



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



In the matter of:)
)
-----) ISCR Case No. 08-07574
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Jennifer I. Goldstein, Esq., Department Counsel

For Applicant: *Pro se*

April 28, 2010

DECISION

ROSS, Wilford H., Administrative Judge:

Applicant submitted his Security Clearance Application (SF-86) on June 21, 2005 (Government Exhibit 1). On April 30, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the 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 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 in writing on May 26, 2009, and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on June 29, 2009. This case was assigned to me on July 2, 2009. DOHA issued a notice of hearing on July 14, 2009. I convened the hearing as scheduled on September 10, 2009. The Government offered Government Exhibits 1 through 9, which were received without objection. Applicant testified on his own behalf, and submitted

Applicant Exhibits A through K, also without objection. Applicant asked that the record remain open for the receipt of additional documents. The Applicant submitted Applicant Exhibit L on September 21, 2009, and it was admitted without objection. DOHA received the transcript of the hearing on September 21, 2009, and the record closed on that date. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

Findings of Fact

Applicant is 60 and divorced. He is employed by a defense contractor and seeks to retain a security clearance in connection with his employment.

Guideline F, Financial Considerations

The Government alleges that Applicant is ineligible for clearance because he is financially overextended and, therefore, at risk of having to engage in illegal acts to generate funds. Applicant admits the factual allegations in SOR ¶¶ 1.c., and 1.g. Those admissions are hereby deemed findings of fact. He denies SOR ¶¶ 1.a., 1.b., 1.d., 1.e., and 1.f.

Applicant testified that the majority of his financial problems occurred in connection with the divorce from his ex-wife. (Applicant Exhibits D, F, G, and L at 45-54; Transcript at 75-79.)

1.a. Applicant denied that he currently owed a credit card company \$7,929 for a judgment. The record shows that a garnishment was issued against Applicant's pay and documentary evidence shows that this debt was paid in full. (Applicant Exhibits H, and L at 3-4; Transcript at 38-46.)

1.b. Applicant denied that he currently owed a utility company \$146 for a past due account. He submitted a paid receipt from the creditor, showing they had been paid in full in May 2009. (Applicant Exhibit B; Transcript at 46-47.)

1.c. Applicant admitted that he owed \$8,378 for a past due credit card account. The current collection agency had obtained a judgment, but the Applicant made a payment arrangement with the creditor. He submitted evidence showing that since December 2008 he had been making consistent monthly payments to the creditor in fulfillment of that arrangement. (Applicant Exhibit C, and L at 5-14; Transcript at 47-57.)

1.d. Applicant denied that he owed \$174 for a debt to a bank. Applicant's ex-wife forged his name on an instant loan check from his bank. He disputed this debt to the credit reporting agencies, and it has been deleted. (Applicant Exhibit D; Transcript at 57-58.)

1.e. Applicant denied owing a bank \$3,275 on a past due credit card account. He disputed the account to the bank, stating that he was not the owner of the account.

The bank has confirmed in writing that his ex-wife is the sole owner of the account. (Applicant Exhibit E; Transcript at 47-53, 82-85.)

1.f. Applicant denied that he owed \$4,712 for a debt to a payday loan company. Applicant's ex-wife forged his name on an instant loan check from this company. He disputed this debt to the credit reporting agencies, and it has been deleted. (Applicant Exhibit D; Transcript at 59-60.)

1.g. This is the same debt as that set forth in 1.c., above. (Government Exhibit 9 at 1; Transcript at 47-57.)

Mitigation

Applicant submits that his current financial situation is stable. The most recent credit report in the record shows that Applicant has no past due debts, other than 1.c., which he is currently paying. (Government Exhibit 9; Transcript at 60-76.)

Policies

Security clearance decisions are not made in a vacuum. When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are to be used as appropriate 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. Security clearance decisions include, by necessity, consideration of the possible risk that 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 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

Guideline F, Financial Considerations

The security concern 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. Applicant, by his own admission, and supported by the documentary evidence, had substantial past-due debts. The evidence is sufficient to raise these potentially disqualifying conditions.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Under AG ¶ 20(a), the disqualifying condition 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.” In addition, AG

¶ 20(b) states that the disqualifying conditions may be mitigated where “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.” Applicant’s financial difficulties arose primarily because of a contentious divorce. He documented serious and long-standing attempts to resolve his past due debts. The record shows that he has paid his legitimate debts, and that he has properly disputed debts, which are paid or are not his. At all times he has acted responsibly. These two mitigating conditions apply.

Applicant has initiated a good-faith effort to pay off his creditors. As stated above, several have been paid. Accordingly, AG ¶ 20(d) is applicable. Applicant’s current financial situation is stable. He is able to pay his current indebtedness in a timely manner. I find that “there are clear indications that the problem is being resolved or is under control,” as required by AG ¶ 20(c).

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 relevant 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 relevant facts and circumstances surrounding this case. Applicant had some financial problems, but his current financial condition is stable. Under AG ¶ 2(a)(2), I have considered the facts of the Applicant’s debt history. As stated at length above, much of this was brought about because of a divorce. Based on the record, I find that there have been permanent behavioral changes under AG ¶ 2(a)(6). Accordingly, I find that there is little to no potential for pressure, coercion, exploitation, or duress (AG ¶ 2(a)(8)); and that there is no likelihood of recurrence (AG ¶ 2(a)(9)).

Overall, the record evidence leaves me with no questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has mitigated the security concerns arising from his financial situation.

On balance, I conclude that Applicant has successfully overcome the Government's case opposing his request for a security clearance. Accordingly, the evidence supports granting his request for a security clearance.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F: FOR APPLICANT

Subparagraphs 1.a. through 1.g.: For Applicant

Conclusion

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

WILFORD H. ROSS
Administrative Judge