



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



In the matter of:)	
)	
-----)	ISCR Case No. 08-08066
SSN: -----)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Melvin A. Howry, Esquire, Department Counsel

For Applicant: *Pro se*

June 23, 2009

Decision

ROSS, Wilford H., Administrative Judge:

Applicant submitted his Electronic Questionnaires for Investigations Processing (e-QIP), on February 11, 2008 (Government Exhibit 1). On December 17, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline F concerning the Applicant. 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 filed an Answer to the SOR on February 5, 2009, and initially requested a decision without a hearing. Subsequently, on February 27, 2009, the Applicant requested that his case be converted to a hearing before an Administrative Judge. Department Counsel was prepared to proceed on February 27, 2009. I received the

case assignment on March 1, 2009. DOHA issued a notice of hearing on March 2, 2009, and I convened the hearing as scheduled on March 26, 2009.

The Government offered Government Exhibits 1 through 7, which were received without objection. Applicant testified on his own behalf, and submitted Applicant's Exhibits A through F, without objection. DOHA received the transcript of the hearing, and the record closed, on April 13, 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 43 and divorced. He is employed by a defense contractor and seeks to obtain a security clearance in connection with his employment.

Guideline F, Financial Considerations

The Government alleges in this paragraph that the Applicant is financially overextended and therefore at risk of engaging in illegal acts to generate funds. The Applicant admitted the factual allegation, but denied that his conduct showed poor self-control, lack of judgment, or unwillingness to abide by rules and regulations.

The Applicant served in the United States military from June 1994 until July 2005. This included tours in Korea and Iraq. Upon his discharge from the military, the Applicant had difficulty finding full time employment. He was unemployed for five months following his discharge, and also for three months in 2006. He began full-time employment with his current employer in April 2007. (Government Exhibit 1 at question 11.)

During the same time, the Applicant became divorced from his wife, and began to have child support obligations. Because of this, he was unable to keep up on other bills other than his child support, and room and board. (Transcript at 21-22.)

Subparagraph 1.a. The Applicant admits that he owed approximately \$12,034.00 for a motorcycle. The Applicant fell behind several payments on this debt, but the vehicle was not repossessed. He has made a payment arrangement with the successor in interest, and has been paying \$175.00 a month since July 2008. As of March 2, 2009, the debt had been reduced to \$11,334.22. (Applicant's Exhibit F; Transcript at 25-28.) The Applicant testified that the creditor is satisfied with this arrangement. His desire is to save an amount sufficient to pay off the debt at a lessor, arranged, amount. (Transcript at 35-37.)

Mitigation

The Applicant has worked for his current employer for two years. They are very satisfied with his performance. Co-workers describe him as "reliable" and "honest."

(Applicant's Exhibits A and B.) His supervisor says that the Applicant is a "dedicated" and "dependable" employee. (Applicant's Exhibit C.)

The Applicant submitted evidence that he successfully paid off a child support arrearage. In addition, he has made voluntary arrangements to pay his child support in a timely manner in the future. (Applicant's Exhibits D and E.)

The Government's credit bureau reports show that he has paid off or resolved all of his debt other than the motorcycle loan. The Applicant submits that this supports his argument that he shows good judgment with regards to his debts. (Government Exhibits 2, 3, 5 and 6.)

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 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 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. 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 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

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. The Applicant admits that he owes the debt set forth in SOR subparagraph 1.a. The evidence is sufficient to raise this potentially disqualifying condition, requiring a closer examination.

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 it may be mitigating if "the conditions that resulted in the financial problems were largely beyond the person's control (e.g. loss of employment, . . . or a death, divorce or separation), and the individual acted responsibly under the circumstances." AG ¶ 20(c) applies if "there are clear indications that the problem is

being resolved or is under control.” Finally, ¶ 20(d) applies where, “the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.”

After leaving the military, the Applicant divorced from his wife and went through a years long period of unemployment and underemployment. Once his financial situation was stable, the Applicant began working with the successor in interest on the motorcycle loan. They agreed to freeze the interest and have the Applicant only pay the principal. This the Applicant has been doing in a timely fashion that is acceptable to the creditor. In all other respects his financial condition is fine. I find that all of these mitigating conditions are applicable to this case.

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) 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 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. The Applicant got into financial difficulty because of his separation from his wife, and because of a prolonged period of unemployment and underemployment after leaving the military. He has arranged with his sole creditor to pay his debt over time, and is fulfilling this arrangement. He has behaved reasonably and appropriately in trying to resolve his debts, thereby AG ¶ 2(a)(6) applies. Under the particular circumstances of this case, I find that there is little to no potential for pressure, coercion, exploitation, or duress (AG ¶2(a)(8)), and that the likelihood of recurrence is close to nil (AG ¶2(a)(9)).

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 mitigated the security concerns arising from his financial considerations. Paragraph 1 is found for the Applicant. He is currently eligible for a security clearance.

