



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



In the matter of:)
)
) ISCR Case No. 08-06660
)
)
Applicant for Security Clearance)

Appearances

For Government: Eric Borgstrom, Esq., Department Counsel
For Applicant: Barbara A. Halpern, Esq.

November 13, 2009

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant successfully mitigated the Government’s security concerns under Guideline F, Financial Considerations. Applicant’s eligibility for a security clearance is granted.

On May 19, 2009, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) detailing 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 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.

DOHA amended the SOR on August 2, 2009. Applicant answered the SOR in writing on July 15, 2009, and the amended SOR on August 11, 2009. He requested a hearing before an administrative judge. The case was assigned to me on August 5,

2009. DOHA issued a Notice of Hearing on August 11, 2009. I convened the hearing as scheduled on September 24, 2009. The government offered Exhibits (GE) 1 through 7 and Hearing Exhibit (HE) I for demonstrative purposes. Applicant did not object and they were admitted. Applicant testified and offered Exhibits (AE) A through F, which were admitted without objection. The record was held open until October 8, 2009, to allow Applicant to submit additional documents, which he did. They were marked AE G through L. The government had no objections, the documents were admitted, and the record closed.¹ DOHA received the transcript of the hearing (Tr.) on October 1, 2009.

Findings of Fact

Applicant admitted all of the allegations in the SOR except 1.d and 1.e. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is 66 years old and has been working for 40 years. He presently works for a federal contractor as a senior scientist. His past experience is as an aerospace engineer. His past employment history includes working for a large company for 19 years and with other companies in his area of expertise. He is married and has three grown daughters, one of whom lives with him, with her two children.²

In 1999, Applicant's employer sold the division of the company he was working with to another company. Applicant received a severance package in the amount of approximately \$60,000. He was unemployed for a few months before finding another job. In 2002, Applicant was working for a company on a project that ended. The company reduced its work force and he was laid off. Prior to 2002, Applicant was current on all of his bills. He and a colleague decided to start their own business. They used their savings and while the business was starting they did not earn an income. They were confident that the business would be successful and had promises of government contracts. During this time, Applicant stated that the Defense Department was shifting its resources from research and development, which his business was focused on, to the wars that were being waged. Despite promises and then apologies from their potential customers, they did not receive contracts. Applicant had used up his savings and was using credit cards to pay his living expenses and business expenses. In 2004, they concluded the business had failed, and in May 2004, he found a job.³

Applicant's new job with Company X was located more than 100 miles away from his home. He commuted to his place of employment daily and his income was approximately \$82,000. Due to the lengthy commute and the exhausting toll it took on him, he resigned and took a different job in May 2005. His salary increased to \$90,000. He was laid off from this job in May 2007. His delinquent debts increased during this

¹ Department Counsel response was marked as HE II.

² Tr. 22-25, 67-74.

³ Tr. 27-33, 62-64, 106-107.

period. He was unemployed until October 2007, when he was hired by his current employer. His salary is \$92,000.⁴

In 2008, Applicant became eligible to collect his pension. He began receiving \$1,935 monthly from his pension from the company where he worked for 19 years. In June 2009, he began receiving \$1,700 from social security benefits.⁵

After his business failed, he had incurred approximately \$30,000 to \$40,000 in delinquent debt. He stated he could not pay down the debt while working for Company X. He continued to pay two credit cards through 2005. He had approximately \$124 remaining from his salary at the end of each month, after paying his living expenses. Each subsequent year, his salary increased slightly, but not enough to begin paying back his debt. He stayed current on his mortgage and other living expenses. In 2008, when Applicant's salary increased and he began receiving both his pension and social security benefits, he had significant expendable income to begin repaying his creditors, which he did.⁶

In January and February 2008, Applicant paid off two credit cards that had not been delinquent, but had balances. He had made payments on these cards regularly and retired the balances.⁷

The debt in SOR 1.a (\$6,196) is a credit card debt. Applicant settled the debt. He made two payment of \$3,000. He made a final payment that was received on September 28, 2009. The debt has been settled and paid.⁸

The debt in SOR 1.b (\$13,874) is a credit card debt. Applicant settled the debt in February 2009, and received a confirmation of the settlement on September 14, 2009.⁹

The debt in SOR 1.c (\$12,223) is a credit card debt. Applicant had difficulty tracking down the current collection company on this debt. He made arrangements to settle the debt with two payments of \$3,934 to be paid on September 23, 2009, and a second payment of \$1,934 to be paid on October 31, 2009. When he makes the final payment the debt will be settled.¹⁰

⁴ Tr. 24-25, 33-36.

⁵ Tr. 25-27.

⁶ Tr. 37-44, 81; AE B.

⁷ AE C.

⁸ Tr. 45-49; AE C at 7, H.

⁹ Tr. 49-52; AE C at 4.

¹⁰ Tr. 52-56, 88; AE C at 2, G.

The debt in SOR 1.d was a tax lien from 1993. When Applicant changed jobs, there were disputed issues regarding travel payments and a severance package and their tax consequences. He disputed the issues with the Internal Revenue Service and the matter was resolved in 1995. Department Counsel conceded this lien was released.¹¹

The debt in SOR 1.e (\$35) is a medical debt that is no longer on Applicant's credit report. He disputed this debt with his medical insurance provider because he believed they were responsible for paying it. He wrote the creditor and advised them it was the insurance company's responsibility. The creditor sent the debt to collection. Although Applicant disputed owing the debt, he paid it in order to resolve the issue.¹²

The debt in SOR 1.f (\$168) is a debt to a telephone company. Applicant disputed this debt with the creditor. He requested the phone service be discontinued, and the company continued to bill him. Even though he disputed the debt, he settled the debt so it would be resolved.¹³

The debt in SOR 1.g (\$1,320) was a homeowner assessment for his house. He stopped paying this bill in 2004. The creditor obtained a judgment. Applicant paid the judgment.¹⁴

Applicant admitted to paying some of his bill late in the last year. He stated he was no more than 30 days late. He also had a dispute with his mortgage company regarding insurance. He admitted he did not have insurance on his home for two months due to an oversight. He has resolved the issues with his insurance company and is current on his bills. He has not received any financial counseling. Applicant presently has sufficient income to pay all of his monthly expenses and other debts.¹⁵

Applicant provided nine character letters.¹⁶ In the letters, he is described as trustworthy and ethical, with the highest level of integrity and professionalism. He is characterized as an expert in his field, who is reliable, disciplined and self-motivated. He is recommended for a security clearance.¹⁷

¹¹ Tr. 15-17, 56-58; GE 6 and 7; AE C at 12.

¹² Tr. 58-59, 82-83; AE C at 11.

¹³ Tr. 59-60, 82-83; AE C at 8-9, I.

¹⁴ Tr. 60-62, 81-82, 103; AE C at 13, J.

¹⁵ Tr. 90-105, 111-114.

¹⁶ AE F.

¹⁷ *Id.* Tr. 65-66.

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 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.

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, an "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 as to obtaining a favorable clearance 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. I have considered all of the disqualifying conditions under AG ¶ 19 and especially considered:

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

Applicant accumulated delinquent debts after experiencing a failed business venture in 2002. Many of his debts remained delinquent for several years. I find there is sufficient evidence to raise the above disqualifying conditions.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. I have considered the following mitigating conditions under AG ¶ 20:

- (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; and

(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.

Applicant paid all of the debts alleged in the SOR. He experienced financial problems when he and his business partner started a new business and it failed. They were confident they would receive government contracts, but due to the changing needs of the Defense Department, the contracts never materialized. Applicant invested his personal savings into the business. When it failed he used credit cards to pay for his needs. I find that the conditions that resulted in his financial problems were beyond his control. He stayed current on some of his bills and others became delinquent. When he began receiving his pension, he systematically resolved his delinquent debts. Applicant now earns a sufficient income that is enhanced by his pension and social security benefits. The circumstances that caused his financial hardship are unlikely to recur and Applicant acted responsibly when his employment situation changed. I find mitigating conditions (a) and (b) apply. Applicant has resolved his delinquent debts, he is earning sufficient income to pay his bills, and his finances are under control. He has paid all of his creditors and is living within his means. He disputed some debts, but decided to pay them to resolve the issues. I find mitigating conditions (c), (d) and (e) 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 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 experienced financial problems when he started a business that failed due to issues beyond his control. He lost his savings and used credit cards so he could live. Once he began working again and earning a salary, he systematically paid his delinquent debts. He now has sufficient

income and lives within his means. Overall, the record evidence does not leave me with questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising under the guideline for 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-1.g: For Applicant

Conclusion

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

Carol G. Ricciardello
Administrative Judge