



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ISCR Case No. 08-06133
)
)
Applicant for Security Clearance)

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

June 23, 2009

Decision

DAM, Shari, Administrative Judge:

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

On October 8, 2007, Applicant submitted an Electronic Questionnaires for National Security Positions (e-QIP). On November 20, 2008, the Defense Office of Hearings and Appeals (DOHA) issued Appellant 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 December 18, 2008, and requested a hearing. DOHA assigned the case to me on February 27, 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 4 into evidence without objection. Applicant testified. He offered Exhibits (AE) A and B into evidence without objection from the Government. 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 exhibits that I marked as AE C through E and admitted into the record without objection from the Government. DOHA received the hearing transcript (Tr.) on May 28, 2009.

Findings of Fact

Applicant admitted the underlying allegations contained in Paragraph 1 of SOR, but denied that he was not addressing them. His admissions are incorporated into the following findings of fact:

Applicant is 53 years old and married for the second time. He and his wife have 6-year-old twins. In 1978, he graduated from college and was commissioned in the Navy. He served seven years of active duty before resigning and joining the reserves in 1985. He worked as a stock broker until 1989 when he decided to return to school for a Master's degree in History. In 1991, he completed the degree and started teaching. He then began work on his Ph.D. From 1995 through 1996, he was on active duty. In July 1999 through December 2000, he returned to active duty. He worked for the IRS from May 2001 until September 11, 2001, at which time he was recalled to active duty. He was subsequently deployed overseas for seven months. He held a Top Secret security clearance while in the Navy.

In September 2002, Applicant was released from active duty and began working for a friend's medical billing company. In June 2003, he was recalled to active duty again and served until January 2004. In February 2004, he resumed work with the billing company until October 2007, when he applied for a government position as an Army historian. In May 2008, he retired from the Navy as a Captain with an honorable discharge. (GE 2)

Applicant attributes his financial problems to several factors, beginning with the birth of his twins in March 2003 and medical bills that began accruing due to their prematurity. Prior to their birth, his wife worked but discontinued after they were born. While on active duty from June 2003 to January 2004, he maintained an apartment for his family in another state, in addition to their house in their home state, which created duplicate housing expenses. When he returned to the billing company in early 2004, he earned \$30,000 to \$36,000. He admitted that some of his financial problems were the result of poor financial management and overspending. (Tr. 28)

Before his twins were born, Applicant was earning about \$65,000, had about \$24,000 in savings and \$12,000 in credit card debt. By the end of December 2003, he had about \$14,000 in savings and \$38,000 in credit card debt. (Tr. 28) At the end of 2004, he had \$9,000 in savings, almost \$50,000 in credit card debt and was earning a

\$36,000 salary. In early 2005, his salary increased to \$48,000 with a promise of a \$10,000 raise in the near future. By summer of 2006, his student loans became delinquent, resulting in a garnishment, and his finances “bottomed out.” (Tr. 36) He subsequently moved into a home that his parents owned. In the fall of 2006, his salary increased to \$60,000 and his wife returned to teaching part-time with an annual income of \$19,000. (Tr. 30-34) In the following fall of 2007, he started his current position, earning \$70,000. He and his wife have ceased using credit cards and live on their salaries. (Tr. 53) He believes his financial condition is improving. (Tr. 37)

In October 2007, Applicant submitted an e-QIP to the Government, notifying it of his delinquent debts. In July 2008, he completed Interrogatories related to his numerous financial delinquencies. He noted that he was establishing hardship payment plans with several creditors.

Based on credit bureau reports (CBR), dated October 24, 2007 and September 2008, the SOR alleged nine debts, totaling \$112,958¹ that started becoming delinquent in 2006 or earlier. The status of the debts is as follows:

1. SOR ¶ 1.a alleges a \$301 medical debt. He has been paying \$25 per month for several months. The balance is \$100. (Tr. 39)
2. SOR ¶ 1.b alleges a \$13,116 debt owed to a credit card company. He spoke to the creditor but has not made any payments on the debt because the company will not establish a small monthly repayment schedule. (Tr. 43)
3. SOR ¶ 1.c alleges a \$28,459 debt owed to a credit card company. He made one payment within the last six months. (Tr. 43)
4. SOR ¶ 1.d alleges a \$6,068 debt owed to a credit card company. Since April 2009, he has been paying \$100 a month. (Tr. 43; AE A)
5. SOR ¶ 1.e alleges a \$26,824 debt owed to a credit card company. He recently spoke to the creditor, who is unwilling to negotiate a small monthly payment. (Tr. 45)
6. SOR ¶ 1.f alleges a \$13,377 debt owed to a credit card company. He has been paying \$125 per month. The balance is \$12,000. (Tr. 46; AE A)
7. SOR ¶ 1.g alleges a \$10,097 debt owed to a credit card company. He is paying \$100 per month. It is the same debt as listed in ¶ 1.h. (Tr. 46; AE A, E; Answer)

¹SOR ¶ 1.g and ¶ 1.h are duplicate debts, reducing the total amount of the delinquent debts listed in the SOR to \$103,626.

8. SOR ¶ 1.h alleges a \$9,332 debt owed to the above referenced credit card company. (Tr. 47; Answer)
9. SOR ¶ 1.i alleges a \$5,384 debt owed to a credit card company. He is paying \$54.95 per month. The balance is \$5,700. (Tr. 47-48; AE B)

In summary, Applicant is making minimal payments of \$405 on six of the eight listed debts that total \$103,626. He began making some of those payments about six or eight months ago. In addition to the above, Applicant and his wife have a combined student loan debt of about \$200,000. The loans went into default status in November 2007. In the summer of 2008, Applicant began a rehabilitation program for the loans and they are now current. He has also paid off many medical bills, as well as other bills. (Tr. 36; GE 2 at 7)

As of July 2008, Applicant's net monthly income was \$5,337, and includes \$1,211 from his wife's teaching position. His monthly expenses are \$2,980 and payments on debts total \$2,380, leaving a \$22 monthly deficit. (GE 2) At this time, he pays more than one-third of his monthly income for debt reduction. (Tr. 45) He believes that he owes about \$110,000 in credit card debt and \$200,000 in student loans. (Tr. 48-49) He anticipates that he will need ten to twelve years to pay off his credit card debt and twenty-five to thirty years to pay the student loans. (Tr. 57)

Applicant admitted that he and his wife did not establish a budget when these financial difficulties started developing in 2003. (Tr. 58) Recently, he developed a spreadsheet for his bills, but not a budget. (Tr. 59) He has not participated in any form of credit counseling because he was told by military people that such actions could negatively affect one's security clearance. (Tr. 37)

Applicant testified candidly about the reasons underlying his financial delinquencies. He accepts responsibility for the decisions he has made over the years and the obligations that he has incurred.

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(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.

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 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 Financial Considerations guideline 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.

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

- (a) an inability or unwillingness to satisfy debts;
- (b) a history of not meeting financial obligations; and
- (e) consistent spending beyond one's means, which may be indicated by excessive indebtedness, significant negative cash flow, high debt-to-income ratio, and other issues of security concern.

Applicant began accumulating a significant amount of delinquent debt in late 2003, which he has been unable or unwilling to address until the summer of 2008. A large portion of the debt is attributable to excessive credit card spending. The evidence is sufficient to raise these three potentially disqualifying conditions.

After the Government produced substantial evidence of those three disqualifications, the burden shifted to Applicant to produce evidence and prove mitigation of the resulting security concerns. 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.

AG ¶ 20(a) cannot apply because Applicant's numerous financial problems have been ongoing since late 2003 and continue into 2009. Some of Applicant's financial problems are attributable to his twins' medical problems, low salaries while working for a private company, and one period of active duty during which he had additional housing

expenses. Those conditions were “beyond his control.” However, there is no evidence that he took adequate steps to manage his obligations or control his spending while he experienced financial difficulties. Hence, AG ¶ 20(b) has limited application. He has not sought credit counseling to-date, established a firm budget nor presented sufficient evidence to demonstrate that there are “indications that the problem is being resolved” to warrant the application of AG ¶ 20(c). He has been making minimal payments on six of the eight debts since last summer, one of which has a \$100 balance. He has unsuccessfully attempted to address the remaining two. His action is some evidence of a good-faith effort to “repay or otherwise resolve debts,” and triggers a very limited application of AG ¶ 20(d). The record evidence does not support the application of AG ¶ 20(e) or 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 mature 53-year-old man, who is highly educated and retired from the Navy after honorably serving our country. He has experienced a series of events that have contributed to some of his financial problems. He is candid and embarrassed by his indebtedness and intends to continue resolving it in the future. However, what is troubling is the magnitude of the debt that has been ongoing for several years. He has voluntarily accrued over \$110,000 in credit card debt and \$200,000 in student loans. While he is taking small steps to manage the problem, he has not sought professional help or established a detailed firm budget with his wife to resolve the problem. His behavior in accumulating and resolving the debt raises questions about his judgment. Overall, the record evidence leaves me with questions as to Applicant’s eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant did not mitigate 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:	AGAINST APPLICANT
Subparagraphs 1.a to 1.i:	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly not consistent with the interests of national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

SHARI DAM
Administrative Judge