



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



In the matter of:)
)
) ISCR Case No. 08-10605
)
)
Applicant for Security Clearance)

Appearances

For Government: John Glendon, Esq., Department Counsel
For Applicant: Spouse of Applicant

May 29, 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 February 6 2009, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) detailing the 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 answered the SOR in writing on March 4, 2009, and requested a hearing before an administrative judge. The case was assigned to me on April 2, 2009. DOHA issued a notice of hearing on April 15, 2009. I convened the hearing as scheduled on May 4, 2009. The Government offered Exhibits (GE) 1 through 6. Applicant did not object and they were admitted. Applicant testified and offered Exhibits

(AE) A and B. The record was held open until May 18, 2009, to allow Applicant to submit additional documents. A post-hearing request was made by Applicant to extend the time to submit additional documents to May 20, 2009. Department Counsel did not object (Hearing Exhibit I) and the record remained opened until the requested date. Applicant submitted additional documents that were marked as AE C through E. Department Counsel did not object and they were admitted. DOHA received the transcript of the hearing (Tr.) on May 11, 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 43 years old and has worked for a federal contractor since March 2008. He retired from the Air Force in 2005, in the grade of E-6, after 20 years of service. He has been married since 1996 and has one child from the marriage and three children from a previous marriage. Three of the children currently live at home. Applicant was unemployed from January 2008 to March 2008, until he was hired by his present employer.¹

Upon retiring from the military Applicant's income decreased significantly. He had difficulty getting a job that paid enough to compensate his prior military income. He expected that he would be earning more than what he was. Applicant was earning approximately \$62,000 a year while in the military. When he retired he earned an hourly wage of \$13.25 or approximately \$25,000 annually. His retirement pay was approximately \$27,000 annually. Applicant worked extra hours to earn more and meet his expenses, but still could not pay his bills. At some point his monthly mortgage payment increased due to his failure to make the payments on time. He began falling behind in his financial obligations. He got behind in his mortgage payments. He attempted to catch up with the payments and paid a lump sum to do so, but the mortgage company then requested another large lump sum, which again was paid. Applicant was trying to prevent his home from foreclosure. The two large lump sum payments caused a shortage of money to pay his other bills. He refinanced his home to obtain a lower interest rate on the mortgage. He took out a second mortgage and borrowed against the equity of his home. Applicant kept slipping back into being unable to make his mortgage payments. Both he and his wife were working at the time. Applicant's wife has since been unemployed since October 2008, due to a medical condition. Due to his concern about losing his house Applicant filed for bankruptcy under Chapter 13 to prevent foreclosure in February 2009.²

Applicant's payment plan under his bankruptcy requires he pay \$632.41 a month for five years. At the time of his hearing he had made three payments on the plan.

¹ Tr. 27-32, 84.

² Tr. 26-70.

Included in the plan are the debts listed in SOR ¶¶ 1.b (home mortgage), 1.c (medical, \$84), 1.d (medical, \$196), 1.e (medical, \$333), 1.f (medical \$147), 1.g (medical, \$75), 1.h (phone, \$376) and 1.i (recreational vehicle, \$2,678).³ Applicant testified he was unaware of the medical debts and the phone bill until he received the SOR. He did not get a bill from the creditors at the time or from a collection agency for these debts. He believed his insurance covered the medical bills. He had shut off his land line phone two years ago and believes this bill was for that service. All of Applicant's debts in the SOR are being paid through his bankruptcy plan.⁴

Applicant participated in the on-line financial counseling required when filing for bankruptcy. He anticipates having extra expendable income when the lease on a car he has expires and he returns the car. His son is graduating from high school this year and entering the military and will no longer be living at home. Applicant does not have any credit cards and has no other delinquent debts. He and his wife started a budget several months ago and are saving \$325 a month and have \$500 left after paying their expenses. He anticipates a refund of approximately \$1,100 from his 2008 tax returns. Applicant earns more at his current job and is able to meet his financial obligations. He is committed to repaying his debts and living within his means.⁵

Applicant's supervisor provided a character letter for him. He believes Applicant to be an extremely hard worker, who values the principles of ethical decisions. Applicant is extremely dedicated to his country and family. He is considered responsible, dedicated and a caring individual. A fellow worker considers Applicant conscientious and courteous. He is a person who pursues his work responsibilities with diligence and care.⁶

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

³ Tr. 92-96; GE 3 and 4; AE D and E. SOR ¶ 1.i is for a recreational vehicle that was purchased in June 2004, prior to Applicant's retirement from the military. The vehicle was voluntarily repossessed in April 2008, after Applicant retired and had financial difficulties. The amount listed is the deficiency after the vehicle was sold.

⁴ Tr. 57-60, 70-79, 96-99.

⁵ Tr. 79-92.

⁶ AE A and B.

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. . . .” 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 had delinquent debts that he was unable to pay for a period time. He continues to owe the debts and is paying them through a bankruptcy plan. 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 considered 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 his delinquent debts are not completely satisfied and are still being paid through his bankruptcy plan. However, the circumstances that caused Applicant's difficulty in paying his bills are unlikely to recur. Applicant experienced a significant decrease in his income when he retired from the military. He had difficulty finding a job that compensated for the loss of his income, even after receiving his retirement pay. He was unemployed for a short period of time. These factors contributed to his financial inability to pay all of his bills. Applicant attempted to prevent the foreclosure of his home by filing for bankruptcy. All of his debts are included in his repayment plan. He now has a job that pays more and has a budget. He has not incurred additional delinquent debt. Applicant is committed to living within his means. I

find the conditions that affected Applicant's finances were beyond his control. He has acted responsibly in putting together a plan to repay his creditors and has made consistent payments toward that plan. I find all of the above mitigating conditions 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 served in the military for twenty years. He had difficulty finding a job that paid well enough to supplement his retirement income and got behind in paying his bills. To prevent losing his house he filed for bankruptcy and is paying his debts through a court approved plan. Applicant is committed to resolving all of his debts and living debt free. 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.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.

Carol G. Ricciardello
Administrative Judge