



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



In the matter of:)
)
) ISCR Case No. 08-07634
)
)
Applicant for Security Clearance)

Appearances

For Government: Eric H. Borgstrom, Esquire, Department Counsel
For Applicant: *Pro Se*

October 13, 2009

Decision

DAM, Shari, Administrative Judge:

Based upon a review of the record evidence as a whole, eligibility for access to classified information is granted.

On November 13, 2007, Applicant submitted a Questionnaire for Investigations Processing (eQIP). On May 11, 2009, 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 June 2, 2009, Applicant answered the SOR in writing and elected to have the case decided on the written record in lieu of a hearing. On July 8, 2009, Department Counsel prepared a File of Relevant Material (FORM) containing nine Items and he mailed Applicant a complete copy on July 14, 2009. Applicant received the FORM on July 21, 2009, and had 30 days from its receipt to file objections and submit additional information. On August 17, 2009, Applicant submitted a Statement with five exhibits to which Department Counsel had no objection. On September 3, 2009, DOHA assigned the case to me. After receiving the file, I marked Applicant's exhibits as AE 1 through 5 and entered them into the record.

Findings of Fact

In his Answer to the SOR, Applicant admitted the factual allegations contained in Paragraphs 1.a and 1.b.

Applicant is 54 years old. He and his wife have been married for 30 years. They have two adult children. He earned a bachelor's degree, a master's degree in business administration, and a master's degree in mechanical engineering. From June 1977 until October 1997, he served as an officer in the Naval Reserve. Since March 1979, he has held a Secret clearance and at times a Top Secret clearance. He has worked for his current employer, a federal contractor, since September 1987. He is a principal engineer for the company. (Item 3; Statement)

In June 2006, Applicant started a franchise for personal training. He obtained a Small Business Administration (SBA) loan through Bank 1 and another loan through Bank 2. He secured both loans with mortgages on his home. In early 2007, the business began experiencing financial problems, as a result of a decrease in the number of clients and inclement weather. He continued to lose money over the next several months. In July 2007, he closed the business to prevent the accumulation of additional debt. (Statement) He subsequently sold his assets to pay some of the business debt.

On August 23, 2007, Applicant met with a bankruptcy attorney to discuss the business closure and financial issues. By the end of 2007, the lawyer began negotiating a resolution of the SBA loan. The parties were unable to reach an agreement with the SBA and Bank 1 over the next several months. In late 2008, the lawyer advised Applicant to file a debt adjustment proceeding under Chapter 13 of the bankruptcy code. (AE 4) On March 27, 2009, Applicant filed a Chapter 13 Voluntary Petition. According to the Petition, Applicant's assets total \$290,325 and his liabilities total \$503,778. (Item 8) In his August 11, 2009 letter, Applicant's lawyer states as follows:

We have agreed with the Chapter 13 Trustee on the debtor's plan. We will present an amended plan which may still be contested by SBA. Any delay in confirmation is a consequence of continuing technical legal issues and not [Applicant's] performance under the plan which has been perfect in terms of both cooperation and payment. (AE 4)

Under the Trustee's plan, Applicant is making monthly payments of \$1,900. He began making those payments in April 2009, one month after he filed for bankruptcy. (AE 2) That plan may change as he continues to negotiate issues with the SBA and Bank 1. (Statement at 3) In addition to making that payment, he continues to make monthly payments to other creditors. He consistently pays the first mortgage on his home. As of June 2009, the balance was \$105,066. (AE 3) His student loan is current and has a balance of \$62,457 as of June 2009. (AE 3) In his October 2008 Personal Finance Statement (PFS), he included the mortgage and student loan as two debts he was paying. He noted that he was negotiating a payment for the SBA loan. (Item 5) According to that PFS, his net monthly income was \$5,560. His monthly expenses were \$2,470 and his debts were \$1,890, leaving him \$1,200 remaining. (*Id.*) Applicant did not experience financial difficulties until he started his business. (Statement at 2) A credit bureau report dated November 2007 verifies his assertion.

The SOR alleged two security concerns. The status of those concerns is as follows:

1. SOR ¶ 1.a referenced a judgment for \$2,138 owed to a credit card company. That debt is included in the bankruptcy. (Item 8 at 28)
2. SOR ¶ 1.b alleged that when Applicant filed a March 2009 Voluntary Petition for Chapter 13 bankruptcy he had \$290,325 in total assets, \$503,779 in liabilities, and as of April 2009 no bankruptcy plan had been confirmed. According to the Docket Text of the Bankruptcy Petition, Applicant filed a Chapter 13 Plan and Certificate of Credit Counseling the same day he filed the Petition. (Item 8)

In summary, Applicant is resolving his debts through a bankruptcy and is paying other creditors directly.

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(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, an “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 clearance 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.

AG ¶ 19(a) sets forth a condition that could raise a security concern and be potentially disqualifying in this case: “an inability or unwillingness to satisfy debts.” After Applicant’s business failed in 2007, Applicant accumulated a significant amount of debt

that he was unable to satisfy or manage until he filed a bankruptcy petition in March 2009. The evidence is sufficient to raise this disqualifying condition.

After the Government raised a potential disqualification, the burden shifted to Applicant to rebut and prove mitigation of the resulting security concern. AG ¶ 20 includes six conditions that could mitigate security concerns arising from financial difficulties, four of which may be applicable in this case:

- (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.

In June 2006, Applicant started a business that began to fail in December 2006. In July 2007, he closed the business to prevent the accumulation of additional debt. A month later, he sought legal assistance and sold some of his assets to pay debts. This unusual situation is unlikely to recur and does not cast doubt on his current reliability. Hence, AG ¶ 20(a) has some application. The circumstances leading to the business failure, a diminished client population and inclement weather, were conditions beyond his control. Within one month of closing the business, he sought legal assistance, a responsible action. Over the course of the next year, his lawyer attempted to negotiate a resolution of some of his debts before filing bankruptcy. Thus, AG ¶ 20(b) is applicable. Prior to filing the bankruptcy petition, he completed credit counseling. He has made monthly payments to the bankruptcy trustee in accordance with a plan submitted at the time of the bankruptcy in March 2009. Those actions warrant a partial application of AG ¶ 20(c) because they indicate that his situation is being resolved. In addition to paying the trustee, he continues to pay creditors outside of the bankruptcy, further demonstrating a good-faith effort to resolve his financial responsibilities, and triggering the application of AG ¶ 20(d).

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 relevant 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 a 54-year-old man, who honorably served in the U.S. Navy for twenty years. In 2007, he encountered a significant financial setback when his business franchise failed. He promptly sought help from a lawyer and has complied with a repayment plan filed with the bankruptcy court. Prior to filing a bankruptcy petition, his lawyer attempted to resolve some of the issues through negotiations. Based on Applicant's awareness of the effect that future financial problems could have on his employment, I believe that similar problems will not recur and that he will make payments to the bankruptcy trustee as agreed. There is no other adverse information in the record that raises a security concern. Overall, the record evidence leaves me without questions and concerns as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising under financial considerations.

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
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	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.

SHARI DAM
Administrative Judge