



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



In the matter of:)
)
-----) ISCR Case No. 08-06904
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government:
Jeff Nagel, Esquire, Department Counsel

For Applicant:
Pro se

August 24, 2009

Decision

ROSS, Wilford H., Administrative Judge:

The Applicant submitted his Questionnaire for National Security Positions (SF86), on July 31, 2007 (Government Exhibit 1). On January 13, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to the Applicant, which detailed security concerns under Guideline F stating why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant, and recommended referral to an administrative judge to determine whether a clearance should be denied or revoked. 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 President Bush on December 29, 2005,

and effective within the Department of Defense for SORs issued after September 1, 2006.

The Applicant answered the SOR in writing on February 9, 2009, and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on February 26, 2009. This case was assigned to another administrative judge on March 3, 2009. The case was reassigned to me on April 8, 2009. DOHA issued notices of hearing on April 7, 2009, and April 8, 2009. I convened the hearing as scheduled on May 18, 2009. The Government offered Government Exhibits 1 through 6, which were received without objection. The Applicant testified on his own behalf, and submitted Applicant's Exhibits A through E, also without objection. The record was left open at the Applicant's request for the submission of additional documentation. The Applicant submitted Applicant's Exhibit F on May 28, 2009. This exhibit was also received without objection. DOHA received the transcript of the hearing on May 27, 2009. The record closed on May 28, 2009. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

Findings of Fact

The Applicant is 29, single, and is six classes short of a bachelor's degree. The Applicant was laid off from his defense industry employer because the company lost their contract. He seeks a security clearance in connection with his prospective employment in the defense industry. (Transcript at 7-10.) In his Answer to the SOR, Applicant admitted the allegations in Paragraph 1 of the SOR. Those admissions are hereby deemed findings of fact.

Paragraph 1 (Guideline F - Financial Considerations)

The Government alleges that the Applicant is ineligible for clearance because he is financially overextended and therefore at risk of engaging in illegal acts to obtain funds.

1.a. through 1.e. The Applicant admits that he owes Key Bank the approximate amount of \$36,854 for a series of student loans.¹ The Applicant attended a university from September 1997 to January 2000. He received financial aid from the university as well as student loans from three different lenders. In 2000, he withdrew from school because he was unable to keep up his grades, which was required for him to retain his financial aid. Due to his failure to attend school his payment deferment ended until approximately 2007. The Applicant then began attending a junior college, and is taking enough credit hours to put his loans into deferment status again. (Transcript at 25-30, 34-35; Applicant's Exhibit E.)

¹Allegation 1.e. states that the Applicant owes \$36,854 to Key Bank. I find that this alleged debt is actually a consolidated statement of the other student loans.

The documentary evidence in the record shows that two of the three lenders have put the Applicant's debts in a payment deferred status. He worked for his defense industry employer from January 2007 to March 2009. Because of that employment, he was able to start making payments on his student loans, allowing them to go into deferment status. (Transcript at 44-48, 50; Government Exhibit 2 at 5, Exhibit 3 at 2-5, Exhibit 4, Exhibit 5, and Exhibit 6.) The third lender sold its loans to a collection agency. The Applicant is making regular payments to this collection agency per his agreement with them. To date he has paid over \$2,000 on his student loan debt. (Transcript at 35, 42-44, 48-52; Applicant's Exhibit A and Exhibit F.)

The Applicant's current financial status is stable, if strained because of his layoff. He lives at home, where he rents a room from his parents. He budgets his money, and has for several years. He states that he is not afraid of hard work, has done manual labor in the past, and will continue to pay off his student loans. The most recent credit report of the Applicant's shows he has no past due debt, other than the student loans. (Transcript at 36-38, 41; Government Exhibit 6.)

Mitigation

The Applicant also presented recommendations from his general manager and two work leaders that are very laudatory. The letters describe the Applicant as "reliable, honest, and trustworthy in every respect," "dedicated," and "conscientious, responsible." (Applicant's Exhibit B, Exhibit C, and Exhibit D.)

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. 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. 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.

Finally, as emphasized by President Eisenhower 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

It is the Government's responsibility to present substantial evidence to support the finding of a nexus, or rational connection, between the Applicant's conduct and the continued holding of a security clearance. If such a case has been established, the burden then shifts to the Applicant to go forward with evidence in rebuttal, explanation or mitigation which is sufficient to overcome or outweigh the Government's case. The Applicant bears the ultimate burden of persuasion in proving that it is clearly consistent with the national interest to grant him or her a security clearance.

In this case, the Government has met its initial burden of proving by substantial evidence that the Applicant has had financial difficulties (Guideline F). The Applicant, on the other hand, has successfully mitigated the Government's case.

Paragraph 1 (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(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. The Applicant failed to pay several of his student loans for a period of years. The evidence is sufficient to raise these potentially disqualifying conditions, requiring a closer examination.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Mitigating Condition ¶ 20(a) states that the disqualifying conditions 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." The Applicant's debts are not the result of a spending spree or some other action that would show poor judgment. He is back in school, on path to receive his degree, and is paying off the one student loan that is not in deferment. The evidence raises this mitigating condition.

Evidence that "the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts" is also mitigating under ¶ 20(d). As stated above, his loans to two of the three student loan companies are in deferment. He is making satisfactory payments towards the third. I conclude this mitigating condition applies.

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. 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 facts and circumstances surrounding this case, in particular his allowing these debts to lie fallow for several years, his payments to the collection agency, and his return to school on a basis that allows the other loans to go into a forbearance situation. Three of the factors have the most impact on this case. First, I find that there is the "presence or absence of rehabilitation and other permanent behavioral changes," as set forth under AG ¶ 2(a)(6). The Applicant has shown that his failure to pay these loans was a temporary situation that has been corrected. In addition, he is an overwhelmingly truthful person. Under the particular facts of this case, there is little or no "potential for pressure, coercion, exploitation, or duress" as set forth in AG ¶ 2(a)(8). Finally, the evidence does not show a "likelihood of continuation or recurrence" of the conduct as discussed in AG ¶ 2(a)(9).

On balance, it is concluded that the Applicant has successfully overcome the Government's case opposing his request for a DoD security clearance. Accordingly, the evidence supports a finding for the Applicant as to the factual and conclusory allegations expressed in Paragraph 1 of the Government's Statement of Reasons.

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 THE APPLICANT
Subparagraph 1.a.:	For the Applicant
Subparagraph 1.b.:	For the Applicant
Subparagraph 1.c.:	For the Applicant
Subparagraph 1.d.:	For the Applicant
Subparagraph 1.e.:	For the Applicant

Conclusion

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

WILFORD H. ROSS
Administrative Judge