



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



In the matter of:)
)
) ISCR Case No. 09-01015
SSN:)
)
Applicant for Security Clearance)

Appearances

For Government: D. Michael Lyles, Esquire, Department Counsel
For Applicant: *Pro se*

March 19, 2010

Decision

MASON, Paul J., Administrative Judge:

Based on a review of the case file, pleadings, exhibits, and testimony, Applicant's clearance is granted.

Statement of the Case

Applicant submitted his Electronic Questionnaire for Investigations Processing (SCA, GE 1) on October 14, 2008. On April 20, 2009, Applicant provided interrogatory answers to his debt delinquencies. On June 4, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing security concerns under financial considerations (Guideline F). The action was taken pursuant to 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 made effective within the Department of Defense for SORs issued on or after September 1, 2006.

Applicant's undated answer to the SOR was received by DOHA on July 23, 2009. DOHA issued a Notice of Hearing on August 31, 2009, for a hearing on September 15, 2009. The hearing was held as scheduled. At the hearing, four exhibits (GE 1 through 4) were admitted in evidence without objection to support the government's case. Applicant testified and submitted six exhibits (AE A through AE, AE G and AE H).¹ The record remained open until September 30, 2009 (Tr. 51), to allow Applicant an opportunity to submit additional evidence. Applicant submitted three exhibits (AE I through AE K). Those exhibits include documentation from the life insurance company processing his 401(k) loan application, a federal credit union statement dated September 26, 2009, and Appellant's unsubstantiated statement that he paid off certain creditors and his truck. DOHA received the transcript on September 22, 2009. The record closed on October 1, 2009.

Findings of Fact

The SOR alleges financial considerations (Guideline F), based on seven debts. The delinquent debts consist of two telephone accounts, two medical accounts, two credit card accounts, and a mobile home repossession. The total for the six small past due accounts (SOR 1.a. through 1.f.) is \$3,678, and the larger repossession account (SOR 1.g.) is \$33,173. The debts became delinquent between November 2005 and October 2008. Applicant admitted all the debts.

Applicant is 37 years old. He has two daughters by his former wife who he married in July 1998 and divorced in September 2006. He pays \$760 a month in child support for his two daughters (Tr. 32). He lives with his fiance and her four children. She receives child support and Applicant supplements her support (*Id.*). His fiance is actively searching for employment (*Id.*).

Several months after high school, Applicant joined the United States Marine Corps (USMC) in October 1991 and received an honorable discharge in October 2004 (AE H). In his 13 years of service, Applicant was assigned to duty locations all over the world (Tr. 22). He was a drill instructor for several years, training approximately 90 recruits at periodic intervals to become better Marines (*Id.*). Applicant's last duty assignment from 2001 to 2004, was guarding nuclear weapons at the same military facility where he has been employed for the past five years (Tr. 23). His commanding officer (CO) for the last three years of Applicant's military service provided a letter of recommendation in December 2004 extolling Applicant's service. The CO also signed Applicant's honorable discharge.

¹ AE F is not in the record because it was not admitted in evidence. AE F, a position statement of Applicant's career in the United States Marine Corps (USMC) and with his current employer, was not admitted in evidence. The Government objected to the admission of the one-page exhibit because of the potential redundancy of the exhibit with Applicant's impending testimony (Tr. 14). I sustained the objection, and advised Applicant he could testify from the document when he presented his case. (Tr. 14-15, 22).

Applicant developed financial problems by allowing his former wife to handle the finances (Tr. 30). His financial difficulties became worse when his former wife decided she did not want to live in their mobile home (SOR 1.g.). In hopes of keeping the marriage intact, Applicant rented a house and surrendered the mobile home to the dealer in 2006 (Tr. 28, 36, 38). The mobile home account (SOR 1.g.), which became delinquent in November 2005, was treated as a repossession by the dealer, sold at auction, and Applicant was held responsible for the \$33,173 balance (GE 4).

Applicant stopped paying the other debts listed in the SOR because he did not have the money, having moved several times around the time of the divorce (Tr. 29). He also admitted he did not leave forwarding addresses for his creditors to keep in contact with him (*Id.*; GE 3 at 1).

In his interrogatory answers submitted on April 20, 2009, Applicant acknowledged the overdue debts listed in the SOR, and that he wanted to pay them (GE 2). He also acknowledged an Internal Revenue Service (IRS) debt that he indicated had been paid. That debt does not appear in the SOR or credit reports. In his SCA, Applicant disclosed the lien had been levied in July 2006, and he paid the lien off through a wage garnishment (GE 1 at 30).

On September 9, 2009, Applicant applied for a \$7,000 loan from his 401 (k) plan (administered by a life insurance company) to pay off six of the seven debts listed in the SOR, and his truck (AE G). At the hearing, he confirmed his plan to obtain the loan (Tr. 18, 31), and to hire an attorney to settle the mobile home account identified in SOR 1.g. (Tr. 25-26). The application was held up because the life insurance company stated that he had to sign a Personal Loan and Spousal Consent Request Form confirming he was no longer married (Tr. 27). The finance company then directed him to return the form to receive the loan (*Id.*). Applicant was advised by the company the form was in the mail, and he was waiting to receive it (*Id.*)

On September 21, 2009, Applicant signed the Personal Loan and Spousal Consent Request Form indicating he was not married (AE I). He had the form notarized. The form verifies the loan amount and also indicates the loan figures were valid until October 10, 2009 (*Id.*). The federal credit union statement summary shows that as of September 26, 2009, Applicant had two loans that had been closed out in a normal fashion (AE J). In AE K, Applicant provided an unsubstantiated statement indicating he settled the accounts identified in SOR 1.a., 1.c., 1.d., and 1.f., and also paid off a \$4,000 balance on a truck. The statement shows the total amount of funds used to settle the four listed accounts and one unlisted account is \$5,497 (*Id.*).

Having had a chance to listen to Applicant's testimony, observe his demeanor as he testified, and weigh and balance his testimony with the other record exhibits, I find Applicant's testimony to be credible and worthy of belief. He realizes he must pay his debts, and I find he has a plan to pay his debts. The only item missing is independent evidence establishing that these debts were paid.

Character Evidence

Applicant provided several character references. The lieutenant colonel, who was the CO during Applicant's military service between 2001 and his discharge in October 2004, supplied a glowing endorsement of Appellant, particularly his expertise as an artisan (AE A). According to the CO, Applicant personally designed long-lasting fighting models to protect and preserve the security of strategic weapons (*Id.*). Applicant's contributions as the Hazard Materials Officer was officially recognized by the Inspector General of a component of the Marines. The CO praised Applicant's ability to transform misfits into productive and goal-oriented Marines (*Id.*)

Applicant's coworker of four years believes Applicant is reliable and trustworthy, and also a special friend (AE B). The shop lead has known Applicant for more than four years and considers him a responsible team leader. The deputy facilities manager has known Applicant for four years and respects the dedication and productivity in Applicant's job performance (AE D).

The morale, welfare, and recreation marketing director met Applicant in 2001 and worked with him for the next three years. Applicant was always ready to accommodate or assist in any way (AE E). After Applicant was discharged in 2004, he continued to help the morale recreation department. Applicant has demonstrated his reliability and dependability to the director (*Id.*)

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the revised adjudicative guidelines (AG). Each guideline lists potentially disqualifying conditions and mitigating conditions, which are used in evaluating an applicant's eligibility for access to classified information. These guidelines are flexible rules of law that must take into consideration the complexities of human behavior.

The administrative judge's ultimate adjudicative goal is to reach a fair and impartial decision that is based on common sense. The decision should also include a careful, thorough evaluation of a number of variables known as the "whole person concept." Finally, 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. Reasonable 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 sensible, 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.I.14., the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.I.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.

Analysis

Financial Considerations

AG ¶ 18. The Concern. "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. Compulsive gambling is a concern as it may lead to financial crimes including espionage. Affluence that cannot be explained by known sources of income is also a security concern. It may indicate proceeds from financially profitable criminal acts."

There are two disqualifying conditions under AG ¶ 19 that must be considered. AG ¶ 19(a) (*inability or unwillingness to satisfy debts*) is applicable because Applicant owes more than \$36,000 to seven creditors and is unable to pay the debt. AG ¶ 19(c) (*a history not meeting financial obligations*) also applies as Applicant has accumulated seven delinquent debts since November 2005.

The first four mitigating conditions are potentially applicable. 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 reliability, trustworthiness, and good judgment*) does not apply due the recency of a few of the delinquent accounts.

Applicant receives some mitigation under AG ¶ 20(b) (*the conditions that resulted in the financial problem were largely beyond the person's control and the individual acted responsibly under the circumstances*). It appears that Applicant went the "extra mile" to accommodate his former wife. In trying to save the marriage, he surrendered the mobile home and rented a house. Applicant showed poor judgment by not posting his forwarding addresses for creditors to maintain contact. He showed even more poor judgment by not taking any action to address his debts until September 2009. Even though Applicant did not act "responsibly under the circumstances," he is entitled to some mitigation under AG ¶ 20(b).

Applicant has had no financial counseling as defined by AG ¶ 20(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*). Even though there is

no independent evidence of payment of any of the creditors, I conclude Applicant received his loan as planned. Acquiring the funds to repay delinquent debts provides some evidence that Applicant is trying to gain control over his delinquencies.

AG ¶ 20(d) (*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*) affords Applicant limited mitigation. It is clear that Applicant applied for the \$7,000 loan and returned the follow-up forms to receive the loan. I find he has presented sufficient evidence of obtaining a loan. I am also confident he will pay all of his delinquent debts.

Whole Person Concept

I have examined the evidence with the disqualifying and mitigating conditions in my ultimate finding against Applicant under the financial guideline. I have also weighed the circumstances within the context of nine variables known as the whole person concept. In evaluating the relevance of an individual's conduct, the administrative judge should consider the following factors:

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 the participation was 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.

I have considered Applicant's 13-year military career. I have considered the former CO's favorable remarks about Applicant's last tour of duty between 2001 and 2004. I have also considered the consistently good reviews Applicant has received regarding his job performance over the last five years since his discharge. Applicant credibly testified that he did not address his financial problems over the years because of his frequent residential moves and the fact that he ran out of money. I find that Applicant has taken the necessary steps to supply himself with sufficient funds to pay his debts. I am also confident he will take the appropriate legal action to resolve his debt for the mobile home. Accordingly, under the specific circumstances of this case, the positive character evidence from Applicant's former CO and his current coworkers and supervisors, together with his credible testimony, the financial considerations guideline is found in Applicant's favor.

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 (Financial Considerations, Guideline F): FOR APPLICANT

Subparagraph 1.a.	For Applicant
Subparagraph 1.b.	For Applicant
Subparagraph 1.c.	For Applicant
Subparagraph 1.d.	For Applicant
Subparagraph 1.e.	For Applicant
Subparagraph 1.f.	For Applicant
Subparagraph 1.g.	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. Clearance is granted.

Paul J. Mason
Administrative Judge