



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
XXXXXXXXXXXX, XXXXX) ISCR Case No. 08-08290
SSN: XXX-XX-XXXX)
)
Applicant for Security Clearance)

Appearances

For Government: John B. Glendon, Esq., Department Counsel
For Applicant: *Pro se*

April 20, 2010

Decision

TUIDER, Robert J., Administrative Judge:

Applicant has mitigated security concerns pertaining to Guideline F (financial considerations). Clearance is granted.

Statement of the Case

On April 23, 2008, Applicant submitted a Questionnaire for Sensitive Positions, Standard Form (SF) 86. On March 24, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing security concerns under Guideline F (financial considerations) for 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 adjudicative guidelines (AG) effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant answered the SOR in writing on June 26, 2009, and DOHA received his answer on June 29, 2009. Department Counsel was prepared to proceed on

August 6, 2009. The case was assigned to me on August 13, 2009. DOHA issued a notice of hearing on September 4, 2009, scheduling the hearing for October 23, 2009. The hearing was held as scheduled.

The Government offered Government Exhibits (GE) 1 through 7, which were received without objection. The Applicant offered Applicant Exhibits (AE) A through E, which were received without objection, and he testified on his own behalf.

I held the record open until November 6, 2009, to afford the Applicant the opportunity to submit additional documents on his behalf. Applicant submitted AE F through R, which were received without objection. DOHA received the hearing transcript (Tr.) on October 30, 2009. The record closed on November 6, 2009.

Findings of Fact

Applicant admitted all of the SOR allegations with explanations. His answers with explanations are incorporated herein as findings of fact. After a thorough review of the evidence, I make the following additional findings of fact.

Background Information

Applicant is a 45-year-old computer administrator, who has worked for his defense contractor employer since August 2008. He seeks to retain his secret security clearance, which is a requirement for his continued employment. (GE 1, Tr. 11-13.)

Applicant graduated from high school in May 1982. He attended a university from September 1989 to May 1996, and was awarded a Bachelor of Science degree in computer science. (GE 1, Tr. 21-22.)

Applicant served in the U.S. Army from May 1983 to November 1986, and was honorably discharged as a specialist 4 (pay grade E-4). His military occupational specialty was 71L (Administrative Specialist). He successfully held a security clearance during his Army service. (GE 1, AE G(3), Tr. 17-18.)

Applicant was married from May 2001 to September 2005. That marriage ended by divorce. He has an 11-year-old daughter born during that marriage. In March 2007, he was ordered to pay \$152 per week in child support and \$292 per week in spousal support. He remarried in 2005. His current wife is employed as a mental health counselor. (GE 1, AE C, 14-20, 67.)

Financial Considerations

Applicant's background investigation addressed his financial situation and included the review of his April 2008 SF-86; his October 2008 responses to DOHA Interrogatories; as well as his April 2008, August 2008, October 2008, and December 2008 credit reports. GE 1 – 7.

Applicant's SOR identified seven separate debts -- one judgment, one state tax lien, one charged-off account, two collection accounts, and two past-due accounts, approximating \$46,000.

Applicant has settled, paid, or otherwise resolved the seven debts alleged. A brief summary of each debt follows. The debt alleged in SOR ¶ 1.a. is a judgment in favor of Applicant's divorce attorney in the amount of \$4,315. Applicant submitted documentation from his divorce attorney that he is making payments on this account and his account is current. (GE 3, AE A, AE K, Tr. 24-29.)

The debt in SOR ¶ 1.b. is a state tax lien in the amount of \$2,710. Applicant was making payments to state tax authorities, but used funds earmarked to pay this debt when his former wife's furnace failed in December 2008. He paid to repair her furnace so his daughter and former wife would have heat. Applicant provided documentation of this furnace repair. He also provided documentation that he resumed payments to state tax authorities and his account is current. (GE 3, AE A, AE P, AE N, Tr. 29-35.)

The debt alleged in SOR ¶ 1.c. is a credit card charged-off account in the amount of \$753. Applicant paid this account in full. (GE 3, AE A, Tr. 35-38.)

The debt alleged in SOR ¶ 1.d. is a telephone company collection account in the amount of \$517. Applicant paid this account in full. (GE 7, pg. 1-14, AE A, Tr. 38-40.)

The debt alleged in SOR ¶ 1.e. is for child support arrearages owed to the state in the amount of \$25,467. Applicant submitted documentation that in March 2007 he was ordered to pay \$152 per week in child support and \$292 per week in spousal support by way of wage garnishment. He testified that his former wife obtained an *ex parte* support increase without his knowledge, which created a substantial arrearage. He also testified and provided documentation that he did not receive credit for money paid to her former spouse. He provided documentation of his claim and is actively litigating this matter with results pending. It is Applicant's contention that he is current. (GE 3, GE 7, AE C, AE R, Tr. 40-51.)

The debt alleged in SOR ¶ 1.f. is for past-due student loans in the amount of \$12,040. Applicant testified that his former wife was responsible for paying bills while they were married. He stated that his wife assured him that she was making payments on his student loans and he later discovered that was not the case. Applicant has contacted the lender and is in a "rehabilitation" program. He has made payment arrangements, and his account is current. (AE A, AE B, AE I, Tr. 51-60.)

The debt alleged in SOR ¶ 1.g. is a credit card collection account in the amount of \$597. Applicant paid this account in full. (GE 7, p. 1-15, AE A, AE J, Tr. 60-65.)

Applicant attributes his financial problems to costs associated with his divorce in 2005. He was required to maintain two households on a reduced income. During Applicant's previous marriage, he paid for his wife's uncovered medical bills and for his daughter's uncovered dental bills. He also incurred unplanned costs associated with the deaths of his former in-laws. Furthermore, while struggling to maintain two households, he was unemployed for 18 months from August 2005 to January 2007. Following his divorce, he fell behind on the majority of his debts. (Tr. 23, 71-74.)

In conclusion, Applicant has paid, settled, made good-faith efforts to repay overdue creditors, or resolved all debts alleged. He submitted a budget with his monthly expenses, which reflects a net remainder of \$1,300. His budget further demonstrates that he maintains a modest lifestyle and is living within his means. (AE H, AE Q, Tr. 67-71.)

Character Evidence

Applicant provided reference letters from his current supervisor and a co-worker. His supervisor is a senior manager within Applicant's company. He described him as an employee who is "consistently pleasant," "tackling all assignments with dedication," "hard worker and always willing to learn," a "team player" and someone who "would make a great asset to any organization." Applicant's co-worker referred to Applicant as "very cordial, professional" and as someone who "always maintains his composure even under the most stressful conditions." Applicant submitted his most recent performance evaluations that reflect sustained solid performance. (AE D, AE E, AE M.)

Applicant submitted copies of his honorable discharge certificate from the Army as well as a copy of his DD-214 (Certificate of Discharge from Active Duty). Collectively, these documents reflect Applicant's favorable military service. They further reflect Applicant's sense of duty and document three years and six months of honorable military service. (AE G(1-3).

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the 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 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.

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.

Section 7 of Executive Order 10865 provides that 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

Upon consideration of all the facts in evidence, and after application of all appropriate legal precepts, factors, and conditions, including those described briefly above, I conclude one relevant security concern is under Guideline F (financial considerations). AG ¶ 18 articulates the security concern relating to financial problems:

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 provides two financial considerations disqualifying conditions that could raise a security concern and may be disqualifying in this case, “(a) inability or unwillingness to satisfy debts,” and “(c) a history of not meeting financial obligations.” Applicant’s history of delinquent debt is established by his admissions and evidence presented. As indicated in SOR ¶¶ 1.a. to 1.f., he had seven delinquent debts totaling about \$46,000 that have been in various states of delinquency since at least 2005. The Government established the disqualifying conditions in AG ¶¶ 19(a) and 19(c).

Five financial considerations mitigating conditions under AG ¶¶ 20(a)-(e) 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;

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and

(e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

Applicant’s conduct does not warrant full application of AG ¶¶ 20(a) or 20(b) because he did not act more aggressively and responsibly to resolve his delinquent debt. Because there is more than one delinquent debt, his financial problems are not isolated. It was not until 2008 and 2009 that these debts were paid or resolved. Therefore, his debt is “a continuing course of conduct” under the Appeal Board’s jurisprudence. See ISCR Case No. 07-11814 at 3 (App. Bd. Aug. 29, 2008) (citing ISCR Case No. 01-03695 (App. Bd. Oct. 16, 2002)). He receives partial credit under AG ¶ 20(a) because the debt “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.” Under AG ¶ 20(b), he receives partial mitigation because of his 2005 divorce, his 18 months of unemployment, costs associated with the funerals of his in-laws, and uncovered medical bills. However, he did not provide sufficient information to establish that he acted responsibly under the circumstances.¹

AG ¶ 20(c) is not applicable because Applicant did not seek financial counseling. He has, however, produced a budget that reflects that he is living within his means and regained financial responsibility. Furthermore, there is sufficient information to establish full mitigation under AG ¶ 20(d).² Applicant has paid, is paying, or otherwise resolved his debts. AG ¶ 20(e) is applicable to the debt in SOR ¶ 1.d. which relates to purported child support arrearages. Applicant has submitted documentation that supports a reasonable basis to dispute the amount owed. To this end, he has pending litigation in family court challenging his arrearages.

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

¹“Even if Applicant’s financial difficulties initially arose, in whole or in part, due to circumstances outside his [or her] control, the Judge could still consider whether Applicant has since acted in a reasonable manner when dealing with those financial difficulties.” ISCR Case No. 05-11366 at 4 n.9 (App. Bd. Jan. 12, 2007) (citing ISCR Case No. 99-0462 at 4 (App. Bd. May 25, 2000); ISCR Case No. 99-0012 at 4 (App. Bd. Dec. 1, 1999); ISCR Case No. 03-13096 at 4 (App. Bd. Nov. 29, 2005)). A component is whether he maintained contact with his creditors and attempted to negotiate partial payments to keep his debts current.

²The Appeal Board has previously explained what constitutes a “good-faith” effort to repay overdue creditors or otherwise resolve debts:

In order to qualify for application of [the “good-faith” mitigating condition], an applicant must present evidence showing either a good-faith effort to repay overdue creditors or some other good-faith action aimed at resolving the applicant’s debts. The Directive does not define the term ‘good-faith.’ However, the Board has indicated that the concept of good-faith ‘requires a showing that a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation.’ Accordingly, an applicant must do more than merely show that he or she relied on a legally available option (such as bankruptcy [or statute of limitations]) in order to claim the benefit of [the “good-faith” mitigating condition].

(internal citation and footnote omitted) ISCR Case No. 02-30304 at 3 (App. Bd. Apr. 20, 2004) (quoting ISCR Case No. 99-9020 at 5-6 (App. Bd. June 4, 2001)).

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.

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. AG ¶ 2(c).

There is evidence against mitigating Applicant's conduct. The SOR lists seven debts approximating \$46,000 that were at one time or another in various states of delinquency. For several years, he failed to keep his accounts current or negotiate lesser payments, showing financial irresponsibility and lack of judgment. His lack of success resolving delinquent debt until recently raises sufficient security concerns to merit further inquiry.

The mitigating evidence under the whole-person concept is more substantial. Applicant's record of military service and good employment weighs in his favor. There is no evidence of any security violation during the time Applicant may have held a security clearance. He is a law-abiding citizen. His debts are current and his SOR debts are all paid, resolved, or being disputed in the case of his child support arrearages. His monthly expenses are current. The Appeal Board has addressed a key element in the whole-person analysis in financial cases stating:

In evaluating Guideline F cases, the Board has previously noted that the concept of "meaningful track record" necessarily includes evidence of actual debt reduction through payment of debts." However, an applicant is not required, as a matter of law, to establish that he has paid off each and every debt listed in the SOR. All that is required is that an applicant demonstrate that he has ". . . established a plan to resolve his financial problems and taken significant actions to implement that plan." The Judge can reasonably consider the entirety of an applicant's financial situation and his actions in evaluating the extent to which that applicant's plan for the reduction of his outstanding indebtedness is credible and realistic. See Directive ¶ E2.2(a) ("Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination.") There is no requirement that a plan provide for payments on all outstanding debts simultaneously. Rather, a reasonable plan (and concomitant conduct) may provide for the payment of such debts one at a time. Likewise, there is no requirement that the first debts actually paid in furtherance of a reasonable debt plan be the ones listed in the SOR.

ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) (internal citations omitted). Applicant is making a significant contribution to the national defense. His company fully supports him and recommends him for a security clearance. He made mistakes,

and debts became delinquent. There is, however, simply no reason not to trust him. He has paid his debts. Furthermore, he has established a “meaningful track record” of debt payments. These factors show responsibility, rehabilitation, and mitigation. After weighing the disqualifying and mitigating conditions, and all the facts and circumstances, in the context of the whole person, I conclude he has mitigated the financial considerations security concerns.

I take this position based on the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), my careful consideration of the whole person factors and supporting evidence, my application of the pertinent factors under the adjudicative process, and my interpretation of my responsibilities under the adjudicative guidelines. Applicant has fully mitigated or overcome the government’s case. For the reasons stated, I conclude he is eligible for access to classified information.

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

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

Conclusion

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

Robert J. Tuidor
Administrative Judge