



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



In the matter of:)
)
) ISCR Case No. 08-09082
)
)
Applicant for Security Clearance)

Appearances

For Government: Candace Le'i, Esq., Department Counsel
For Applicant: *Pro Se*

June 29, 2009

Decision

DAM, Shari, Administrative Judge:

Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

On June 5, 2008, Applicant submitted an Electronic Questionnaires for Investigations Processing (e-QIP). On April 2, 2009, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR), detailing security concerns under Guideline F (Financial Considerations). 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.

On April 10, 2009, Applicant answered the SOR in writing and elected to have the case decided on the written record in lieu of a hearing. On May 7, 2009, Department Counsel prepared a File of Relevant Material (FORM) containing nine Items, and mailed Applicant a complete copy the same day. Applicant received the FORM on May 15, 2009, and had 30 days from its receipt to file objections and submit additional information. On June 4, 2009, Applicant submitted additional information. On June 17, 2009, DOHA assigned the case to me. Department Counsel did not object to Applicant's submission and I marked his exhibit as AE 1 and admitted it into the record.

Findings of Fact

In his Answer to the SOR, Applicant admitted the factual allegations contained in the SOR ¶¶ 1.a and 1.b.

Applicant is 31 years old and single. In the summer of 2003, he began falling behind in paying his credit accounts because he did not fully understand the implication of managing his credit and was spending more money than he earned. At the time, he was living with his parents, earning \$9 per hour. (Item 5)

Since May 2004, Applicant has been employed as a security officer for a defense contractor. He earns \$21 per hour. In January 2009, he submitted his budget. He has a net monthly income of \$2,600 and \$1,110 in expenses. He pays \$130 toward his obligations, including one of the SOR debts. He has \$1,370 remaining at the end of the month for any additional obligations or expenses. (Item 6)

Based on credit bureau reports (CBR) dated June 2008, March 2009 and May 2009, the SOR alleged two delinquent debts, totaling \$12,574. (Items 7, 8, 9) Both debts are resolved:

1. SOR ¶ 1.a lists a debt for \$10,039 that is being resolved through a debt consolidation agreement, which Applicant executed on March 19, 2009. He made his first monthly payment of \$314 on April 3, 2009, as agreed. (Item 3; AE 1 at 2)
2. SOR ¶ 1.b lists a debt for \$2,535 owed on a personal loan. That debt was transferred to another collection agency. As of October 2008, the balance was \$1,671, as Applicant has made three \$100 payments on the bill. As of May 20, 2009, the bill is current. (Item 3 at 4; AE 1 at 3)

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 commonsense decision. According to AG ¶ 2(a), 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.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. According to Directive ¶ E3.1.15, "The 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 that an 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 adverse to an applicant 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 *a/so* Executive Order 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, three of them are potentially disqualifying:

- (a) an inability or unwillingness to satisfy debts;
- (b) indebtedness caused by frivolous or irresponsible spending and the absence of any evidence of willingness or intent to pay the debt or establish a realistic plan to pay the debt; and
- (c) a history of not meeting financial obligations.

Based on three CBRs and his admissions, Applicant accumulated debts that he was previously unable or unwilling to satisfy debts that began accruing in 2003 because of overspending and poor financial management. The evidence is sufficient to raise these three disqualifying conditions.

After the Government raised potential disqualifications, the burden shifted to Applicant to rebut and prove mitigation of the resulting security concerns. The guideline includes six examples of conditions that could mitigate security concerns arising from financial difficulties 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;
- (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.

Applicant's financial delinquencies have been ongoing since 2003, and did not arise out of unusual circumstance, but rather overspending and financial mismanagement. Hence, AG ¶ 2 (a) and AG ¶ 20(b) do not apply. Applicant presented evidence that he received credit counseling and established a repayment plan for the debt contained in SOR ¶ 1.a, and, he is making monthly payments on the debt listed SOR ¶ 1. b. Hence, he made a good-faith effort to resolve both debts, which are now under control, triggering the application of AG ¶ 20(c) and AG ¶ 20(d). There is no evidence to support the application of AG ¶ 20(e) or AG ¶ 20(f).

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). They include the following:

(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.

According to 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. Applicant is 31-years old and has worked for a federal contractor since May 2004. He candidly admitted that he accumulated delinquent debts starting in 2003 and takes responsibility for his obligations. In October 2008, he began resolving one of the debts and in March 2009, he began resolving the other. He took those steps to manage his debts prior to the issuance of the April 2009 SOR. According to his budget, he has sufficient money to pay both debts. Based on his awareness of the effect that financial delinquencies could have on his employment and his actions to resolve the delinquent obligations, I do not believe similar problems will recur in the future. Overall, the record evidence leaves me

