



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



In the matter of:)
)
) ISCR Case No. 08-06856
)
)
Applicant for Security Clearance)

Appearances

For Government: Alison O'Connell, Esq., Department Counsel
For Applicant: *Pro Se*

October 14, 2009

Decision

LOUGHRAN, Edward W., Administrative Judge:

Applicant mitigated Financial Considerations security concerns. Eligibility for access to classified information is granted.

Statement of the Case

On February 25, 2009, 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 (EO) 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 (DoD) for SORs issued after September 1, 2006.

Applicant answered the SOR on March 30, 2009, and requested a hearing before an administrative judge. The case was assigned to me on July 2, 2009. DOHA issued a

notice of hearing on July 16, 2009, scheduling the hearing for August 5, 2009. The hearing was convened as scheduled. The government offered Exhibits (GE) 1 through 4, which were received without objection. Applicant testified on his own behalf and submitted Exhibits (AE) A through G, which were received without objection. The record was held open for Applicant to submit additional information. Applicant submitted two sets of documents, which were marked AE H through R and admitted without objection. After viewing Applicant's documents, I reopened the record to allow Applicant to submit additional documents. Applicant submitted another set of documents, which were marked AE S through YY and admitted without objection. Department Counsel's memorandums are marked Hearing Exhibits (HE) I, II, and III. DOHA received the transcript of the hearing (Tr.) on August 12, 2009.

Procedural Rulings

I advised Applicant of his right under ¶ E3.1.8 of the Directive to 15 days notice before the hearing. Applicant affirmatively waived his right to 15 days notice.

Findings of Fact

Applicant is a 65-year-old engineer for a defense contractor. He has worked for his current employer since 1998. He is the deputy chief engineer on a major weapons system. He has worked on the same project, with his current employer or other defense contractors, since 1984. He is a graduate of a service academy. He served as a military officer after graduation and is a decorated veteran of the Vietnam War. He has been married for 41 years. He has four children and four stepchildren. His wife was a widow with four young children when he married her. Applicant's children are adopted. The three youngest children are "special needs" children and still live with Applicant and his wife.¹

Applicant traveled frequently for his job. Because of his time away from home, his wife handled their finances. There is a casino close to where Applicant lives. His wife started gambling at the casino. She developed a severe gambling problem and incurred significant losses. She stopped paying the household bills, including their mortgage, in order to fund her gambling. Applicant became aware of the extent of her gambling, and how far behind they were, in about November 2006. By that time, they were a number of months behind in their mortgage payments, and their lender was threatening foreclosure.²

Applicant and his wife filed Chapter 13 bankruptcy in April 2007. They made some payments to the trustee before the bankruptcy was dismissed in February 2008. Applicant testified the bankruptcy was dismissed because they were unable to maintain the payments. He admitted another reason that he and his wife dismissed the bankruptcy was because she received a settlement from a lawsuit over an injury

¹ Tr. at 47-50; Applicant's response to SOR; GE 1, 2: AE B, C.

² Tr. at 21-25; Applicant's response to SOR; GE 2.

sustained in a car accident. He stated that the settlement was at least \$40,000 and may have been \$75,000, but he did not know the actual figure. He and his wife did not want the settlement to be considered in the bankruptcy for use in determining their payment plan. They did not use any of the settlement to pay their debts. His wife paid about \$27,000 for a new car. Applicant stated that he did not know what she did with the remainder of the money. She indicated in a letter that she lost it gambling.³

Applicant lost his house to foreclosure in February 2008. He was about \$17,000 behind on the mortgage at one point. Applicant received an IRS Form 1099-A, Acquisition or Abandonment of Property. The form indicated that the fair market value of the property when the lender obtained it was \$298,114. The balance of the principal on the mortgage was \$267,396. Because of the equity in the property, no deficiency was owed on the mortgage.⁴

The SOR alleges Applicant's bankruptcy, his delinquent mortgage, and three additional delinquent debts totaling about \$22,104. Applicant had not made payments on any of the debts as of the date of hearing.⁵

Applicant submitted post-hearing documents that he sold to his sister ten shares of stock that he received as an inheritance. He stated that he did not realize the value of the stock until he received a check for \$66,180 from his sister's attorney on August 12, 2009. He used the money from the sale to pay or settle his delinquent debts.⁶

Applicant settled the delinquent debt of \$1,467 owed to a collection company on behalf of a financial institution, as alleged in SOR ¶ 1.c, with a payment of \$660 on August 27, 2009.⁷

SOR ¶ 1.d alleges a delinquent debt of \$16,762 owed to a collection company on behalf of a financial institution. Applicant settled the debt, which had grown to \$16,910, with a payment of \$10,215 on August 27, 2009.⁸

Applicant settled the delinquent debt of \$3,977 owed to a collection company on behalf of an exercise equipment company, with a payment of \$1,988 on August 27, 2009. This debt was alleged in SOR ¶ 1.e.⁹

³ Tr. at 23-24, 42-44, 50-51; Applicant's response to SOR; GE 2; AE J.

⁴ Tr. at 23-25, 31-32; Applicant's response to SOR; GE 2-4; AE A.

⁵ Tr. at 34, 47, 51-52.

⁶ AE L, O-S.

⁷ GE 2; AE OO, WW-YY.

⁸ AE EE-HH.

⁹ AE U-W.

In addition to the debts alleged in the SOR, Applicant paid or settled seven additional debts with payments totaling about \$19,860. He also paid his tax year 2008 IRS debt of \$2,876.¹⁰

Applicant has received financial counseling. His wife is receiving counseling for her gambling problem. She quit for a period and then started gambling again in about June 2009. It is unclear if she is currently gambling, but she stated in a letter that “deep down in [her] heart [she] never ever want[s] to gamble again.” When he found out she had a gambling problem, Applicant stopped her access to their funds. After she went a period without gambling, he returned her access to their accounts. She gambled away much of their funds.¹¹

Applicant submitted a number of letters on his behalf. His job performance has been outstanding. He is praised for his, honesty, trustworthiness, patriotism, judgment, work ethic, professionalism, leadership, dedication, and integrity. The authors recommend that he retain his security clearance.¹²

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 to be used 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, administrative judges apply the guidelines 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.

¹⁰ AE T, X-DD, JJ-NN, PP-VV.

¹¹ Tr. at 25-33; AE D, E, I, J, L, M, S.

¹² AE D.

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 the 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. 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 adverse 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 under AG ¶ 19. Two are potentially applicable in this case:

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

Applicant accumulated a number of delinquent debts and was unable or unwilling to pay his obligations for a period of time. The evidence is sufficient to raise the above disqualifying conditions.

Four Financial Considerations Mitigating Conditions under AG ¶ 20 are potentially applicable:

(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; and

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant's financial issues resulted from his wife's gambling problem. This qualifies as a condition that was outside his control. To be fully applicable, AG ¶ 20(b) also requires that the individual act responsibly under the circumstances. Applicant has resolved all of the debts alleged in the SOR. He also resolved eight debts not alleged in the SOR. He acted responsibly under the circumstances by making a good-faith effort to repay his overdue creditors. He has receiving financial counseling, and there are indications that the problem is being resolved. His financial problems do not cast doubt on his current reliability, trustworthiness, and good judgment. AG ¶¶ 20(a), 20(b), 20(c), and 20(d) are all applicable

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.

