



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



In the matter of:)
)
) ISCR Case No. 08-12166
)
)
Applicant for Security Clearance)

Appearances

For Government: Candace Le'I, Esquire, Department Counsel
For Applicant: *Pro Se*

September 11, 2009

Decision

ANTHONY, Joan Caton, Administrative Judge:

After a thorough review of the case file, pleadings, testimony, and exhibits, I conclude that Applicant mitigated the Government's security concerns under Guideline F, Financial Considerations. His eligibility for a security clearance is granted.

Applicant signed his Questionnaire for Sensitive Positions (SF-86) on September 10, 2008. On May 27, 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 June 17, 2009, Applicant answered the SOR in writing. He elected to have a hearing before an administrative judge. The case was assigned to me on August 3,

2009. A Notice of Hearing, setting Applicant's hearing for August 26, 2009, was issued August 6, 2009. I convened the hearing as scheduled to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant.

The Government called no witnesses and introduced five exhibits, which were marked Ex. 1 through 5 and admitted to the record without objection. Applicant testified on his own behalf and called no witnesses. He introduced three exhibits, which were identified and marked as Ex. A through Ex. C and admitted to the record without objection.

At the conclusion of the hearing, I left the record open until close of business on September 2, 2009, so that Applicant could, if he wished, provide additional information for the record. Applicant timely filed six additional exhibits. Department Counsel did not object to Applicant's post-hearing submissions. I marked the post-hearing submissions as his Ex. D through Ex. I, and they were admitted to the record. DOHA received the transcript (Tr.) of the hearing on September 2, 2009.

Findings of Fact

The SOR contains nine allegations of disqualifying conduct under AG F, Financial Considerations. Applicant admitted all nine allegations and offered additional information. Applicant's admissions are admitted as findings of fact. (SOR; Answer to SOR.)

Applicant is 28 years old, an information technology (IT) specialist, and employed as a Blackberry administrator by a government contractor. He is single and has completed three years of college. He needs 20 additional college credits in order to obtain a bachelor's degree. He seeks a security clearance. (Ex. 1; Tr. 16, 31, 64-65.)

Applicant owes approximately \$34,000 in education loans. He owes the federal direct student loan program approximately \$27,034, including interest, fees, and costs. These debts are alleged at SOR ¶¶ 1.b. through 1.g. Additionally, Applicant owes his state student loan program approximately \$6,425. His state student loan debts are alleged at SOR ¶¶ 1.a., 1.h., and 1.i. The SOR alleges no other outstanding delinquent debts. (SOR; Ex. A; Ex. B; Ex. D; Tr. 41, 57.)

Applicant began his college education in 1999. For his first two years of study, his parents paid his student loans. Then, as his younger sisters began to attend college, his parents found it necessary to assist them. Beginning in 2001, Applicant took on responsibility for paying his education loans. (Tr. 27-28, 35-36.)

From May 2000 until October 2006, while he was enrolled in his university studies, Applicant participated in a federal Stay in School Program. He understood that the federal agency that employed him would pay his student loans if he maintained a "C" average. In 2006, the agency notified the Stay in School Program students that it

would undergo downsizing. Applicant and other students in the program were counseled and advised that they would be laid off. Applicant decided he would not wait to be laid off. (Ex. 1; Tr. 34-35, 41.)

In November 2006, he took a job with a communications company as a customer account executive. His annual salary was \$28,000. He was having difficulty paying his education debts. His parents helped him by paying \$2,000 on his state student loans. (Tr. 28.)

In February 2007, he took a job with another communications company. He was no longer in school, and his federal student loans were in default. He could not afford to repay the federal student loans. His salary was \$34,000 a year, and in April 2008, he received a raise to \$38,000 a year. He began to work for his present employer in September 2008, at an annual salary of \$50,000. (Tr. 38, 41-42.)

Soon after beginning his present job, Applicant felt he was financially able to begin paying his student loan debts. He contacted the federal student loan program to arrange payment of his federal student loans. Because his loans were in default, he entered a program to rehabilitate them. Beginning in November 2008, he paid \$299 a month to rehabilitate his loans and remove them from default status. In July 2009, the federal direct student loan program informed him that his regular payments had rehabilitated his delinquent loans. He continues to make monthly payments to repay his federal direct student loans. In August 2009, the federal direct student loan program notified him that it had requested that the national credit bureaus remove negative credit information about the loans from his credit reports. (Ex. C; Ex. E; Tr. 36-42, 49.)

In June 2009, Applicant entered into a payment plan with his state student loan program to repay his delinquent state student loans. He agreed to pay the state agency \$270 a month until he was able to pay more. (Ex.B; Tr. 46-51.)

After his hearing, Applicant consulted with the state student loan agency and with a credit counseling firm about his state student loan delinquencies. The state student loan agency agreed to cancel the payment plan he had agreed to so that he could work with the credit counseling firm to consolidate his state student loan debt with his credit card debt of approximately \$700 and pay both off at the same time.¹ He did this because he thought it would have a beneficial effect on his credit rating. (Ex. D; Ex. G; Ex. H.)

Applicant's net take home pay each month is \$3,200. In order to save money and pay his debts, he lives at home in his parents' basement, and he pays them \$400 a month in rent. His food expenses are \$250. He pays his family's cable bill of \$100 every month. He has a monthly car payment of \$469. He spends \$108 each month on car insurance and approximately \$150 on gasoline. His monthly cell phone bill is \$84. Additionally, he pays \$299 to the federal direct student loan program, and he will pay

¹ Applicant testified that he was not in arrears on his credit card debt. (Ex. D; Tr. 58, 79.)

\$270 or an equivalent amount to satisfy his delinquent state student loans. Periodically, he is repaying the \$2,000 loan his parents made on his behalf when they paid his state student loan delinquency in 2006. To date, he has repaid \$700 of the \$2,000 to his parents. (Tr. 40-45, 53-55, 63-64.)

Applicant submitted a performance assessment from the company that employed him in 2007. The employer rated Applicant as a “High Contributor” and praised Applicant’s strong work ethic, his leadership, and his interpersonal skills. His current employer praised his “exceptional customer service experience,” his ability to work productively off-site without supervision, and his strong interpersonal skills. (Ex. F; Ex. I.)

Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security, and it has emphasized that “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information. *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant an applicant’s eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.

When evaluating an applicant’s suitability for a security clearance, an 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, the administrative judge applies these guidelines in conjunction with the factors listed in the adjudicative process. The administrative judge’s overarching adjudicative goal is a fair, impartial and commonsense 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. 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 substantial delinquent student loan debt and was unable or unwilling to pay his creditors. This evidence is sufficient to raise these potentially disqualifying conditions.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Several Guideline F mitigating conditions could apply to the security concerns raised by Applicant’s financial delinquencies.

Unresolved financial delinquency might be mitigated if it “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.” (AG ¶ 20(a)) Additionally, unresolved financial delinquency might be mitigated if “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.” (AG ¶ 20(b)) Still other mitigating circumstances that might be applicable include 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” (AG ¶ 20(c)) or “the individual has initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.” (AG ¶ 20(d)) Finally, if “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 options to resolve the issue,” then AG ¶ 20(e) might apply.

Applicant admitted a history of financial difficulties related to his education loans, which are substantial. From 2000 to 2006, Applicant was enrolled in the federal Stay in School Program, and he expected the program to assist him with the payment of his student loans. In 2006, the federal agency where he worked cut back on funding for the Stay in School Program. Applicant left the agency and sought private sector employment. Between 2006 and the end of 2008, his low income prevented him from paying his delinquent federal and state student loans. When he obtained a job which paid him a better wage, he set out to satisfy his student loan delinquencies. Beginning in October 2008, he rehabilitated his federal direct student loans, and he has entered a payment plan to satisfy this debt of approximately \$27,000. Additionally, he has sought credit counseling and is working with a credit management firm to consolidate payment of his state student loan delinquencies and his credit card debt. His current annual income is sufficient for him to make these payments, so long as he continues to live frugally.

Applicant is 28 years old, and he has learned, through experience, some hard financial lessons. He has acknowledged his financial responsibilities and has made good-faith efforts to satisfy his creditors. He sought financial counseling, and it is clear that he is learning to resolve his current financial problems and to avoid repeating the same mistakes in the future. I conclude that AG ¶¶ 20(a), 20(b), 20(c), and 20(d) apply in mitigation to the facts of Applicant’s case. AG ¶ 20(e) is not relevant in this case.

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 relevant 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 is a young person of 28 years. His supervisors and co-workers respect him and rely upon his expertise and technical knowledge. His financial problems began when he accumulated student loan delinquencies and lacked sufficient resources to repay the loans. When he acquired a job that paid him enough income to meet his financial obligations, he set up plans to pay his student loan debts. At the present time, there appear to be no impediments to prevent him from timely repaying his student loans and meeting his other financial obligations.

Applicant has shown good faith in contacting his creditors and arranging payment plans to satisfy his student loan creditors. He is currently living within his means and paying attention to his financial obligations.

I observed Applicant carefully at his security clearance hearing. I found him to be a serious and responsible person. I believe it is highly unlikely that in the future he will fail to carry out any of the responsibilities of a person entrusted with a security clearance and the protection of classified information. I conclude that he is not a security risk at this time.

Overall, the record evidence leaves me with no questions or doubts as to Applicant's judgment and eligibility and suitability for a security clearance, and I conclude Applicant mitigated the security concerns arising under Guideline F, 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. through 1.i.: For Applicant

Conclusion

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

Joan Caton Anthony
Administrative Judge