



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



In the matter of:

ISCR Case No. 08-08986

Applicant for Security Clearance

Appearances

For Government: Eric Borgstrom, Department Counsel
For Applicant: *Pro Se*

March 23, 2009

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant mitigated the Government's security concerns under Guideline F, Financial Considerations. Applicant's eligibility for a security clearance is granted.

On December 12, 2008, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guidelines 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 January 10, 2009. He later requested a hearing before an administrative judge. The case was assigned to me on February 10, 2009. DOHA issued a notice of hearing on February 17, 2009. I convened the hearing as scheduled on March 10, 2009. The Government offered Exhibits (GE) 1 through 8. Applicant did not object and they were admitted. The Government also submitted a

demonstrative exhibit that was marked as Hearing Exhibit (HE) I. Applicant testified and offered Exhibits (AE) A through I. Department Counsel did not object and they were admitted. The record remained open until March 19, 2009, to allow Applicant to submit additional evidence, which he did. They were marked as AE J through P. Department Counsel had no objections and they were admitted and the record closed. DOHA received the transcript of the hearing (Tr.) on March 17, 2009.

Findings of Fact

Applicant admitted allegations 1.a, 1.b, 1.c, 1.d, 1.e, 1.g, 1.h, 1.i, 1.j, 1.l and 1.n, of the SOR and denied the remaining allegations. The admissions are incorporated herein. In addition, after a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is 42 years old and has worked for a federal contractor for approximately 17 months as a field service engineer. He is a divorced father of two children, ages 18 and 17. He has consistently paid child support and financially supports his children with additional funds as needed and when affordable.¹

Applicant worked for a federal agency as a contractor overseas from 1992 to 2003. He started two businesses in 2003 to 2004. Both businesses were located in a recreational area with a man-made lake that was near a dam. The area catered to tourism. Both businesses made modest profits until a leak was found in the dam in 2005, which required it to significantly lower its water level to prevent flooding. This reduced the recreational opportunities associated with the dam, which in turn affected tourism and all of the businesses in the area, including Applicant's two stores. In 2006, the water level was reduced again, which had a devastating impact on Applicant's stores and the surrounding businesses. Applicant paid the bills associated with the stores, such as those to suppliers, rent, utilities, and his employees, but was unable to keep up with other debts. During the later stage of the depressed economy he went from a gross monthly income of \$9,000 to \$1,500 in 30 days. By the end of 2005, Applicant took on a second job to help pay the bills. He was finally forced to close the stores in 2007. Applicant was unemployed for approximately six weeks before being hired at his present job 2007.²

Applicant did not have health insurance for a period of time and he needed medical attention, which further impacted his financial situation.

Applicant has been paying off his delinquent debts since becoming employed. He paid the remaining balance on his car in early 2008. He repaid a business and personal loan in February and May 2008. He also paid a credit card debt.³

¹ Tr. 35-37; AE K.

² Tr. 23-38, 46-47, 50.

³ Tr. 24, 80; AE N.

Applicant made a chart of his finances which lists his debts and a plan to pay off the remaining debts. He is systematically paying off his debts. His chart shows debts that he has already paid that were not included in the SOR. He is reluctant to agree to a payment plan with certain creditors due to the uncertainty of his present job and ability to pay his remaining debts. He does not want to start a plan that he cannot complete, so he is saving the remainder of his monthly income and will then tackle the debts he can pay. When he knows his job is secure he will readily enter payment plans.⁴

Applicant had credit cards that originally had low balances, but when his businesses failed he was unable to make the minimum payments and the balances escalated.

Applicant has two state tax liens and a civil judgment for state taxes owed. These tax debts are from his business for sales and use taxes. There was some confusion about the tax that was due in December 2004 and Applicant readily admitted he was late in paying the tax, which caused penalties and interest to be incurred. He was unaware of the additional amounts until six months after the infraction. He admitted he was late on other occasions and had difficulty paying the taxes. He stated the debts in SOR ¶¶ 1.a, 1.b, and 1.c do not reflect the payments he made and the state will not remove the liens until all back taxes are paid. He asserted that the total amount he owes is \$10,427. Applicant also received a \$760 refund from the state which will be applied to his current debt.⁵ Applicant has no other tax debts.⁶

The debt in SOR ¶ 1.d (\$1,554) is a credit card debt that became delinquent in June 2007. The account was sold several times. Applicant contacted the current creditor, but Applicant could not comply with their repayment plan offer at this time.⁷

The debt in SOR ¶ 1.e (\$1,215) is a credit card debt that went delinquent in October 2007. Applicant contacted the creditor and the debt has been sold again. He has not contacted the current creditor.⁸

The debt in SOR ¶ 1.f (\$914) is a credit card debt. Applicant stated it is the same debt as in SOR ¶ 1.k. The balance is approximately \$1,000. Applicant has a payment plan and has made three payments of \$75.67. New monthly payments will be paid through an automatic withdrawal from Applicant's bank.⁹

⁴ Tr. 63; AE N..

⁵ GE 2.

⁶ Tr. 42-54; AE O.

⁷ Tr. 54-56.

⁸ Tr. 56-57.

⁹ Tr. 38-41, 58, 65; AE B.

The debt in SOR ¶ 1.g (\$210) became delinquent in 2005. The original creditor was a jewelry store where he made a purchase in 2004 before his business problems. The creditor has since filed for bankruptcy and the debt was sold to a different creditor. Applicant has attempted to determine the current creditor without success.¹⁰

The debt in SOR ¶ 1.h (\$520) is a credit card debt. Applicant tried numerous times to determine the collection company. He attempted to pay the original creditor but they refused payment because the debt had been sold. He learned three days prior to the hearing there was yet another collection company. No further arrangements have been made.¹¹

The debt in SOR ¶ 1.i (\$950) is a department store credit card. It has been delinquent since 2007 and no recent payments have been made. Applicant believes this is the same debt as in SOR ¶ 1.m because he only had one credit card with that store.¹²

The debt in SOR ¶ 1.j (\$702) is a store credit card debt that was incurred in 2006. Applicant paid \$380 to the collection company to make the debt current, but then fell behind again. He has not made recent payments on the debt.¹³

The debt in SOR ¶ 1.l (\$1,307) is a store credit card debt. Applicant has not made payments on the debt.¹⁴

The debt in SOR ¶ 1.n (\$981) is for medical services when Applicant did not have health insurance. Applicant has arranged a payment plan to begin next week. He will pay \$140 a month toward this debt. Another medical debt from the same creditor is included in this payment plan. The other debt is not alleged in the SOR.¹⁵

The debt in SOR ¶ 1.o is a medical debt that Applicant settled for \$385. It was incurred for a hospital bill when Applicant did not have health insurance.¹⁶

The debt in SOR ¶ 1.p is a medical debt that Applicant incurred while he did not have health insurance. The debt is paid.¹⁷

¹⁰ Tr. 58-61.

¹¹ Tr. 61-63.

¹² Tr. 64, 66-67.

¹³ Tr. 64-65.

¹⁴ Tr. 65-66.

¹⁵ Tr. 67-68.

¹⁶ Tr. 69-70; AE E.

¹⁷ Tr. 70-71; GE 2 at p. 62.

Prior to Applicant's business venture, he always paid his bills on time. He explained his failure to pay his debts was because he did not have the money. He was using what money he had to pay his business debts. He estimated that he will have all of his delinquent debts paid in approximately 18 months. If he stays employed, he will be deployed overseas and his income will increase, thereby accelerating his payment schedule. Applicant estimated he has \$600 to \$700 remaining at the end of each month after paying his expenses. He takes the remainder and either applies it toward a small debt to resolve it, or saves it so he has enough to resolve another debt after he has saved enough money. He maintains about \$800 in savings for emergencies, such as auto repairs. Applicant recently received a raise from his employer which will help him resolve his debts.¹⁸

Applicant's supervisor provided a character letter on his behalf. He believes Applicant to be a valuable asset to the company. He has a superb work ethic and is dedicated to performing all of his assigned tasks.¹⁹

A former supervisor attested to Applicant's professional leadership ability, calm temperament when under pressure and ability to accept and complete any task given him with outstanding results. He exhibited a steadfast attitude and devotion to duty. He was considered a huge asset.²⁰

A fellow worker also provided a character letter. He believes Applicant is extremely cooperative with a desire to do quality work in a timely fashion.²¹

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 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,

¹⁸ Tr. 63, 72-90; AE M and P.

¹⁹ AE A.

²⁰ AE L.

²¹ AE B.

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.

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 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 notes several conditions that could raise security concerns. I have considered all of the disqualifying conditions under AG ¶ 19 and especially considered:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

Appellant has delinquent debts that began accruing in when his businesses start to fail in 2005 and, remain unpaid because of his failed businesses and loss of income. He is still resolving those debts. Therefore, I find both disqualifying conditions apply.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. I have considered the following mitigating conditions under AG ¶ 20:

- (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; and
- (d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant's behavior is recent because he has delinquent debts that remain unpaid. His conduct casts doubt on his reliability, trustworthiness and good judgment. I find (a) does not apply. In the past Applicant paid his bills on time. When he started two businesses that eventually failed due to the downturn in the tourist business he had difficulty paying his bills. He also needed medical services during a time he did not have health insurances. These were circumstances beyond his control. For (b) to fully apply he must have also acted responsibly under the circumstances. Applicant focused on paying his business debts and his employees. He took a second job to keep paying his bills. Unfortunately, he could not keep up with the debts. I find under the circumstances that he acted responsibly by ensuring his business creditors were paid, his employees were paid and paying off his small debts. Therefore, I find (b) applies. There is no evidence Applicant has received any financial counseling. Applicant has set up payment plans and is paying off some of his debts. He is only taking on those debts that he knows at this juncture he can reasonable pay, considering his job is in jeopardy. I find it

reasonable that he does not want to enter a payment plan if he knows he can not maintain it. Saving his money until he can pay off each debt, under the circumstances is reasonable. If he keeps his job he will enter into payment plans and attempt to accelerate his payments. I find Applicant is making a good-faith effort to repay his creditors and there are indications the problems are being resolved. Hence I find (c) and (d) apply.

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 common sense 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. Applicant consistently paid his bills in the past. He consistently pays his child support. He began having financial problems when, due to conditions beyond his control, the tourism declined and it affected the economy where his businesses were located. He did his best to pay his business creditors and employees, but unfortunately at the expense of his personal debts. Applicant has a systematic plan for paying all of his remaining debt. Although he has significant personal debt that is delinquent, he has not abandoned it. This is not a case of Applicant walking away from his debt. He realizes making an agreement to repay a creditor and then defaulting, if he loses his job, is not acting in good faith. He instead has chosen to pay what he can, and save money so he can reasonably resolve the remaining debts in the future. 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 successfully mitigated the security concerns arising from financial considerations.

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

Subparagraphs 1.a-1.p: For Applicant

Conclusion

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

Carol G. Ricciardello
Administrative Judge