



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



In the matter of:)	
)	
-----)	ISCR Case No. 08-08487
SSN: -----)	
)	
Applicant for Security Clearance)	

Appearances

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

For Applicant: *Pro se*

May 14, 2009

Decision

ROSS, Wilford H., Administrative Judge:

Applicant submitted his Electronic Questionnaires for Investigations Processing (e-QIP), on February 13, 2008 (Government Exhibit 1). On October 30, 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 October 10, 2008, and requested a hearing before an Administrative Judge. Department Counsel was prepared to proceed on December 11, 2008. I received the case assignment on December 16, 2008. DOHA issued a notice of hearing on January 6, 2009, setting the hearing for February 9, 2009. The hearing was held on that date.

At the hearing, the Government offered Government Exhibits 1 through 5, which were received without objection. Applicant testified on his own behalf, and submitted Applicant's Exhibits A through M, without objection. DOHA received the transcript of the hearing on February 19, 2009. 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

The Applicant is 44 and married. He has been married three times before. The Applicant 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 denied all of the allegations under this guideline.

The Applicant states that most of the debts involved in the SOR concern his third wife. They were married in May 2001 and divorced in December 2002. He testified that the two of them opened up a computer retail store. "In 2002, my wife left, took all the cash in the bank account, both personal and business, took half the business assets and products out of the store, and I was left with a business which was not doing very well at the time, half the inventory and no operating capital." (Transcript at 28.) The Applicant also submitted that his third wife opened credit card accounts in his name without his permission, and that for several years he has been fighting with the creditors and the credit reporting agencies regarding the validity of these accounts. (Transcript at 29-30.)

Subparagraph 1.a. The Applicant consistently denies that he owes a creditor \$8,461.00, for a vehicle repossession. He maintains that the vehicle was only in his third wife's name, and she allowed the vehicle to be repossessed. He has continually disputed in writing the validity of this debt. The most recent credit reports provided by the Government and the Applicant do not show this account. (Government Exhibit 2 at 3 and Exhibit 4; Applicant's Exhibit E, Exhibit F and Exhibit G; Transcript at 32.)

Subparagraph 1.b. The Applicant consistently denies that he owes a creditor \$2,313.00 for a credit card. He maintains that the credit card was only in his third wife's name. He has continually disputed the validity of this debt in writing. After an investigation by the credit reporting agency, this debt was deleted in January 2009. (Applicant's Exhibit M.) The most recent credit reports provided by the Government and the Applicant do not show this account. They do show two other accounts with the same creditor, both of which are current. (Government Exhibit 4; Applicant's Exhibit E, Exhibit F, Exhibit G at 7-8; Transcript at 32.)

Subparagraph 1.c. The Applicant consistently denies that he owes a creditor \$175.00 for an unknown account, which may be a payroll advance. He maintains that he has no knowledge of this debt or what it is for. He has continually disputed the validity of this debt in writing. The most recent credit reports provided by the Government and the Applicant do not show this account. (Government Exhibit 4; Applicant's Exhibit G; Transcript at 33-35, 49.)

Subparagraph 1.d. The Applicant consistently denies that he owes a creditor \$3,235.00 for a credit card. He maintains that he has no knowledge of this debt or what it is for. Further, the Applicant states he never had a credit card issued by this entity. He has continually disputed the validity of this debt in writing. The collection agency investigated the debt, closed out the account and submitted to have their credit line deleted from the Applicant's credit report. In addition, after an investigation by the credit reporting agency, this debt was deleted in January 2009. (Applicant's Exhibit K and Exhibit M.) The most recent credit reports provided by the Government and the Applicant do not show this account. (Government Exhibit 4; Applicant's Exhibit G; Transcript at 35-36.)

Subparagraph 1.e. The Applicant consistently denies that he owes a creditor \$917.00 for a credit card. He has continually disputed the validity of this debt in writing. The most recent credit reports reflect no past due amount and state, "Consumer disputes after resolution." The Applicant has another account with the same creditor, which is current. (Government Exhibit 4; Applicant's Exhibit G; Transcript at 36-37.)

Subparagraph 1.f. The Applicant denies that he currently owes \$2,128.00 on a credit card debt. He has stated that this debt was a joint debt with his third wife. The Applicant testified that he paid approximately \$1,000.00 on this account. (Transcript 37-38, 42.) In September 2009, the Applicant requested in writing that this creditor validate that there was a current debt owed by the Applicant. (Applicant's Exhibit E and Exhibit F.) The debt has been removed from the most recent credit reports submitted by the Government and the Applicant. (Government Exhibit 4; Applicant's Exhibit G.)

The Applicant submitted evidence that his current credit history is good. He and his fourth wife have purchased a house, and he is current on that debt as well as others. The Applicant and his wife both make good salaries. (Applicant's Exhibit B, Exhibit C and Exhibit D.) He is able to maintain all of his payments on his indebtedness, and have money left over at the end of the month. (Applicant's Exhibit A and Exhibit G; Transcript at 43-46.)

Mitigation

The Applicant has worked for his current employer for a year as of the time the record closed. His performance evaluation shows that he is a "Successful Contributor." (Applicant's Exhibit J.)

The Applicant's Lead submitted a statement acknowledging that the Applicant fully disclosed his past credit history. Even so, he describes the Applicant is described

as a person who is “trustworthy” and an “integral part of the team.” (Applicant’s Exhibit I.)

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. AG ¶ 19(a) states that an “inability or unwillingness to satisfy debts” may be disqualifying. The Applicant refuses to pay these debts because they are not his. Under AG ¶ 19(c), “a history of not meeting financial obligations” may raise security concerns. The Applicant denies owing most of the debts in the SOR. A credit report is not definitive evidence of the existence of a debt, but it is substantial evidence. Thus, 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, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances.” Finally, ¶ 20(e) applies where, “the individual has a reasonable basis to dispute the legitimacy of the past-due debts 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.”

The Applicant’s third wife left him in a precarious financial state when she left him and their business, taking the available money and half the inventory. As described at length above, the Applicant has consistently disputed the validity of debts he believes are his ex-wife’s, and has done so in an appropriate manner. Specifically, he has asked

the creditors for validation of the debt, and filed repeated disputes with the credit reporting agencies. Based on his actions, the creditors and/or credit reporting agencies have deleted the credit lines for five of the six creditors. The sixth creditor does not show a past due amount as of the date of the hearing. 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 raises these potential mitigating conditions.

It is also worth noting that the Applicant makes a good living, owns a house, and is current on all of his own debt payments. This is not the case of a deadbeat who refuses to pay his just debts, but a person who has a legitimate dispute with creditors and has attempted over many years to resolve it. He is respected by his employers, and has been forthcoming with them about his debt situation.

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 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 divorce from his third wife, and because of her actions in running up accounts using his name. He has worked hard over a number of years to resolve these situations, and has done so successfully. 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.

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