



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



In the matter of:)
)
-----) ISCR Case No. 08-08711
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Thomas Coale, Esquire, Department Counsel
For Applicant: *Pro Se*

August 26, 2009

Decision

HOWE, Philip S., Administrative Judge:

On March 28, 2008, Applicant submitted his electronic version of the Security Clearance Application (SF 86) (e-QIP). On February 9, 2009, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) 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. Applicant did not date the answer. He submitted his answer from his assignment in a foreign country. Applicant requested his case be decided on the written record in lieu of a hearing.

On May 26, 2009, Department Counsel submitted the Department's written case. A complete copy of the file of relevant material (FORM) was provided to the Applicant. He was given the opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant received the file on July 1, 2009. Applicant filed a Response to the FORM on July 1, 2009, within the 30 day time allowed that would have expired on July 31, 2009. I received the case assignment on July 21, 2009. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

Findings of Fact

In his undated Answer to the SOR, Applicant admitted the factual allegations in ¶¶ 1.a to 1.e. He denies the factual allegations in ¶ ¶ 1.f to 1.o of the SOR, with explanations.

Applicant is 44 years old, divorced in 1993, has two children, and works for a defense contractor. He has worked for the same employer since March 2008. He earns more than \$200,000 annually, with a gross monthly income of \$16,324, and a net monthly income of \$6,669. Applicant is working in a foreign country until January 2010. (Items 4, 7)

Applicant filed Chapter 7 bankruptcy in May 2001. He was discharged in bankruptcy in September 2001. Subsequent to the bankruptcy discharge, Applicant incurred other delinquent debt. (Items 4 to 7)

Applicant has 14 delinquent debts totaling \$58,376. He admits \$18,599 and denies \$39,787 of the debts. (Items 4 to 7)

1. and 2. Applicant owes two education loans for college courses he took in 2005 and 2006 (SOR subparagraphs 1.b and 1.c). The loans total \$13,438. As of March 2009, Applicant owed \$11,171.97 after making \$5,000 in payments at the rate of \$1,000 monthly. Applicant in his Response to the FORM states his payments are current and the loans are in rehabilitation status. The balance owed is \$8,299.80. The November 2008 credit report lists these debts under "closed accounts." These debts are resolved by installment payments. (Items 3-7, Response)

3. Applicant owes \$5,161 on a credit card debt (SOR subparagraph 1.d). This debt was resolved with a settlement amount. The debt was owed on an automobile loan for which Applicant did not make all his payments. The car was repossessed. The account was charged off by the creditor after the settlement was made. According to the credit report of November 2008 submitted by Applicant, the account is resolved. (Items 3-7)

4. Applicant owes unpaid child support payments in the amount of \$34,249 (SOR subparagraph 1.e). Applicant had his arrearage payments increased in March 2008 to

\$2,700 monthly to reduce the amount owed for the past child support. In the 16 months since that arrangement started, Applicant would have paid \$43,200, more than enough money to resolve that debt. The November 2008 credit report shows a zero balance owing on his child support. The November 2008 credit report lists these debts under "closed accounts." The debt is resolved. (Items 3 to 7, Response)

5. Applicant owed \$1,907 to a collector (SOR subparagraph 1.f). It has been transferred to another collector. Applicant intends to make two payments. He submitted a document dated March 2009 that shows the debt was paid. The account numbers on the document and in the April 2008 credit reports for this account are the same. The debt is resolved by a settlement on March 2, 2009. (Items 3 to 7)

6. Applicant paid the dental bill listed in the SOR at subparagraph 1.g for \$50. It was paid on March 27, 2009. The creditor letter states the debt was paid in full. (Items 3 to 7)

7. Applicant owes \$386 on a credit card (SOR subparagraph 1.h). He paid this debt in two installments. The first payment was \$231.43 paid on August 20, 2008, plus a \$5.00 charge for payment by telephone. The second payment was made on November 4, 2008, in the amount of \$155.76, plus a \$5.00 telephone service charge. Applicant submitted extracts from his checking account statement verifying the payments. This debt is resolved by payment. (Items 3-7)

8. Applicant owes \$776 on a cellular telephone debt (SOR subparagraph 1.i). This debt has been owed since February 2002, which is the oldest delinquent debt shown on Applicant's credit reports. Applicant claims in all the documents he submitted that the debt was paid, but he does not have proof of payment. This debt does not appear on Applicant's November 2008 credit report, but did appear on his April and September 2008 credit reports. The status of the debt is unclear, but may have been resolved by payment because it does not appear on the latest credit report available. (Items 3-7)

9. Applicant owes \$139 on a satellite television account (SOR subparagraph 1.j). This account has been owed since May 2003. This debt appears on the April 2008 credit report, but not the September and November 2008 credit report. Applicant denies owing this money to this creditor. The debt is unresolved because of its unknown status. (Items 3-7)

10. Applicant owes \$964 to a collector on a bank credit card (SOR subparagraph 1.k). The debt arose originally from a prepaid credit card Applicant obtained after his Chapter 7 bankruptcy. This debt was paid in the amount of \$736.70 on July 9, 2008. Applicant submitted a letter from the collector verifying the payment. This debt was resolved by payment. (Items 3 to 7)

11. Applicant owes a storage company \$58 for fees (SOR subparagraph 1.l). The debt appears on the April 2008 credit report, and not on the two subsequent credit reports. Applicant claims his former wife incurred the storage charges, and he is not obligated to pay the charges. His Answer contends the creditor has no record of his debt. The debt remains unresolved because of the absence of any proof of payment or non-obligation by Applicant. (Items 3 to 7)

12. Applicant owes \$775 to a collector (SOR subparagraph 1.m). This account appears on the April 2008 credit report, but not on the two subsequent reports contained in the FORM. Applicant denies responsibility for the debt, which originated in 2007. He claims the original creditor was “elusive,” and they could not confirm any information on their system about him. The debt remains unresolved because of Applicant’s lack of information about it. Applicant has not submitted any documents showing he disputed the debt in writing. (Items 3 to 7)

13. Applicant owes an insurance company \$148 (SOR subparagraph 1.n). Applicant claims to have contacted the company, and it has no record of any debt. He stated he has insurance with the company at the present time. This debt appears on the April 2008 credit report, but not the two subsequent reports. Applicant had no copies of correspondence with this creditor to show he contacted them, or that he asked them to remove the debt from his credit reports. He did not submit correspondence showing he asked the three credit agencies to remove this debt, or that he filed a dispute with the agencies. This debt remains unresolved. (Items 3 to 7)

14. The final delinquent debt listed in the SOR at subparagraph 1.o is \$335 owed to another cellular telephone company. This debt was paid in full on July 2, 2008. Applicant submitted a letter from the collector verifying the debt was paid. This debt is resolved by payment. (Items 3 to 7)

Policies

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, the administrative judge applies the guidelines 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.

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.

According to Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an “applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel, and 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

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 at AG ¶ 19 contains nine disqualifying conditions that could raise security concerns. From these nine conditions, two conditions are applicable to the facts found in this case:

(a) inability or unwillingness to satisfy debts is potentially disqualifying; and,

(c) a history of not meeting financial obligations.

Applicant accumulated \$58,376 in delinquent debt from 2002 to the present time that remains unpaid. Applicant had 14 delinquent debts, including past child support and an unpaid debt on a repossessed car.

The guideline in AG ¶ 20 contains conditions that could mitigate security concerns arising from financial difficulties.

(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;

(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; and,

(f) the affluence resulted from a legal source of income.

Of these six conditions, only one is applicable. AG ¶ 20 (d) provides that if a person starts a good-faith effort to repay or resolve in some manner his delinquent debts, then the security concern can be mitigated. Applicant, even though he is living and working overseas, took the initiative to investigate and repay nine of his delinquent

debts. He is able to make payments, including \$2,700 monthly for the purposes of paying past due child support, because he is now receiving a large salary for his work.

There are only five debts which may be unresolved from the original 14 debts. Applicant claims they are paid, or they do not appear on the records of the creditors listed in the three credit reports in the file. Those debts are set forth in SOR subparagraphs 1.i, 1.j, 1.l, 1.m, and 1.n. The amount owed on these debts is \$1,896. This amount is miniscule, and could be resolved definitively by Applicant with further diligent work when he returns from his foreign assignment. Some of these debts do not appear on the latest credit report, such as the \$776 contained in SOR subparagraph 1.i. If the debt is paid, then Applicant only owes \$1,120 on the remaining four debts. If what the creditors told him is true, then he would not owe any of these five debts. If the debts continue to appear on his credit reports, he could dispute them with the credit reporting agencies and possibly have them removed from his credit reports. Or, Applicant could pay the debts in one month from his salary, thereby removing them from his credit record. His problem may be that if the creditors truly have no record of any debt, he might not be able to get them to accept the payments. Nonetheless, Applicant has resolved the larger debts. It is likely he will resolve these five minor debts even before he returns to the United States.

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 recentcy 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 facts and circumstances surrounding this case. Applicant was an adult when he incurred the debts. As an adult, he has worked diligently and consistently to repay or resolve in some way his delinquent debts. The oldest debt started in 2002, and that debt may have been paid. He changed his behavior and resolved these debts. There is no

potential for coercion because the debts remaining unresolved amount to less than \$2,000. With his large salary, there is no likelihood of recurrence of his previous spending pattern. Applicant now has a steady and well-paying job, and can pay his debts as he incurs them. Applicant accepted responsibility for his debts and paid them.

Overall, the record evidence leaves me without questions or substantial 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. I conclude the "whole person" concept for Applicant.

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

Subparagraph 1.a to 1.o: For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

PHILIP S. HOWE
Administrative Judge