



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



In the matter of:)
)
) ISCR Case No. 08-06765
)
)
Applicant for Security Clearance)

Appearances

For Government: James F. Duffy, Esq., Department Counsel
For Applicant: *Pro Se*

April 22, 2009

Decision

DAM, Shari, Administrative Judge:

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

On February 25, 2008, Applicant submitted an Electronic Questionnaires for Investigations Processing (e-QIP). On December 12, 2008, 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.

On January 20, 2009, Applicant answered the SOR in writing and elected to have the case decided on the written record in lieu of a hearing. On February 5, 2009, Department Counsel prepared a File of Relevant Material (FORM) containing eight Items, and mailed Applicant a complete copy on February 10, 2009. Applicant received the FORM on February 17, 2009, and had 30 days from its receipt to file objections and submit additional information. On March 11, 2009, Applicant submitted a letter with additional information. Department Counsel had no objections to the submissions, which I marked as Applicant Exhibits (AE) A and B and admitted into the record. On March 19, 2009, DOHA assigned the case to me.

Findings of Fact

In his Answer to the SOR, Applicant admitted all factual allegations contained in the SOR ¶¶ 1.a through 1.cc. In AE A, Applicant revised his previous Answer, admitting all allegations, except ¶¶ 1. r, 1.t, 1.y, 1.aa, 1.bb, and 1.cc. He claimed they no longer appear on credit bureau reports (CBR), dated March 4, 2009, and March 7, 2009. He did not provide those documents. He also denied the allegation contained in SOR ¶ 1.v pertaining to a state tax lien, asserting that it was paid.

Applicant is 52-years old and married. In February 2008, he began his employment with a federal contractor as a drafter.¹ Prior to this position, he worked as an associate designer for a private company from August 2006 to January 2008. Immediately preceding that time frame, he was on social security disability from June 2003 to August 2006, due to medical conditions. In late 1999, he suffered a heart attack and later lost a kidney. He was subsequently placed on dialysis and experienced many complications. In early 2001, he underwent a triple bypass surgery after being evaluated for a transplant. As a result of his health issues and mounting debts, in June 2001, he filed a Chapter 13 Bankruptcy. In April 2004, he received a transplant. He and his wife attempted to manage their debt through the bankruptcy proceeding, but in June 2004 he converted the Chapter 13 into a Chapter 7 bankruptcy. In the process, he surrendered his home, but retained two cars. In October 2004, the court discharged delinquent debts, the amount of which is not clearly articulated in the record. He worked for a private company as an insulator from May 1995 until June 2003, when his request for disability became effective. While on disability, his wife earned about \$17,000 annually, but has not worked since 2007. (Item 5; AE A)

From September 2005 to August 2006, Applicant attended vocational training in order to accommodate his physical infirmities, terminate his disability status, and improve his financial situation. (AE A; Item 5 at 10) As a result of that training, he obtained his current position. (AE A)

Based on credit bureau reports (CBR) dated March 8, 2008, and November 13, 2008, the SOR alleged twenty-eight delinquent debts, totaling \$6,598. Twenty-two of those debts are owed to medical creditors and total \$3,942. On March 10, 2009,

¹Applicant obtained a Secret security clearance sometime in 1980, which he needed to work at a naval shipyard for a federal contractor. (Item 5 at 32)

Applicant entered into an agreement with a company to help resolve nineteen of the twenty-eight outstanding debts, which total \$4,579. Applicant asserted that the remaining eight debts (totaling \$1,419) have been removed from his recent CBR, but does not indicate why. Seven of those eight debts are medical debts and are included in the twenty-two debts noted previously. (AE A and B) Applicant paid the \$688 state tax lien, listed under SOR ¶ 1.v. (Item 6 at 5; Item 8; AE A)

According to the budget he submitted in August 2008, Applicant's net monthly income was \$2,063 and his expenses were about \$2,260, indicating a \$197 monthly deficit. Since May 2007, he has managed to pay off four tax liens. (Item 7)

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.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. According to 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."

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 that an 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 adverse to an applicant 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 *a/so* Executive Order 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive 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.

The guideline notes several conditions that could raise security concerns. Under AG ¶ 19, two of them are potentially disqualifying:

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

Based on two CBRs and his admissions, Applicant has been unable or unwilling to satisfy debts that began accruing subsequent to the discharge of other debts through bankruptcy in October 2004. The evidence is sufficient to raise these two disqualifying conditions.

After the Government raised potential disqualifications, the burden shifted to Applicant to rebut and prove mitigation of the resulting security concerns. The guideline includes six examples of conditions that could mitigate security concerns arising from financial difficulties 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;

(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 are ongoing and have been so, both prior to and subsequent to a discharge of debt through the bankruptcy court in October 2004. Hence, AG ¶ 2 (a) cannot apply. Applicant's financial difficulties are attributable to a three-year period of time in which he was on disability, his wife earned a small salary, and he incurred large medical bills that constitute the bulk of the delinquent debts. Those conditions were beyond his control. However, there is no evidence in the record indicating that he responsibly attempted to manage his finances during those difficult periods, which is necessary for full application of this mitigating condition. Thus, AG ¶ 20(b) has limited application. Applicant did not present any evidence that he received credit counseling. Recently, he hired a firm to begin resolving 19 of the 28 delinquent debts, which actions warrants some mitigation under AG ¶ 20(c). Applicant has paid the outstanding \$688 tax lien, such that AG ¶ 20(d) applies to that debt. There is no evidence indicating that he disputed any of the debts, which is required for the application of AG ¶ 20(e). The record does not support the application of 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 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 is 52-years old and recently began working for a federal contractor. Prior to this position, he worked for a private company for about eight years before becoming disabled due to kidney failure. As a consequence of his serious medical condition, he was on disability for three years, while his wife earned a minimal salary. Those circumstances clearly contributed to his bankruptcy and later financial problems. Initially, he attempted to manage his debts through a Chapter 13, but within three years converted it into a Chapter 7 when he could no longer maintain the payments. I also considered the Government's concerns over Applicant's outstanding delinquent debt that now totals about \$6,000 and accrued since his October 2004 bankruptcy discharge. While I appreciate the significance of that concern, I recognize that Applicant sought to improve his financial situation by attending vocational school for a year between 2005 and 2006 while on disability. Given his initial attempt to pay his debts through a Chapter 13 and the subsequent completion of vocational training, I find that he previously demonstrated a determination to responsibly manage his financial delinquencies. Although he entered into an agreement to resolve his debts very recently, there is no other derogatory information in the record that leads me to conclude that he will not follow through with the resolution of his debts (most of which are medical) and jeopardize his employment.

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

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.cc:	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