



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 08-08419
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Jeff Nagel, Esquire, Department Counsel

For Applicant: *Pro se*

August 21, 2009

Decision

ROSS, Wilford H., Administrative Judge:

Applicant submitted his Questionnaire for National Security Positions (SF86), on November 27, 2007 (Government Exhibit 1). On January 30, 2009, 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 12, 2009, and requested a decision without a hearing. Pursuant to Paragraph E3.1.7 of the Additional Procedural Guidance at Enclosure 3 of the Directive, Department Counsel requested that a hearing be held in this case. (Transcript at 8-9.) Department Counsel was prepared to proceed on March 3, 2009. I received the case assignment on March 5, 2009. DOHA issued a

notice of hearing on April 8, 2009, setting the hearing for May 19, 2009. The hearing was convened on that date.

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 H, without objection. The Applicant requested that the record remain open for the submission of additional documents. The Applicant submitted Applicant's Exhibits I through P at various dates ending on August 17, 2009, and they were received without objection.¹ DOHA received the transcript of the hearing on May 27, 2009. The record closed on August 17, 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 37, married, and has a Master's degree. He is employed by a defense contractor and seeks to retain a security clearance previously granted 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 allegations 1.a., 1.b., 1.c., 1.d., and 1.f. under this guideline. Those admissions are hereby deemed findings of fact. He denied allegation 1.e.

The Applicant served on active duty in the United States Army for 13 years. His career was very successful and he left with the rank of Staff Sergeant. (Government Exhibit 6; Applicant's Exhibit A at 5-10.) The Applicant left active duty to pursue civilian opportunities in his field of expertise, and to advance in the Navy Reserve. (Transcript at 31-39.)

Once the Applicant began working in his civilian career, he found that his income almost doubled, to over \$100,000 a year. This lasted from about 2003 to 2007. During this time the Applicant and his wife bought a house using an 80/20 split.² They also used several credit cards to pay for improvements to the house, as well as other household expenses, and the wife's medical care when their child was born. When the

¹Because of the particular factual situation in this case, at the request of the Applicant, and with the express understanding of the Department Counsel, the record was left open for an extended period of time. This is pursuant to my authority under Paragraph E3.1.9. of the Additional Procedural Guidance at Enclosure 3 of the Directive, which states, "The Administrative Judge may rule on questions on procedure, discovery and evidence and shall conduct all proceedings in a fair, timely, and orderly manner." (Transcript at 68-70.)

²An "80/20 split" refers to a situation where the borrower takes out two mortgages that pay 100% of the purchase price for a house, using an 80% loan and a 20% loan. These loans can be with the same or different lenders.

Applicant became unemployed for several months in 2007, their financial situation became untenable. (Transcript at 54-63.)

When they were unable to pay the mortgage, the Applicant and his wife downsized their expenses. They have been on a stable budget for the past two years, and are able to pay their current debts. He has also been working to resolve his past due indebtedness. (Transcript at 27-30, 63-66.) As part of his attempts to resolve his indebtedness, the Applicant considered bankruptcy and had extensive discussions with a bankruptcy law firm. (Applicant's Exhibit D.) He decided against filing for bankruptcy, in part, because of the family trust, discussed immediately below.

An additional factor in this case is a family trust, of which the Applicant is a beneficiary. The Applicant presented substantial documentary evidence, in addition to his credible testimony, describing the trust. Due to a family disagreement, which is no fault of the Applicant's, the funds had not been distributed as of the date of the hearing. The Applicant's part of the trust, when distributed, is estimated at \$400,000. (Applicant's Exhibit C; Transcript at 28-30, 49-51, 65-67.)

Subparagraph 1.a. The Applicant admits that he owed approximately \$22,490 for a credit card. The Applicant successfully paid this debt for a negotiated amount (\$15,800) on June 9, 2009. (Applicant's Exhibit I, Exhibit J and Exhibit K; Transcript at 42-43.)

Subparagraph 1.b. The Applicant admits that he owed approximately \$17,343 for a second credit card. The Applicant successfully paid this debt on July 10, 2009. (Applicant's Exhibit F at 3, Exhibit K at 2, and Exhibit M; Transcript at 43.)

Subparagraph 1.c. The Applicant admits that he owed approximately \$19,914 for a third credit card. The Applicant successfully paid this debt on July 23, 2009. (Applicant's Exhibit F at 2, and Exhibit N; Transcript at 43.)

Subparagraph 1.d. The Applicant admits that he owed approximately \$82,620 for a second mortgage on his primary residence. As described further under 1.f., below, the house was foreclosed upon by the primary mortgage holder. Because he had refinanced this loan, the second mortgage remained as a personal responsibility of the Applicant. The Applicant successfully paid this debt for a negotiated amount (\$20,000) on June 30, 2009. (Applicant's Exhibit L, and Exhibit P; Transcript at 46.)

Subparagraph 1.e. The Applicant denied that he was currently indebted to a state's tax authority in the amount of \$751. He provided documentary evidence showing that the subject tax lien (Government Exhibit 2) was released on January 20, 1998. (Applicant's Exhibit B; Transcript at 45-46.)

Subparagraph 1.f. The Applicant admits that he owed \$323,981 for a first mortgage on his principal residence. When the Applicant became unemployed he quickly burned through his savings trying to make the mortgage payments. The

Applicant and his wife made the decision to turn the house back to the lender because they could not make the payments, and were unable to make a short sale.

The mortgage holder took back the property in July 2007, and held a foreclosure sale in approximately February 2008. The state's anti-deficiency statute applied, which means that the mortgage holder is held to the amount received in the foreclosure sale and the Applicant has no current debt to them. This is confirmed by the Government's most recent credit report, which shows there being no amount past due on this debt. (Government Exhibit 7 at 2.) The Applicant also submitted a credit report which states, concerning this debt, "Credit Grantor reclaimed collateral to settle defaulted mortgage." (Applicant's Exhibit E at 7-8.) (See Transcript at 46-49.)

Mitigation

The Applicant submitted his evaluation for the past year, as well as work and military related awards and commendations. The documents show that he was a highly respected soldier, and is a successful member of the defense industry. (Applicant's Exhibit A.)

The Applicant's current supervisor, a senior vice-president, submitted a letter on the Applicant's behalf. This gentleman states, "Despite the circumstances that led to the foreclosure in February 2008, [the Applicant] has proven to be a professional of the highest integrity, unquestionable ethics, and strong moral character." (Applicant's Exhibit A at 1-2.)

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 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 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. AG ¶ 19(a) states that, “inability or unwillingness to satisfy debts” maybe disqualifying. Under

AG ¶ 19(c), “a history of not meeting financial obligations” may also raise security concerns. The Applicant admits that he owed the debts set forth in SOR subparagraphs 1.a., 1.b., 1.c., 1.d., and 1.f. The record evidence shows that he had successfully resolved subparagraph 1.e. in 1998. The evidence is sufficient to raise these potentially disqualifying conditions, 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 . . .), and the individual acted responsibly under the circumstances.” AG ¶ 20(c) applies when, “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.” Finally, under AG ¶ 20(d), it is a mitigating factor where “the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.”

The Applicant, by his own account, made a poor financial choice in buying a home when he was doing well financially. Like many people today, he has lost that investment when he became unemployed for several months. However, he then acted in an intelligent manner by downsizing his household, finding full-time employment, and attempting to resolve his debts. The Applicant has been able to pay his current bills for several years, and has paid a substantial amount of money towards the arrearage. The three debts he owed to credit card companies, and his second mortgage, have been completely paid off. This is confirmed by documentary evidence from the creditors. As for his first mortgage, that debt is no longer due and owing because of the foreclosure sale and his state’s anti-deficiency statute.

I find the behavior occurred under such unusual circumstances that it is unlikely to recur, and it does not raise concerns about his current reliability, trustworthiness, or good judgment. The evidence shows that the problem is under control and that the situation will not be repeated. He has a firm grasp of his financial situation, and has shown that he can be relied upon in the future. The evidence raises all the mitigating conditions discussed above.

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. 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. In addition, 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 facts and circumstances surrounding this case. The Applicant got into financial difficulty because of a relatively short but devastating span of unemployment. He has a plan to pay all of his debts and has fulfilled it. The Applicant 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 there is little to no likelihood of recurrence (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.

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 THE APPLICANT

Subparagraphs 1.a through 1.f.: For the 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.

WILFORD H. ROSS
Administrative Judge