



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 08-05945
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Melvin A. Howry, Esq., Department Counsel

For Applicant: *Pro se*

May 6, 2010

DECISION

ROSS, Wilford H., Administrative Judge:

Applicant submitted his Electronic Questionnaire for Investigations Processing on November 13, 2007. (Government Exhibit 1.) On March 2, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline F. 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 adjudicative guidelines (AG) effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant answered the SOR in writing on May 6, 2009, and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on June 29, 2009. This case was assigned to me on July 1, 2009. DOHA issued a notice of hearing on July 14, 2009. I convened the hearing as scheduled on September 10, 2009. The Government offered Government Exhibits 1 through 9, which were received without objection. Applicant testified on his own behalf, and submitted Applicant Exhibits A

through H, which were also received without objection. Applicant asked that the record remain open for the receipt of additional documents. The Applicant submitted Applicant Exhibit I on October 8, 2009, and it was admitted without objection. DOHA received the corrected copy of the transcript of the hearing on October 5, 2009. The record closed on October 8, 2009. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

Findings of Fact

Applicant is 52 and divorced. He is employed by a defense contractor and seeks to retain a security clearance in connection with his employment.

Guideline F, Financial Considerations

The Government alleges that Applicant is ineligible for clearance because he is financially overextended and, therefore, at risk of having to engage in illegal acts to generate funds. Applicant admits the factual allegations in SOR ¶¶ 1.a., 1.b., 1.c., 1.f., 1.g., and 1.h. Those admissions are hereby deemed findings of fact. He denies the remaining subparagraphs in the SOR.

Applicant testified that the majority of his financial problems occurred in connection with the divorce from his ex-wife, which occurred in 2004. This was followed by a period of unemployment and underemployment. Specifically, in August 2006 the company the Applicant used to work for lost a Government contract and he lost his job. After a year, he was able to obtain employment with a different Government contractor. (Government Exhibit 1; Transcript at 51-62.)

Applicant received financial counselling through the military in early 2008. (Applicant Exhibit A.) He began working with a bankruptcy law firm starting in July 2008. He retained the firm, and they filed a Chapter 7 bankruptcy on April 30, 2009. Through no fault of the Applicant, he did not receive a Discharge in bankruptcy until September 23, 2009. (Government Exhibit 3 at 5-13; Applicant Exhibits D, I at 3, 5-14; Transcript at 65-68.) As part of the bankruptcy process, the Applicant successfully completed two financial counselling courses.

The following debts were included in the Applicant's Chapter 7 filing: ¶¶ 1.a., 1.b., 1.e., 1.f., 1.g., 1.h., 1.i., 1.j., 1.l., 1.n., 1.o., 1.p., and 1.q. Applicant received a discharge for all of these debts. (Government Exhibits 7, 9; Applicant Exhibit I at 3, 5-14.)

The current status concerning the other debts in the SOR is as follows:

1.c. Applicant admitted that he owed \$5,963 for a past due credit card account. He has paid this debt. A credit report dated July 25, 2008, confirms this debt was paid and is resolved. (Applicant Exhibit C at 4; Transcript at 41.)

1.d. and 1.k. Applicant denied that he owed \$114 and \$426 for two debts to different mobile phone companies. Applicant stated that most of the mobile phone bills were incurred by his ex-wife without his permission. He filed disputes concerning these debts with the credit agencies, or placed the debts in his bankruptcy. (Transcript at 42-44.) Several of the debts included in the Applicant's Chapter 7 bankruptcy concern these particular mobile telephone companies. These particular debts appear in a credit report from November 2007. (Government Exhibit 2.) They do not appear after that. Under the particular circumstances of this case, I find that these debts have been resolved either by dispute, or by being included in the Applicant's bankruptcy.

1.m. Applicant denied that he owed \$139 for a debt to a mobile phone company. This is Applicant's telephone, and he submitted his most recent mobile phone bill to show that he is current on that account. (Applicant Exhibit I at 15-16; Transcript at 48-49.)

Mitigation

Applicant's current financial situation is stable. His most recent credit report does not show any past due indebtedness. (Government Exhibit 9; Transcript at 69-73.)

Applicant retired after a successful military career. (Applicant Exhibit E.) He submitted his most recent employee evaluation. His overall rating was "Outstanding/Far Exceeds Expectations." (Applicant Exhibit G.) Finally, Applicant submitted letters of recommendation from two work supervisors. They describe the Applicant as "conscientious and honest," and "dedicated, and committed." (Applicant Exhibit F.)

Policies

Security clearance decisions are not made in a vacuum. When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are to be used as appropriate 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 overarching adjudicative goal is a fair, impartial, and commonsense 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. In addition, the administrative judge may also rely on his own common sense, as well as his knowledge of the law, human nature, and the ways of the world, in making a reasoned 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. Security clearance decisions include, by necessity, consideration of the possible risk that 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.

Finally, as emphasized in Section 7 of Executive Order 10865, “Any determination under this order . . . shall be a determination 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 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 debts” is potentially disqualifying. Similarly under AG ¶ 19(c), “a history of not meeting financial obligations” may raise

security concerns. Applicant, by his own admission, and supported by the documentary evidence, had substantial past-due debts. The evidence is sufficient to raise these potentially 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 “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.” In addition, AG ¶ 20(b) states that the disqualifying conditions may be mitigated where “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.” Applicant’s financial difficulties arose primarily because of a contentious divorce, combined with a bout of underemployment and unemployment. He documented serious and long-standing attempts to resolve his past due debts. The record shows that he has discharged the vast majority of his past due debts in bankruptcy, as well as paying other debts, and disputing those that were not his. At all times he has acted responsibly. These two mitigating conditions apply.

Applicant received financial counselling through the military family support system. His advisor recommended a bankruptcy. He retained a law firm, which filed a Chapter 7 for him after confirming he met the means test. His debts were properly discharged. Accordingly, since he has resolved his debts, AG ¶ 20(d) is applicable. Applicant’s current financial situation is stable. He is able to pay his current indebtedness in a timely manner. I find that “there are clear indications that the problem is being resolved or is under control,” as required by AG ¶ 20(c).

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 relevant circumstances. Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. 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.

I considered the potentially disqualifying and mitigating conditions in light of all the relevant facts and circumstances surrounding this case. Applicant had some financial problems, but his current financial condition is stable. Under AG ¶ 2(a)(2), I have considered the facts of the Applicant's debt history. As stated at length above, much of this was brought about because of a divorce, and a period of unemployment and underemployment. Based on the record, I find that there have been permanent behavioral changes under AG ¶ 2(a)(6). Accordingly, I find that there is little to no potential for pressure, coercion, exploitation, or duress (AG ¶ 2(a)(8)); and that there is no likelihood of recurrence (AG ¶ 2(a)(9)).

Overall, the record evidence leaves me with no 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 situation.

On balance, I conclude that Applicant has successfully overcome the Government's case opposing his request for a security clearance. Accordingly, the evidence supports granting his request for a security clearance.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	FOR APPLICANT
Subparagraphs 1.a. through 1.q.:	For Applicant

Conclusion

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

WILFORD H. ROSS
Administrative Judge