 2) He is also putting 6% of his paycheck in a 401(k). (Tr. 66) He has recently paid a \$544 delinquent debt that was not listed on the SOR, but does appear on the October 2008 credit bureau report. (Tr. 73) He no longer uses credit cards. (Tr. 100)

Applicant provided a copy of a letter, dated September 27, 2008, documenting an increase in his pay for good performance. (AE A) He submitted a copy of the recent performance evaluation, leading to that increase, which gives him a rating of 3.7 out of 5.0. (AE I) Applicant's section manager submitted a letter of recommendation in which he complimented Applicant for his work and efforts. The manager stated that Applicant is "dependable, reliable, comes to work on time and is never late. I can trust [Applicant] to make the best decision possible for this section. I would hate to lose a good hard working employee like [Applicant]." (AE F) The section leader of Applicant's team is aware of Applicant's financial problems and the steps he has taken to resolve them. He highly recommends him, writing: "[Applicant] has shown me that he is willing to learn, reliable, dedicated, motivated and honest." (AE G) A colleague of Applicant, who has worked with him since November 2007, has also assisted him in resolving his debts. He stated, "I find [Applicant] to be extremely trustworthy and devoted to his job and the ideals of a safe and secure nation." (AE H)

During his testimony, Applicant honestly acknowledged his debts. He candidly explained how they occurred and the steps he has taken to resolve them. With help from his parents, he has learned to manage his finances more responsibly and maintain his budget. He uses an accounting software program to monitor his finances. He is adamantly opposed to using credit cards. He received several hours of credit counseling before he was discharged from the Navy in March 2006.

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 ¶

⁴Neither of these debts is included in the SOR and will not be considered in an analysis of disqualifying conditions, but will be considered in the whole person analysis.

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 applicant or proven by Department Counsel and has the ultimate burden of persuasion to obtain 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 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 two conditions that could raise security concerns and may be potentially applicable in this case. Under AG ¶ 19(a), “an inability or unwillingness to satisfy debts” is potentially disqualifying. Similarly, under AG ¶ 19(c), “a history of not meeting financial obligations” may raise security concerns. Applicant began accumulating a significant amount of delinquent debt after he left the Navy in March 2006 that he could not pay until he began his current position in November 2007. The evidence is sufficient to raise these disqualifications.

After the Government produced substantial evidence of those disqualifications, the burden shifted to Applicant to produce evidence and prove a mitigating condition. AG ¶ 20 includes six conditions that could mitigate security concerns arising from financial difficulties:

(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.

Applicant's financial delinquencies arose two years ago, in 2006, and continued into December 2007, when he began addressing them. Because the problems are recent and not isolated, his previous judgment is called into question and AG ¶ 20(a) cannot apply.

Applicant accumulated debts after he was discharged from the Navy and was unable to obtain full-time employment for almost two years. His inability to find a decent job for a period of time was a circumstance beyond his control. Because he did not

present evidence indicating that he attempted to manage his debts while unemployed, AG ¶ 20(b) has limited application.

After learning of the extent of his financial problems from the Government in the fall of 2007, Applicant entered into a repayment plan in December 2007 to resolve all of his outstanding debts. To-date, he has paid one SOR debt and deposited about \$8,700 with a company that is resolving his other delinquent debts. He produced evidence that he has paid in full one debt for \$544, not included in the SOR. He received credit counseling from the Navy in 2006 and advice from his parents. Based on his budget, which includes a workable repayment plan, his finances are under control, as a result of his good-faith efforts to resolve or pay his debts. Hence, AG ¶ 20(c) and AG ¶ 20(d) have some application

There is no evidence to support the application of AG ¶ 20(e) and AG ¶ 20(f).

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). 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.

According to 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 26-year-old unmarried man, who served in the Navy for five and a half years before being administratively discharged in March 2006. Prior to that discharge, he was building an impressive naval career and earning a good salary before being discharged due to his misconduct. After being discharged from the Navy, he was unemployed for almost two years resulting in the accumulation of about \$40,000 of debt, including \$16,000 owed to the DoD for a reenlistment bonus that he did not fulfill, and \$4,800 to his parents. After reviewing his credit reports with the Government in early fall of 2007, he promptly entered into a repayment plan in December 2007, to resolve and pay his obligations. While the terms of that agreement appear to favor the company, Applicant's decision to immediately

address his issues demonstrated responsible financial judgment. At this time, he has reduced the DoD debt to \$10,500 and loan from his parents to \$1,100. He paid other debts through the plan that were not listed in the SOR. He has contributed about \$8,700 to his debt reduction program. According to the terms of that agreement, he anticipates having the debts paid by July 2010. Over the course of the last year or more, Applicant appears to have matured and has credibly expressed his commitment to achieving financial solvency.

Applicant's manager, team leader and colleague, are aware of his financial problems, diminishing any potential for financial exploitation. All of them recommend him for a security clearance. His first year's performance evaluation notes a higher than average rating. He is dedicated to his job and his co-workers confirm his honesty and dedication.

Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all of the above 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.j: 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