



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



In the matter of:)
)
) ISCR Case No. 08-07356
)
)
Applicant for Security Clearance)

Appearances

For Government: Tom Coale, Esq., Department Counsel
For Applicant: *Pro Se*

April 30, 2009

Decision

LOUGHRAN, Edward W., Administrative Judge:

Applicant has mitigated the Financial Considerations and Personal Conduct security concerns. Eligibility for access to classified information is granted.

On December 17, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, Financial Considerations and Guideline E, Personal Conduct. 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 January 23, 2009, and requested a hearing before an administrative judge. The case was assigned to another administrative judge on March 4, 2009, and reassigned to me on March 11, 2009. DOHA issued a notice of hearing on March 17, 2009, and the hearing was convened as scheduled on April 7,

2009. The Government offered Exhibits (GE) 1 through 5, which were received without objection. The Government also offered a demonstrative exhibit which was marked Hearing Exhibit (HE) I. Applicant testified on his own behalf, and submitted Exhibits (AE) A through E, which were received without objection. DOHA received the transcript of the hearing (Tr.) on April 28, 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 53-year-old employee of a defense contractor. He has worked for his current employer since 1982, and has held a security clearance throughout his employment. He is also a technical sergeant in the Air National Guard. He served on active duty in the U.S. Army from 1976 to 1980. He served in the National Guard from 1982 to 1988, and again from 1990 to 1999. He joined the Air National Guard in 2000. He received a certificate upon completion of a technical school. He was married from 1978 until his divorce in 2002. He married again in 2002. He has two adult children and three adult stepchildren.¹

The SOR alleges five delinquent debts, totaling \$18,602. The debts are all credit card or revolving accounts. In his answer to the SOR, Applicant admitted owing all the debts. Since he responded to the SOR, Applicant withdrew funds from his 401(k) and paid or settled in full all the debts. The \$4,226 debt alleged in SOR ¶ 1.a was settled in full for \$2,200 on February 27, 2009. He paid in full the \$3,914 debt alleged in SOR ¶ 1.b on or before March 13, 2009. He paid in full the \$1,203 debt alleged in SOR ¶ 1.c on February 26, 2009. The \$4,143 debt alleged in SOR ¶ 1.d had grown to \$4,714 by February 2009. Applicant paid the full \$4,714 on February 26, 2009. The \$5,116 debt alleged in SOR ¶ 1.e was settled in full for \$4,773 on March 5, 2009.²

Applicant submitted a Questionnaire for National Security Positions (SF 86) certified as true on February 7, 2008. He answered “No” to Questions 28a and 28b, which asked “In the last 7 years, have you been over 180 days delinquent on any debt(s)?” and “Are you currently over 90 days delinquent on any debt(s)?” Applicant’s wife handled their finances. He knew he had debts and his accounts had balances, but he was unaware that she had not been making the payments and permitted the accounts to become delinquent. Because his wife kept his financial situation from him, Applicant thought he was answering the questions truthfully. He did not find out that he had delinquent debts until the background investigator brought them to his attention

¹ Tr. at 20-27; GE 1.

² Tr. at 27-31; Applicant’s response to SOR; GE 2-5; AE A-E.

after the SF86 had been submitted.³ After considering all the evidence, I find that Applicant did not intentionally falsify his SF86.

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 over-arching adjudicative goal is a fair, impartial and common sense 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.

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.

³ Tr. at 35-37; GE 1.

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(c), “a history of not meeting financial obligations” may raise security concerns. Applicant had a number of delinquent debts. The evidence is sufficient to raise AG ¶ 19(c) as a disqualifying condition.

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 wife was handling their finances. Without his knowledge she let bills go unpaid, resulting in five delinquent debts. He acted responsibly and paid or settled in full all the delinquent debts. I find that situation is unlikely to recur and does not cast doubt on his current reliability, trustworthiness, and good judgment. His financial problems are resolved and are under control. AG ¶¶ 20(a), 20(b), 20(c), and 20(d) are all applicable.

Guideline E, Personal Conduct

The security concern relating to the guideline for Personal Conduct is set out in AG ¶ 15:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. The following mitigating condition is potentially applicable:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities.

Applicant omitted some financial information from his Questionnaire for National Security Positions; however, as discussed above, he was unaware that his debts were delinquent. He believed he was answering the questions truthfully. It was not a deliberate omission. AG ¶ 16(a) is not applicable. SOR ¶ 2.a is concluded for Applicant.

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 common sense 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. I have incorporated my comments under Guidelines F and E in my whole person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but some warrant additional comment. Applicant has worked for a defense contractor and held a security clearance for more than 26 years. He has extensive military service in the Army, the National Guard, and the Air National Guard. His wife handled their finances and let bills go unpaid without his knowledge. He paid or settled in full all his delinquent debts. Applicant's finances do not constitute a security concern.

Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has mitigated the Financial Considerations and Personal Conduct security concerns.

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:

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|---------------------------|---------------|
| Paragraph 1, Guideline F: | FOR APPLICANT |
| Subparagraphs 1.a-1.e: | For Applicant |
| Paragraph 2, Guideline E: | FOR APPLICANT |
| Subparagraph 1.a: | For Applicant |

Conclusion

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

Edward W. Loughran
Administrative Judge