



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 08-08649
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Jennifer I. Goldstein, Esq., Department Counsel

For Applicant: B. Daniel Lynch, Esq.¹

March 4, 2010

DECISION

ROSS, Wilford H., Administrative Judge:

Applicant submitted his Electronic Questionnaires for Investigations Processing (e-QIP) on January 20, 2008 (Government Exhibit 1). On May 28, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing the security concerns under Guideline F. 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 answered the SOR in writing on July 8, 2009, and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on

¹On February 19, 2010, Applicant's counsel withdrew from his representation. As of that date, Applicant is representing himself, *Pro Se*.

October 23, 2009. This case was assigned to me on October 30, 2009. DOHA issued a notice of hearing on December 14, 2009, and I convened the hearing as scheduled on January 14, 2010. The Government offered Government Exhibits 1 through 7, which were received without objection. Applicant testified on his own behalf, called one additional witness, and submitted Applicant Exhibits A and B, also without objection. DOHA received the transcript of the hearing, and the record closed, on January 26, 2010. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

Findings of Fact

Applicant is 45, has a longtime companion, and nine children. 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 that Applicant is ineligible for clearance because he is financially overextended and therefore at risk of having to engage in illegal acts to generate funds. Applicant denied all the allegations in the SOR, submitting evidence that his financial situation is stable.

1.a. Applicant paid this \$250 medical debt in November 2009, as shown by a statement from the creditor, and several credit reports. (Transcript at 45-48; Government Exhibit 2 at 9-11, and Exhibit 7 at 2; Applicant Exhibit B at 32.)

1.b. A state tax lien was filed against Applicant in July 2003 in the amount of \$4,894.² (Government Exhibit 3 at 6.) It was released in August 2009. (Transcript at 48-50; Applicant Exhibit B at 34-35.)

1.c. A state tax lien was filed against Applicant in October 2003 in the amount of \$8,963.18. (Government Exhibit 3 at 3.) It was released in August 2009. (Transcript at 49-50; Applicant Exhibit B at 36-37.)

1.d. A state tax lien was filed against Applicant in October 2007 in the amount of \$4,848.30. (Government Exhibit 4 at 1.) It was released in June 2009. (Transcript at 51-53; Applicant Exhibit B at 38-39.)

1.e. A Federal tax lien was filed against Applicant in March 2007 in the amount of \$11,059.16. It was released in April 2009. (Transcript at 53-54; Applicant Exhibit B at 40-41.)

Applicant admitted that these tax liens were filed because he was delinquent in filing his tax returns. According to the Applicant, due to his number of deductions, he

²Subparagraph 1.b. of the SOR was amended to read that amount. (Transcript at 33.)

usually does not have to pay any income tax. He further stated that he has now filed all of his tax returns. He further admitted that the failure to file timely tax returns was entirely his fault. (Transcript at 43-45, 81-92.)

1.f. The debt alleged in this paragraph is the same debt as that in subparagraph 1.a. (Transcript at 54-56.)

1.g. This allegation was amended to read as follows, “You are indebted to [redacted] CO FDS on an account that is being paid by court order the approximate balance of \$106,707.22.” (Transcript at 93-98.)

This debt is in relation to public support the Applicant’s family received over ten years ago. At that time, Applicant decided to change careers. In order to do this, he had to go to school full time. His companion does not work, so they found it necessary to file for public support while he went to school. There is no allegation or evidence that this was done improperly or illegally.

Once the Applicant attained his training, he immediately got a job with a substantial increase in pay and began paying the money back to the state authority. The reason for this recoupment is not set forth in the record. Payment is being made pursuant to an income withholding order. In the ensuing years, he has paid over \$20,000 towards reducing this debt,. The records show that Applicant is current with his payments to this governmental creditor. He pays \$1,500 a month towards this debt, and has been paying that amount for at least two years. Applicant further testified, and evidence shows, that he has been working with the governmental creditor to reduce this debt. (Transcript at 39-42, 56-58, 64-81; Government Exhibit 2 at 3; Applicant Exhibit B at 20-21 and 42-53.)³

Mitigation

Applicant has worked for his employer for two years. His Program Manager testified that customers “have identified him [Applicant] as the poster child for a good employee.” (Transcript at 26.)

In recommending the Applicant for a security clearance, the witness stated:

[W]ith respect to his work ethics and his performance on the job, he is someone that I would trust. He demonstrated high ethical values and, you know, good moral character. I know he’s a family man. You know, everything I’ve seen has indicated that he is a good guy, upstanding, solid.

(Transcript at 32.)

Applicant testified that his financial situation is stable. He and his family live frugally, and have for many years. They have no problems making their debt payments,

³It is not alleged that the Applicant improperly received any of these welfare payments.

including those to the governmental authority. The most recent credit report in the file shows that his financial situation is good. (Transcript at 71-75; Government Exhibit 2 at 4; Applicant Exhibit B at 1-31.)

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 to be used as appropriate 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 to obtain 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 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 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(a), an “inability or unwillingness to satisfy debts” is potentially disqualifying. Similarly under AG ¶ 19(c), “a history of not meeting financial obligations” may raise security concerns. Applicant had one delinquent debt, in the amount of \$250. He also had tax liens filed against him, and owes over \$100,000 to a governmental creditor. The evidence is arguably sufficient to raise these potentially disqualifying conditions.⁴

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.” As stated above, the Applicant had one past due debt, which he has paid. All the tax liens have been lifted. Finally, he is not delinquent on his large government debt. This mitigating condition applies.

AG ¶ 20(b) states that the disqualifying conditions may be mitigated where “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

⁴The evidence shows that the tax liens were filed because the Applicant failed to file his tax returns in a timely fashion. This act was not alleged in the SOR. However, I have considered the Applicant’s actions in making my findings under the whole person concept, further discussed below.

under the circumstances.” This mitigating condition does not apply because the Applicant’s financial situation was not, and is not, dire.

Applicant paid his one delinquent debt, and also settled his affairs with the state and Federal taxing agencies so that they released all of their liens. I have considered the fact that all but one return was filed after the issuance of the SOR. Applicant admits that he was foolish, but has learned an important lesson. Accordingly, AG ¶ 20(d) is applicable under the particular facts of this case in that he “initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.”

As fully stated above, Applicant has resolved his tax situation, is paying the governmental creditor in a way that is sufficient for them, and has no delinquent bills. Under the particular circumstances of this case, I find that “there are clear indications that the problem is being resolved or is under control,” as required by AG ¶ 20(c).

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 relevant 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. 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 relevant facts and circumstances surrounding this case. Applicant was dilatory in filing his tax returns, but all have now been filed. He fully understands that a return to his dilatory ways of the past can put his holding of a security clearance in jeopardy. He paid the one delinquent debt that was alleged in the SOR. I have considered the fact that the governmental creditor in 1.g. is being paid by an income withholding order. In this case, given the nature of the account, and the fact that the creditor has reported the Applicant to be “current” or “paying as agreed,” I find that this is a different situation than where a debt is paid by garnishment.

His spending has not been irresponsible, (AG ¶ 2(a)(2)). Based on the state of the record, I find that there have been permanent behavioral changes under AG ¶ 2(a)(6). Accordingly, at the present time, I find that there is no potential for pressure,

coercion, exploitation, or duress (AG ¶ 2(a)(8); and that there is no likelihood of recurrence (AG ¶ 2(a)(9)).

Overall, the record evidence leaves me with no questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has mitigated the security concerns arising from his financial situation.

On balance, I conclude that Applicant has successfully overcome the Government's case opposing his request for a DoD security clearance. Accordingly, the evidence supports granting his request for a security clearance.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F: FOR APPLICANT

Subparagraphs 1.a. through 1.g.: 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.

WILFORD H. ROSS
Administrative Judge