



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----, -----) ISCR Case No. 09-00796
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Jeff Nagel, Esquire, Department Counsel
For Applicant: *Pro se*

October 29, 2010

Decision

WHITE, David M., Administrative Judge:

Applicant is responsible for delinquent debts that were largely caused by his former wife during their five-year marriage. He took over responsibility for the family finances in 2009, and implemented reasonable plans to resolve the debts. His former wife's failure to meet her financial obligations after their divorce caused his efforts in this regard to become untenable, and he ultimately had to file for bankruptcy relief. He has done so, and has both the means and every intention to remain solvent in the future. He is a responsible and trustworthy individual, and met his burden to mitigate security concerns arising from his financial situation. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

Applicant submitted a security clearance application (SF 86) on August 27, 2008. On October 30, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant, 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 *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* that went into effect within the Department of Defense on September 1, 2006.

Applicant answered the SOR in writing (AR) on November 21, 2009, and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on December 18, 2009, and the case was assigned to me on May 14, 2010. DOHA issued a Notice of Hearing on July 8, 2010, and I convened the hearing as scheduled on August 2, 2010. Due to unexplained mail delays, Applicant did not receive the Notice of Hearing until July 27, 2010. After an explanation of his right to at least 15 days of notice before his hearing, Applicant stated that he had sufficient time to prepare, wanted to proceed with the hearing as scheduled, and waived the 15-day notice period.¹ The Government offered exhibits (GE) 1 through 7, which were admitted without objection. Applicant offered exhibits (AE) A through E, which were admitted without objection, and testified on his own behalf. His supervisor also testified. I granted Applicant's request to leave the record open until August 16, 2010, for submission of additional evidence. DOHA received the transcript of the hearing (Tr.) on August 10, 2010. Applicant submitted no further evidence, and the record was closed as scheduled.

Findings of Fact

Applicant is a 33-year-old employee of a defense contractor, where he has worked since September 2002. Before that, he served three years of active duty in the Air Force. He has held a security clearance since 1999, without incident. He is recently divorced, with one child of whom he is the custodial parent.² In his response to the SOR, Applicant admitted the factual allegations in SOR ¶¶ 1.a through 1.d, with explanations.³ Applicant's admissions, including his statements in response to DOHA interrogatories,⁴ are incorporated in the following findings.

Applicant and his then-girlfriend broke up during the fall of 2004. His financial situation at the time was good, and he purchased a condominium to live in. He had also recently purchased a new car. In early 2005, his girlfriend told him that she was pregnant with his child, and they decided to marry so their child would have a two-parent home. They combined their finances, including some outstanding delinquencies of his wife's that he did not previously know about. Their son was born in July 2005. Since his wife was an accountant, he agreed to her request that she manage the family finances. Without his knowledge, she began to spend more than they earned on a regular basis, and neglected some of their bills. In 2006, Applicant was notified that his

¹Transcript (Tr.) 11-15.

²Tr. 7-8, 31-32; GE 1; AE C.

³AR.

⁴GE 3.

mortgage was six months delinquent and the lender was considering foreclosure. He withdrew \$15,000 from his 401K retirement savings to bring the mortgage and some other debts current, but others remained outstanding.⁵

In 2007, Applicant's wife injured her back during a fall in a parking lot. This injury caused her to miss a significant amount of work, and resulted in substantial medical bills including, eventually, for neck surgery in October 2008. Applicant's wife remained in charge of their finances and told him she was taking care of the bills. However, they fell behind on his mortgage again, as well as other bills. In September 2008, Applicant entered into an agreement with his mortgage lender to repay the arrearage by increasing his monthly payment by \$402 per month for three years. He made those payments as long as he could, while also actively negotiating a loan modification agreement that was successfully finalized in April 2010.⁶

Applicant's wife began abusing prescription pain medication after her injury, further worsening their financial problems. In May 2009, he finally informed her that he was going to take over the family finances, and he entered into a debt management plan with an accredited, non-profit, reputable consumer credit counseling service. The plan called for him to pay \$403 per month to the service, who would then negotiate repayment arrangements with his creditors. The plan called for resolution of almost \$12,000 in delinquent debt, including those alleged in SOR ¶¶ 1.a, 1.c, and 1.d, by July 2012. Applicant paid a total of \$4,498 into the debt management plan, including \$50 for a financial education course he was required to attend as part of the program. The company kept about \$310 in fees, and paid the remaining funds to his various creditors. Applicant's mortgage loan was not included in this plan.⁷

Applicant's wife did not react well to his decision to take over their finances. Among other things, in early June 2009, she smashed in the windshield of his car and assaulted him. She locked their son in the house and left for periods of time. On June 19, 2009, Applicant was granted a domestic violence protective order against his wife, which also granted him temporary custody of their son. He filed for divorce on November 6, 2009. The divorce became final on May 17, 2010, and Applicant was awarded custody of their son and child support from his wife in the amount of \$597 per month beginning November 1, 2009. Applicant was awarded possession of his home, together with the mortgage debt thereon, as well as his car and its associated loan. He was also awarded a portion of the couple's remaining debt, including one half of their federal income tax delinquencies from 2007 through 2009 of \$11,657. This tax debt was incurred due to penalties for early withdrawals from retirement plans and under withholding by Applicant's wife to acquire additional funds during those years. Applicant has entered into an agreed repayment plan with the Internal Revenue Service (IRS) and pays \$161 per month toward this tax debt, which he intends to increase when his son

⁵Tr. 48-51; AE A..

⁶Tr. 48-54, 64-68; AR; AE A; AE B.

⁷Tr. 58-64, 71; AR; AE A.

enters school in the fall of 2010 causing his \$810 monthly child care expenses to be cut by at least \$400 per month.⁸

Applicant's wife has not paid him any of the court-ordered child support to date. On July 26, 2010, the court modified its withholding order to \$826 per month to begin making up the arrearage. Despite the fact that she continues working, she also failed to make her required payments on the loan for the car that was awarded to her in their divorce. The car was subsequently repossessed in June 2010, and auctioned off leaving a deficiency balance of \$11,000 for which Applicant is jointly liable to the creditor.⁹

Applicant has long resisted advice from others that he seek bankruptcy relief, because he wanted to repay his debts. He initially consulted a bankruptcy attorney in May 2009, but decided to enter the debt management plan instead for that reason. However, with his wife's ongoing refusal to pay child support or the other marital debts for which she was awarded responsibility in the divorce decree, Applicant realized he had no other reasonable option. He met with the bankruptcy attorney again on May 14, 2010, and decided to file for Chapter 7 relief. On July 29, 2010, he finished paying the legal fees, and the attorney filed the bankruptcy case for him on that date. Applicant has about \$36,000 in unsecured debt that will be discharged, leaving him with only his renegotiated mortgage payments, the remaining payments on his own car loan, his agreed IRS tax repayments, and his regular living expenses going forward. His current budget reflects a \$207 monthly surplus, not including the pending \$400 reduction in childcare expenses, and not including any income from child support that he is due.¹⁰

Applicant's supervisor testified and wrote a letter describing his extremely high opinion of Applicant's dedication, reliability, trustworthiness, maturity, and ability to follow and enforce security protocols. The supervisor, a retired master sergeant, has known and supervised Applicant for eleven years while working in a precision measurement equipment laboratory.¹¹ Applicant received an early promotion from E-3 to E-4 while in the Air Force, and has been selected as Employee of the Quarter and Employee of the Month several times. He was extremely credible, organized, and well informed about his financial situation during the hearing. Department Counsel fairly commented that, "he's acted very, very reasonably [and] done whatever is in his power to mitigate and extenuate the Government's concerns."¹²

⁸Tr. 56-58, 68-76, 82-83, 92-98.

⁹Tr. 68-76; AE C.

¹⁰Tr. 76-83; AR; GE 3; AE D.

¹¹Tr. 38-46; AE E.

¹²Tr. 87, 91.

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions (DCs) and mitigating conditions (MCs), which are to be used 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 AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶¶ 2(a) and 2(c), the entire process is a conscientious scrutiny of applicable guidelines in the context 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 the 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, "[t]he applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision." Section 7 of Executive Order 10865 provides: "[a]ny determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned."

A person applying for access to classified information seeks to enter 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.

Analysis

Guideline F, Financial Considerations

The security concerns relating to the guideline for financial considerations are 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 evidence raised security concerns under two Guideline F DCs, as set forth in AG ¶ 19(a) "inability or unwillingness to satisfy debts"; and ¶ 19(c) "a history of not meeting financial obligations." Applicant's history of delinquent debt stretches back more than four years, and continues, in part, at present. The burden accordingly shifts to Applicant to rebut, explain, extenuate or mitigate these facts and the resulting security concerns.

The guideline includes four conditions in AG ¶ 20 that could mitigate security concerns arising from Applicant's financial problems:

- (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.

Applicant's delinquent indebtedness is ongoing, but arose due to his marriage to, and trust in, a woman who badly mismanaged their family finances despite being an accountant. The problems were further exacerbated by her addiction to prescription pain medication. Appellant made reasonable efforts to convince her to be more responsible while trying to keep their marriage together. He finally took personal control

of their finances, causing her to assault and leave him. He divorced her, and has surplus income again. He therefore established substantial mitigation under AG ¶ 20(a) because his debts arose under circumstances that are unlikely to recur and do not cast doubt on Applicant's current reliability, trustworthiness, or good judgment.

Partial mitigation under AG ¶ 20(b) was also established. Applicant's delinquencies were initially incurred by his wife without his knowledge, and worsened by her 2007 injury and her resulting inability to work, surgery, and drug addiction. He finally divorced her in order to begin correcting the problems, but her failure to pay court-ordered child support or her allocated portion of their marital debt made his continuing effort to repay his creditors through his debt management plan impossible. Applicant has acted responsibly throughout these problems, and has filed for bankruptcy relief as a last resort to resolve his unsecured debts. He successfully renegotiated his mortgage loan terms, and is fully current in paying his regular living expenses. He is also complying with his IRS repayment agreement, and plans to substantially increase those monthly payments once his child care expenses permit. Thus, additional mitigation was established under AG ¶¶ 20(c) and (d).

As the Appeal Board has ruled concerning the successful mitigation of security concerns arising from financial considerations, "[a]n applicant is not required to show that [he] has completely paid off [his] indebtedness, only that [he] has established a reasonable plan to resolve [his] debts and has 'taken significant actions to implement that plan.'"¹³ This applicant has established and substantially implemented an effective plan to resolve the debts that could formerly have given rise to security concerns. He also demonstrated his commitment to avoiding future financial problems, and a solvent budget that will permit him to do so.

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.

¹³ISCR Case No. 06-12930 at 2 (App. Bd. Mar. 17, 2008) (quoting ISCR Case No. 04-09684 at 2-3 (App. Bd. Jul. 6, 2006)).

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 pertinent facts and circumstances surrounding this case. Applicant incurred a moderate amount of delinquent debt, primarily because of his wife's mismanagement of their family finances while he trusted her to handle them. Once he determined that she was not going to become responsible, he took positive and effective actions to get the problems under control and address the debts. Due to his wife's continuing failure to meet her obligations, Applicant's attempt to repay his creditors through a reasonable debt management plan became impossible. He accordingly followed the advice of his attorney and filed for Chapter 7 bankruptcy relief. He also successfully renegotiated his mortgage loan and an IRS repayment plan, both of which he does, and will continue to be able to, pay on time. He is a mature and responsible individual, and recurrence of financial problems is quite unlikely. His proactive efforts to achieve resolution of his debts have eliminated any ongoing potential for pressure, coercion, exploitation, or duress.

Overall, the record evidence creates substantial confidence as to Applicant's present eligibility and suitability for a security clearance. He fully met his burden to mitigate the security concerns arising from his financial considerations.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F: FOR APPLICANT

Subparagraphs 1.a through 1.d: 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.

DAVID M. WHITE
Administrative Judge