



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



In the matter of:)
)
) ISCR Case No. 08-10578
)
)
Applicant for Security Clearance)

Appearances

For Government: John B. Glendon, Esq., Department Counsel
For Applicant: *Pro Se*

June 10, 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 January 8, 2009, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) detailing the 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 February 26, 2009, and requested a hearing before an administrative judge. The case was assigned to me on March 26, 2009. DOHA issued a Notice of Hearing on April 7, 2009. I convened the hearing as scheduled on May 8, 2009. The Government offered Exhibits (GE) 1 through 3.

Applicant did not object and they were admitted. Applicant testified and offered Exhibits (AE) A through D which were admitted without objection. The record was held open until May 22, 2009, to allow Applicant an opportunity to provide additional exhibits which he did and they were marked as AE E through R. Department Counsel did not object and they were admitted.¹ DOHA received the transcript of the hearing (Tr.) on May 18, 2009.

Findings of Fact

Applicant's admissions to the allegations in the SOR 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 34 years old and has worked for a federal contractor as a Design Engineer, since May 2008. He has been married for twelve years and has two children, ages seven and four. He also has a child, age 17, from a previous relationship. He pays child support for this child and is current in his obligation. Applicant graduated from college earning a bachelor's degree in May 2008. His wife is also a college graduate and has a degree in accounting, which she earned in 2002.²

Applicant worked for a company from January 1999 to August 2006, when the company decided to shut down the plant where he worked. Applicant lost his job and was given one year severance pay. He could not hold a full-time job while receiving the severance pay, which was half of the salary he had been earning. Applicant decided to go back to school as a full-time student to earn a degree. Having a college degree allowed him the potential of increasing his marketability and career prospects. From August 2006 until May 2008, Applicant attended college. Around September 2007, Applicant's wife got a part-time job. During the time Applicant attended school he and his family lived off the severance pay he received, which was about \$1,800 a month. He was not entitled to unemployment benefits. They also lived off of their savings and he worked part-time during the day and attended school at night. He was earning from his part-time job about \$2,200 a month before taxes. He stated they were paying their bills, but their income was not enough to cover all of their expenses, despite their efforts to "make ends meet." His severance pay expired in August 2007. They lived month to month until Applicant graduated in May 2008. He and his wife decided it was best for him to finish his degree, even though they got behind in paying some bills. Applicant's wife started working full time in July 2008, earning approximately \$40,000 annually. At the time Applicant started work with his present employer he was earning approximately \$36,000 annually. Applicant's current income is \$40,000.³

¹ An explanation about the exhibits was provided by Department Counsel in Hearing Exhibit I. Applicant submitted three fax transmissions that included multiple duplicate documents. Some of the documents were out of order and some are difficult to decipher as to specifically their intended purpose. I have attempted to determine what particular debt applies to the different documents submitted.

² Tr. 18-20, 25-26.

³ Tr. 20-32.

When Applicant's severance pay expired he began to default on some of his debts. He stated that he paid some of bills that were not listed on the SOR.

The debt in SOR ¶¶ 1.a (\$134) and 1.(b) (\$34) are medical debts that Applicant's insurer did not cover. Applicant stated they are the same creditor and the debts were incurred about a year ago. He provided a receipt for \$145.49 to a medical office. I am assuming that this document pertains to these two debts, but no information was provided to show why a lesser amount was paid or if this is the right creditor. Applicant failed to provide an explanation of the document he provided.⁴

The debt in SOR ¶ 1.c (\$12,518) is a credit card debt. Applicant stated he stopped making payments on the debt sometime in early March 2007. He explained that money was very tight at the time and they used the credit card to pay their mortgage and car payments. He further explained that he and his wife own their own home but they owe \$14,000 in arrearages on the mortgage. They had received a foreclosure notice and are going to restructure their loan with their mortgage company. They defaulted on the loan in October 2007 and made partial payments for a period. They are now making full monthly payments at the required rate and once they have reestablished a consistent payment record, the mortgage company will refinance the loan. They have owned the house since 1999 and Applicant believes they have sufficient equity in it to refinance. Applicant explained it took from May 2008, when he began full-time employment until February 2009 to get back on track with their mortgage payments. Regarding the credit card debt, Applicant negotiated a repayment plan to pay \$130 a month over five years. He has made several payments to the plan.⁵

The debt in SOR ¶ 1.d (\$170 past due) is for retail store purchases made by Applicant's wife. He stated the debt was past due five months. Based on the additional documents provided by Applicant it appears that three payments of \$45 were made to the same creditor. However, it is too difficult to decipher the documents provided by Applicant because he failed to annotate the specific items on his bank statement.⁶

The debt in SOR 1.e (\$250 past due) is a credit card debt. The balance is approximately \$14,000. Applicant has a payment arrangement with the creditor to pay \$210 a month. He has been making payments since January 2009.⁷

The debt in SOR ¶ 1.f (\$149 past due) is for a home equity loan Applicant took out for \$12,000 to allow his wife to stay home with the children and not work. He stated it is current as of January 2009 and provided documentation.⁸

⁴ Tr. 33-37; AE R.

⁵ Tr. 38-50; AE I, L, N, Q, and R.

⁶ Tr. 53-56; AE G, I, N, Q and R.

⁷ Tr. 56-60; AE A, G, I, N, Q and R; GE 3 at page 2.

The debt in SOR ¶ 1.g (\$12,514) is a loan for a motorcycle Applicant purchased in March 2006 prior to the time he knew he was going to be laid off from work. Applicant sold the motorcycle and settled the debt for \$5,245.⁹

Applicant also owes approximately \$6,000 on a car lease that expired in April 2009, due to overage on the vehicle's mileage. He stated they pay this creditor \$160 a month for this debt. Applicant also has approximately \$23,000 in deferred student loans that are owed. His wife also has student loans that are deferred, but he does not know how much she owes.¹⁰

Applicant provided a budget and stated he and his wife have not had any financial counseling. It is unclear if their budget is realistic. They do not have cable television, internet, or a land line phone. Their budget is tight, but they are making it. He stated he feels trapped because of money. His intention is to put 8% of his income into a 401k plan and to pay all of his debts and live debt free. They do not have any credit cards. He stated it took him awhile to see the problem and his wife needs to change the way she thinks about money. He stated they both "get it." He believes he is making better financial choices.¹¹

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

⁸ Tr. 60-63; AE K.

⁹ Tr. 63-66; AE B, C and D.

¹⁰ Tr. 66-76; GE 3 page 3. I have not considered for disqualifying purposes Applicant's other debts that are not alleged. However, I have considered them when analyzing his complete financial picture and in my whole person analysis.

¹¹ Tr. 72-83.

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. . . .” The applicant 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 them under AG ¶ 19 and especially considered the following:

- (a) inability or unwillingness to satisfy debts; and

(c) a history of not meeting financial obligations.

Applicant has delinquent debts. He has paid some of the debts, but others he is still paying and are still owed. I find both disqualifying conditions have been raised.

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

(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 individual 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 still has some delinquent debts that he is working on paying. I find mitigating condition (a) does not apply.

Applicant made a conscious decision when his job was terminated to accept severance pay and go back to school. Losing his job was beyond his control. Under the circumstances the fact he used this opportunity to further his education and thereby enhance his career opportunities is a responsible response. However, considering the loss of income, I am not entirely convinced that he and his wife had a well thought out plan on how to pay their bills and live within their means during this austere period of time. Applicant's wife did not start a full-time job until after Applicant went back to work full-time. Instead they financed their expenses by taking loans and then failing to pay them on time. I am not sure if the budget they presented is realistic when compared to the bank statements they provided showing some of their expenditures. I find mitigating condition (b) only partially applies.

Applicant has not received any financial counseling. He has made an attempt to get a handle on his financial situation and did not totally ignore his debts while he was working part-time and going to school. He and his wife are now both employed full-time and have made consistent monthly payments to catch-up with their payments. Applicant

has contacted his creditors and made payments plans that he is addressing. Applicant has a new appreciation for his financial mistakes and is attempting to rectify them. I find he is making a good-faith effort to repay his creditors and there are indicators that the problem is being resolved. I am concerned that without personal financial counseling and a realistic budget that he and his wife agree to scrupulously comply with, Applicant will again have difficulty paying his bills. Applicant is not required to be debt free, but he must show he is acting financially responsibly. I find under the circumstances he is now acting financially responsibly. Therefore, I find mitigating conditions (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 lost his job and accepted severance pay and decided to go back to school. He worked part-time during this period. His wife began part-time work later and is now working full-time. Applicant got behind in paying his bills during this period. With two incomes Applicant and his wife are making inroads at paying off their delinquent debts. Perhaps Applicant could have made a better financial plan when he went back to school, but under the circumstances I believe he did the best he could to stay financially afloat while he was finishing school. He opted for completing his education and suffering a short term financial set back, but reaping the rewards from his education by providing him with more and higher paying career opportunities. 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 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.g: For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly with in 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