



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



In the matter of:)
)
) ISCR Case No. 08-08965
)
)
Applicant for Security Clearance)

Appearances

For Government: Tovah Minster, Esquire, Department Counsel and
Richard Stevens, Esquire, Department Counsel
For Applicant: Leslie McAdoo Gordon, Esquire

August 28, 2009

Decision

RIVERA, Juan J., Administrative Judge:

Applicant's work performance for a government contractor and his efforts to resolve his financial problems show reliability, judgment, and willingness to comply with rules and regulations. He paid the debt alleged in the SOR. Moreover, he has established a viable plan to pay his legal obligations and is taking significant actions to implement his plan. He mitigated the financial considerations security concerns. Eligibility for access to classified information is granted.

Statement of the Case

On January 17, 2008, Applicant submitted an Electronic Questionnaires for Investigations Processing (e-QIP). On January 27, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to him, pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive),

dated January 2, 1992, as modified and revised. The SOR alleges security concerns under Guideline F (Financial Considerations). The SOR detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for him, and recommended referral to an administrative judge to determine whether a clearance should be granted, denied or revoked.

On February 13, 2009, Applicant responded to the SOR allegation, and requested a hearing before an administrative judge. The case was assigned to me on May 14, 2009. DOHA issued a notice of hearing on June 2, 2009. The hearing was convened as scheduled on June 18, 2009. The government offered Government Exhibits (GE) 1 through 5, which were admitted without objection (Tr. 16). Applicant testified on his own behalf, presented one witness, and submitted Applicant Exhibits (AE) 1 through 10, which were admitted without objection (Tr. 20). DOHA received the transcript of the hearing (Tr.) on June 26, 2009.

Findings of Fact

Applicant admitted the single SOR allegation. His admission is incorporated herein as a finding of fact. After a thorough review of the evidence of record, and having considered Applicant's demeanor and testimony, I make the following additional findings of fact.

Applicant is a 30-year-old executive assistant to the chief executive officer (CEO) of a large defense contractor. He is single and has no children. While in high school, Applicant accepted a Reserve Officer Training Corps (ROTC) college scholarship. In his junior year of college, Applicant failed his physical training test and was dismissed from the ROTC program. He lost his scholarship and had to transfer to a university he could afford. Applicant worked through college and took student loans to pay for his education.

Applicant's ROTC scholarship debt, approximately \$27,981, became due as soon as he was dismissed from the ROTC program. Although he worked part-time while attending college, Applicant's income was not sufficient to pay his ROTC obligation and cover his day-to-day living expenses. Applicant stayed in contact with the Defense Finance and Accounting Service (DFAS) and several times attempted to establish a payment plan. The DFAS' collection agency required Applicant to pay a minimum of \$1,000 a month to establish a viable payment plan. Applicant failed to repay his ROTC debt because, as a student, he did not have the financial means to do so.

Applicant graduated from college in December 2003. He started working shortly thereafter at an hourly rate of \$8.50. When he left that job in 2005, he was making \$10.50 an hour. Between 2005 and 2007, Applicant studied for his master's degree in public policy. At the same time, he was working part-time as a receptionist for his current employer, a government contractor. He was making \$10 an hour.

Applicant received his master's degree in May 2007. He then started working full-time for his current employer at a yearly salary of \$36,000 (\$18 an hour) - \$42,000 with overtime. After he started working full-time, Applicant again attempted to establish a payment plan with DFAS; however, the DFAS' collection agency would not accept payments bellow \$800 a month. Applicant could not afford those terms.

While in college and during the graduate program, Applicant also took other student loans to pay for his education. When he started working full-time, Applicant consolidated all his student loans and started making payments on them. Thereafter, he has consistently paid his student loans on time and has not been in default. He was not allowed to consolidate his DFAS debt with his other student loans. Applicant started to save money to pay his DFAS obligation.

Applicant has been working as the executive assistant to the CEO and Chairman of the Board of his company since 2007. He is considered to be a bright young man with a promising career. He is also considered to be honest, trustworthy, and loyal to the United States. In the CEO's opinion, Applicant has absolute integrity and is a hardworking valuable citizen. He strongly recommended that Applicant receive a security clearance (AE 6).

Applicant discussed with his CEO his financial problems and the SOR allegation. Because of Applicant's job performance and his promising future, the CEO gave Applicant \$10,000 as a gift. He also extended Applicant a \$14,702 loan so that Applicant could pay his debt to DFAS. In June 2009, Applicant paid his debt to DFAS (AE 2). Applicant signed a promissory note agreeing to repay the \$14,702 loan to his company by making \$400 monthly payments (AE 3). He is current and in compliance with the terms of his loan (AE 5).

Applicant owes approximately \$80,000 between his student loans and his debt to his company. A review of Applicant's personal financial statement (AE 1) and credit report (GE 2) shows that he is in control of his financial situation, and that he is not financially overextended. There is no evidence of any additional delinquent and/or charged off debts. Applicant appears to be living within his financial means. Moreover, he has established a viable plan to pay his legal obligations and is taking significant actions to implement his plan.

Applicant expressed remorse for his failure to complete the ROTC program and for his subsequent inability to pay his financial obligation on time. He was candid and forthcoming explaining the circumstances surrounding his ROTC debt and his financial situation. Applicant has learned his lesson through the security clearance process. He is now well aware of what is required of him to show that he is reliable, trustworthy, and financially responsible.

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, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's controlling 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.

In the decision-making process, the government has the initial burden of establishing controverted facts alleged in the SOR by "substantial evidence,"¹ demonstrating, in accordance with the Directive, that it is not clearly consistent with the national interest to grant or continue an applicant's access to classified information. Once the government has produced substantial evidence of a disqualifying condition, the burden shifts to applicant to produce evidence "to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by department counsel, and [applicant] has the ultimate burden of persuasion as to obtaining a favorable clearance decision." Directive ¶ E3.1.15. The burden of disproving a mitigating condition never shifts to the government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

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

¹ See Directive ¶ E3.1.14. "Substantial evidence [is] such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the contrary evidence in the record." ISCR Case No. 04-11463 at 2 (App. Bd. Aug. 4, 2006) (citing Directive ¶ E3.1.32.1). "Substantial evidence" is "more than a scintilla but less than a preponderance." See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994).

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* Executive Order 12968 (Aug. 2, 1995), Section 3.

Analysis

Guideline F, Financial Considerations

Under Guideline F, the security concern is that 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 ¶ 18.

In 2002, Applicant was discharged from the ROTC program because he failed his physical training test. His ROTC scholarship debt became due immediately. At the time, he was a full-time student and worked part-time. He did not have the financial means to pay his ROTC debt and his day-to-day living expenses. He paid his ROTC debt in June 2009, with the generous financial assistance of his employer. AG ¶ 19(a): inability or unwillingness to satisfy debts; and AG ¶ 19(c): a history of not meeting financial obligations, apply in this case.

AG ¶ 20 lists six conditions that could mitigate the financial considerations security concerns:

- (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.

I find that AG ¶¶ 20(a), (c), and (d) apply. Applicant intended to comply with his ROTC commitment, and he wanted to receive an officer commission. He claimed he failed his physical training test during his junior year for reasons beyond his control. Applicant's ROTC scholarship debt became due as soon as he was dismissed from the ROTC program. At the time, Applicant's income was not sufficient to pay his ROTC obligation and cover his day-to-day living expenses. Applicant maintained contact with DFAS, and several times attempted to establish a payment plan.

Applicant started working full-time after completing his master's degree in 2007. He consolidated his student loans and started making payments on them. Thereafter, he has consistently paid his student loans on time and has not been in default. He also attempted to consolidate his debt to DFAS with his other student loans and he was not allowed to do so. Applicant paid his debt to DFAS with the financial assistance of his employer. He owes approximately \$80,000 between his student loans and his debt to his employer. Notwithstanding his large debt, Applicant is in control of his financial situation, and he does not appear to be financially overextended. He has no additional delinquent and/or charged off debts. Applicant appears to be living within his financial means.

Considering the evidence as a whole, I find Applicant's financial problems occurred under such circumstances that they are unlikely to recur. His past questionable behavior does not cast doubt on his current reliability, trustworthiness, and good judgment. Applicant's consolidation and payment of his student loans, his otherwise good credit, and his payment record to his employer show good-faith effort to repay his creditors.

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.

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).

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant is a mature, well educated man with outstanding potential. He has been successful working for a defense contractor since 2005. He has established a reputation as a valuable, dedicated, and reliable employee. His supervisors consider him to be honest, trustworthy, and dependable. There is no evidence he has ever compromised classified information or committed any security violations. Applicant expressed sincere remorse for his financial problem and seems resolute on fixing it. These factors show responsibility, good judgment, and mitigation.

On balance, I conclude Applicant's favorable evidence is sufficient to mitigate the security concerns. Applicant's four-year performance for a government contractor, and his efforts to resolve his financial problems show reliability, judgment, and willingness to comply with rules and regulations. He has a stable job. Moreover, he has established a viable plan to pay his legal obligations and is taking significant actions to implement his plan. Applicant has learned from his past mistakes and, in the future, he will be able to live within his financial means. Overall, the record evidence convinces me of Applicant's eligibility and suitability 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 APPLICANT
Subparagraph 1.a:	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 eligibility for a security clearance for Applicant. Eligibility for a security clearance is granted.

JUAN J. RIVERA
Administrative Judge