



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 08-09376
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Pamela C. Benson, Esquire, Department Counsel
For Applicant: *Pro Se*

March 24, 2009

Decision

HOWE, Philip S., Administrative Judge:

On May 5, 2008, Applicant submitted his Security Clearance Application (SF 86). On October 29, 2008, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing 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 acknowledged receipt of the SOR on November 6, 2008. He answered the SOR in writing after that date, and requested a hearing before an administrative judge. DOHA received the request on November 19, 2008. Department Counsel was prepared to proceed on January 14, 2009, and I received the case assignment that same day. DOHA issued a Notice of Hearing on January 21, 2009, and I convened the hearing as scheduled on February 3, 2009. The Government offered Exhibits 1 through

4, which were received without objection. Applicant testified and submitted Exhibits A through Q, without objection. I gave him permission to submit other exhibits after the hearing, and he submitted one document without objection by Department Counsel, which I then marked as Exhibit R. DOHA received the transcript of the hearing (Tr.) on February 11, 2009. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

Procedural and Evidentiary Rulings

Notice

At the hearing, Applicant indicated he received the hearing notice within 13 days of the hearing date. (Tr. at 7.) I advised Applicant of his right under ¶ E3.1.8 of the Directive to 15 days notice before the hearing. Applicant was given notice by telephone by the Department Counsel on January 21, 2009, of the hearing date. Applicant affirmatively waived his right to 15 days notice, and agreed to proceed with the hearing as scheduled. (Tr. at 8.)

Findings of Fact

In his Answer to the SOR, Applicant admitted the factual allegations in ¶¶1.b through 1.l of the SOR, with explanations. He denied the factual allegation in ¶ 1.a of the SOR. He also provided additional information to support his request for eligibility for a security clearance.

Applicant is 53 years old, unmarried, and works as a security guard for a defense contractor at an hourly wage of \$10.42 per hour. He has a part-time job which pays him \$9.00 per hour, totaling about \$145 weekly. Applicant's net monthly income is \$1,277 from his primary job. His part-time job should net him about \$600 monthly. His VA disability payment adds \$114 to the total net income. Therefore, his total net income is \$1,991. His total monthly expenses are \$1,349.79. The difference is \$642, which he wants to use to pay his debts. He owns his house (and has since 1986) and his car. He has a first mortgage on his house. He was discharged from the Army in 1983 with a disability, and receives \$114 per month from the Veterans Administration (VA) for disability. He relies on the VA for his medical care. Some months the costs of medicines and other services result in the VA keeping his disability payment to cover those costs. (Tr. 21-28, 65, 66, 80; Exhibits 1, O, P)

Before August 2001, Applicant had excellent credit and his debts were paid regularly. His girlfriend, with whom he lived for 17 years, departed their jointly-owned home three weeks after he refinanced his mortgage in August 2001. She was disabled and received disability payments. If they were married, she would have had the payments reduced or eliminated. That dual income helped Applicant afford his home and other purchases during the 17-year relationship. Before she left him, Applicant's girlfriend incurred about \$4,551 in new debts, which she has refused to pay. He wanted her to sign a Quit Claim deed for whatever legal interest in the home she may have, but

she refused to do so. The proposed deed shows her as having a joint tenancy with rights of survivorship in the property. Later, in December 2001, she filed Chapter 7 bankruptcy. In February 2002, he sued her in small claims court for the money she owed him for the debts she incurred in his name and using his credit. His lawsuit was dismissed after the bankruptcy stay became effective. His former girlfriend has never paid him for these debts. If she were to sign the Quit Claim deed, he would refinance the house again, as he planned to do, and use any equity to repay his debts. (Tr. 30-32, 35, 75, 80, 83; Exhibits 1-4, A-H)

Applicant has 12 delinquent debts totaling about \$21,674, listed on the SOR.. His latest credit report shows \$13,241 in debt. (Tr. 60)

Applicant denied he owed \$5,000 to creditors as set forth in subparagraph 1.a of the SOR. His former girlfriend's parents sued both of them to recover a loan they allegedly made to Applicant and their daughter. Applicant thought at the time it was a gift to both of them. After their relationship broke apart, he learned her parents considered it a loan because he signed a promissory note for the amount. Applicant claims he only would owe half the amount, \$2,500, because his former girlfriend owes the other half. The father has since died, and the judgment remains unpaid. (Tr. 41-43; Exhibits 2-4, I)

Applicant owes \$1,938 to a dentist for major dental work done in December 2006 (subparagraph 1.b). He has an installment payment agreement for \$20 monthly on the debt. The dentist filed a small claims lawsuit against Applicant, which he settled with the agreement. Applicant had already paid \$1,500 on that debt until he was not able to make further payments 10 months earlier. (Tr. 43-45; Exhibits 2-4, A, R)

The \$2,449 owed on a department store credit card was incurred by Applicant's former girlfriend in 2001 (subparagraph 1.c). He has not paid that debt. He never used the credit card. (Tr. 45, 46; Exhibits 2-4)

Applicant owes \$147 to a collector. He does not know the basis of the debt. He has not paid it (subparagraph 1.d). (Tr. 46, 47; Exhibits 2-4)

The delinquent debt set forth in subparagraph 1.e. is for \$280 owed to a bank. Applicant owed this debt since July 2003. Applicant intends to repay this debt, the previous listed debt, and the next two listed debts from the money he earns at his part-time employment. (Tr. 47, 48; Exhibits 2-4)

Applicant owes \$513 on a credit card (subparagraph 1.f). He tried to work out a payment plan with this creditor, but the company wanted the entire amount paid at one time. (Tr. 50; Exhibits 2-4)

Applicant owes \$242 on a gasoline credit card (subparagraph 1.g). He does not have the income at present to pay this debt. (Tr. 51; Exhibits 2-4)

Applicant owed \$626 on his mortgage payment, but he has brought this account current in February 2009 (subparagraph 1.h). He was one month behind in his payments. He signed a note to cure the attempted foreclosure last year, pursuant to the HOPE program with his bank. He is paying the \$2,300 in arrearages on an installment payment agreement at \$18 monthly. His new part-time employment income helped him become current on his payments. (Tr. 51-54, 64, 65; Exhibits 2-4, A, B, C, L, O)

The next debt for \$1,341 is owed to a bank for a loan taken out in 2001 (subparagraph 1.i). It became delinquent in 2003. Applicant understood the debt was charged off by the bank, and thought the bank meant he did not have to repay it. It continues to show as a delinquent debt on his credit reports. He has not repaid the debt. (Tr. 55, 56; Exhibits 2-4, A)

Applicant owes a jeweler \$1,615 for an engagement ring and a watch he purchased (subparagraph 1.j). Applicant has not made payments on it for a long time. He bought the engagement ring for his second girlfriend, with whom he lived from 2002 to 2006. She also had her three children living in Applicant's house. Applicant was supporting her and her children, the expenses for which deprived Applicant of money with which to pay his debts. The girlfriend, according to Applicant, was an alcoholic, and her family damaged his house before they departed, necessitating him spending money to repair the damage. (Tr. 56-58; Exhibits 2-4, A)

Applicant's next debt for \$70 is owed to a collector (subparagraph 1.k). Applicant does not recall this debt. He would pay it if he had the income to do so. (Tr. 58; Exhibits 2-4)

The final debt listed in the SOR (subparagraph 1.l) for \$7,453 is owed to a bank on a credit card he and his first girlfriend had. He was trying to refinance his home in 2001 to repay this debt when his girlfriend left him. This debt is unpaid. (Tr. 58, 59; Exhibits 2-4)

Applicant pays his monthly bills on time. His tax returns are filed on time and the taxes paid with the returns. He submitted evidence of his regular monthly payments. He also pays on a wireless telephone service he had with his third girlfriend and her daughter. He got them phones, which he has recovered, but cannot cancel the service because of the cancellation fee. Therefore, he continues to pay the monthly rate while not using the phones. That relationship lasted from July 2007 to October 2007. Applicant currently lives alone. (Tr. 59-68; Exhibits N and O)

Applicant has several periods of unemployment, but has always worked hard to find replacement employment. In November 2001 he was unemployed for a short time. In February 2003 he lost his job, and then found another job. All his jobs were working at hourly rates in security officer positions. In May 2006 he had a heart attack. He was unemployed in October 2007, and got another job in December 2007. In October 2008 he got his part-time job, but was laid off it in December 2008. He has been reemployed

with that company only recently. Applicant does not have any savings, living from paycheck to paycheck. (Tr. 38, 39, 59-68; Exhibits A, N, O)

Applicant submitted character statements from his former employer in 1994 about his work product. He also submitted a 1995 character statement from a supervisor, and an undated statement. Applicant submitted a local newspaper article about a security officer at the city airport greeting people, and claims he was the person about whom the article was written. Finally, he submitted a 2002 promotion letter of his when he became a sergeant in the local police reserves. He worked in the police reserve forces from 1994 to 2008, hoping to get a full-time job as a policeman. He was never able to get on the police force. (Tr. 35-37; Exhibit Q)

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, 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. 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 accumulated delinquent debt from 2001 to 2007, and has been unable to pay most of the obligations for several years. The evidence is sufficient to raise these potentially disqualifying conditions.

After the Government produced substantial evidence of those two disqualifications, the burden shifted to Applicant to produce evidence and prove mitigation of the resulting security concern. AG ¶ 20 includes six conditions that could mitigate security concerns arising under this guideline.

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. Applicant’s financial worries started in 2001. He accumulated delinquent debt when his long-time girlfriend took advantage of him, charged purchases and cash advances in the amount of \$4,551.16. Applicant attempted to sue her to recover this amount, but she filed bankruptcy to prevent him from recovering money to repay these debts. The debts incurred after his

successive two relationships were at least two years ago. He has not paid for the engagement ring and watch from the second relationship, but he is paying for the telephones leased during the third and last relationship. He is paying his current debts, although he is sometimes delinquent with his mortgage payments. He is current on them because of the HOPE program and his personal initiative to keep his home he has had for the past 23 years. These circumstances with his girlfriends are no longer extant. I find the behavior occurred under such unusual circumstances with these relationships which caused Applicant to spend money he could have used for debt repayment that it is unlikely to recur because he has learned to avoid such situations, and they do not raise concerns about his current reliability, trustworthiness, or good judgment. The evidence raises this potentially mitigating condition.

Under AG ¶ 20(b), it may be mitigating 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 under the circumstances.” As noted above, some of the financial problems arose from his failed personal relationships, akin to a divorce in the first and second situations, and a separation in the third relationship. His periods of unemployment in 2001, 2003, and 2007 were minimal because he worked hard to obtain new employment immediately. His heart attack in May 2006 lost him some work time and income. For all these reasons, I find this potentially mitigating condition is a factor for consideration in this case.

Evidence that “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” is potentially mitigating under AG ¶ 20(c). There is no evidence of counseling submitted by Applicant, and it is not a factor to be considered. Applicant does recognize his financial obligations and tries, within the limits of his income, to meet those obligations.

Similarly, AG ¶ 20(d) applies where the evidence shows “the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.” Applicant resolved two of the delinquent debts, his dental bill and his mortgage arrearages, by installment payment plans. The remaining debts he is unable to repay because he cannot refinance his house without the Quit Claim deed from his first girlfriend using that money to repay the debts. Or he does not have sufficient income monthly to repay the debts and continue to pay his mortgage and regular monthly obligations. I conclude this potentially mitigating condition applies partially because of the efforts Applicant made on two debts, and his sincere desire and credible assertion to pay the remaining debts from his income. His part-time job provides him with additional income to repay the six smaller debts first, then the next five debts in ascending order of magnitude, leaving the judgment from his girlfriend’s parents to be paid last at half the amount sought, because she owes the other half to her parents.

Finally, AG ¶ 20(e) concerning affluence from a legal source is not a factor in this case. Applicant lives from pay check to pay check, and has no affluence he needs to explain.

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 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's unpaid debts are a serious problem. But he has worked continuously for many years, and not been idle about his financial obligations. He had good credit before 2001. He made poor decisions about his personal relationships in three situations, but that became obvious only in hindsight. He has always paid his mortgage, or caught up on the payments as quickly as possible. He has diligently sought second jobs to supplement his primary income. His hourly wage security positions do not pay him enough to make his monthly financial obligations, and repay debts incurred during his relationships.

His first girlfriend left him with substantial debts when she secretly charged credit cards and took cash advances. Then she tied his hands financially by refusing to release any interest in his house which she might have after their 17-year relationship ended. She lived in the house with him for 17 years, and apparently has a joint tenancy interest in the property with survivorship rights, according to the Quit Claim Deed.)

Applicant has not incurred new long-term debt, and lives very simply. The delinquent debts were incurred from 2001 to 2006. The last debt he incurred, which remains unpaid, was for the engagement ring in 2006.

Applicant acts responsibly in all aspects of his life. He was a reserve police officer for 14 years, with aspirations of obtaining a full-time position on the force. He

tries to timely repay his debts, and is only hindered by his lack of better paying employment. He has lived in his community for 23 years and in the same house for those years. He has not moved frequently, causing creditors to lose track of his location and his debts to become delinquent. The primary issue is whether his financial circumstances raise concerns about his fitness to hold a security clearance. Applicant has shown over two decades he can live within his means, and has not incurred any long-term delinquent debt, except during his first two failed relationships when his companions incurred debts for which he became obligated. Applicant has demonstrated in a credible and persuasive manner, with his character statements, his employment history, his community stability, and his responsible attitude, that he is a reliable and trustworthy person, and is not inclined to generate funds through illegal acts. He is not a threat to national security because of his long-time employment in the security officer employment field. He has a great interest in police work, and has spent many years in such work in his community as a security officer and reserve police officer. There is nothing derogatory about his life in the file.

Overall, the record evidence leaves me without questions or 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.i:	For Applicant

Conclusion

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

PHILIP S. HOWE
Administrative Judge