



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



In the matter of:)
)
) ISCR Case No. 09-00660
)
)
Applicant for Security Clearance)

Appearances

For Government: Eric Borgstrom, Esq., Department Counsel
For Applicant: *Pro Se*

October 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 April 9, 2009, the Defense Office of Hearings and Appeals (DOHA) issued to 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 answered the SOR in writing on April 21, 2009, and requested a hearing before an administrative judge. The case was assigned to me on July 27, 2009. DOHA issued a Notice of Hearing on August 6, 2009. I convened the hearing as scheduled on September 23, 2009. The government offered Exhibits (GE) 1 and 2.

Applicant did not object and they were admitted. A demonstrative exhibit was offered by the government and was marked as Hearing Exhibit (HE) I. The Applicant testified and offered Exhibits (AE) A through E, which were admitted without objection. The record was held open until October 7, 2009, to allow Applicant to submit additional documents, which he did. They were marked as AE F through I. The government had no objections and the documents were admitted and the record closed.¹ DOHA received the transcript of the hearing (Tr.) on September 30, 2009.

Findings of Fact

Applicant admitted both allegations in the SOR. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is 30 years old and works as computer technician for a federal contractor. He graduated from high school in 1997, and college in 2003, earning a bachelor's degree. From May 2006 to May 2007, he attended a computer training course and received a certificate of completion. While attending college full-time and computer training, Applicant worked between 20 to 40 hours a week at various jobs to support himself. He was unemployed for a period of six months after leaving a job, until he started his current job in June 2008.²

Applicant was working in approximately 2004 or 2005, but was underemployed. He obtained a line of credit from a bank for \$15,000 to help him pay his expenses. He used this money over three to four years and made regular payments of approximately \$400 to \$500 on debt. In 2007, he borrowed another \$5,000 because he wanted to pay off his car loan, so he could trade the car in and buy another one. He thought he could afford the payments. He paid off his car loan and bought a 2002 used car for \$8,000. Shortly after this transaction, he lost his job. He had difficulty finding a job and received unemployment benefits. He stopped making payments on the two lines of credit. In November 2007, he contacted a debt consolidation company and set up a repayment plan for his two debts. It required him to make monthly payments of \$459. He began those payments in November 2007, and has not missed a payment to date.³ The company accumulates the payments and at a certain point determines that there is enough money in Applicant's account to contact his creditor and negotiate a settlement to pay the debt with a lump sum settlement payment. Applicant accumulated enough money to settle the debt in SOR ¶ 1.b. for \$2,229 in July 2009.⁴

¹ HE II.

² Tr. 34-40.

³ AE B, C, G, H, I.

⁴ Tr. 22-34, 41.

Applicant continues to make monthly payments to the debt consolidator and anticipates he will have accumulated enough money to settle the debt in SOR ¶ 1.a by the summer of 2010.⁵

Applicant took out student loans while attending college. He has consistently made his monthly payments and has not been delinquent in repaying them, even when unemployed. He has a car loan and has not missed any payments. He has no other delinquent debts. He has not had financial counseling because he could not afford to pay a required fee. He is current on his state and federal income taxes.⁶

Applicant's coworker testified on his behalf and considers him a polite and good person, who works hard. She has never had any problem with his reliability, trustworthiness, or judgment. She is aware that he is paying his delinquent debts.⁷

Applicant's roommate also testified on his behalf. He is a fraud investigator for the insurance industry and has served as a fraud investigator for the state, and also as a police officer. He owns the house where he and Applicant live. Applicant always pays his rent on time and has never been late. He is aware that Applicant takes every advantage he can to work overtime and believes he lives within his means, and does not buy frivolous things. He believes Applicant is committed to resolving his delinquent debts. He knows Applicant made some poor financial decisions in the past, but he is taking responsibility and has a solid plan for resolving his debts.⁸

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 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.

⁵ Tr. 32-33.

⁶ Tr. 43-47, 53-56.

⁷ Tr. 63-71.

⁸ Tr. 72-78; AE E.

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, an “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 clearance 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 the disqualifying conditions under AG ¶ 19 and especially considered:

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

(c) a history of not meeting financial obligations.

Applicant accumulated two debts that he was unable to pay. They became delinquent in 2007. I find there is sufficient evidence to raise the above disqualifying conditions.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. I have considered the following mitigating conditions 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; and

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

When Applicant was underemployed and unemployed, he knew he was having trouble making payments on the two debts so he sought assistance with a debt consolidation company. He did not neglect his debts, but set up a plan to settle them. He acted responsibly under the circumstances. He has been consistently making payments into the plan and has settled one of his delinquent debts. He continues to make regular payments into the plan and anticipates settling the remaining debt once he has accumulated enough money. Applicant had a period of underemployment and unemployment that affected his ability to pay his bills. He is current on all other obligations, including his student loans. Applicant acted responsibly and there are clear indications that he will resolve the remaining debt with his repayment plan. He works overtime when he can and does not spend his money frivolously. 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 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 experienced financial problems when he was underemployed and unemployed. Two of his debt obligations became delinquent. He contacted a debt consolidation company and set up a plan to resolve the debts. He has settled one debt and is saving through his plan to resolve the other debt. Applicant has acted responsibly under the circumstances. His co-worker and roommate are supportive of his request for a security clearance. They are aware of his financial issues. 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 under the guideline for 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.b:	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