



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 09-01103
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Stephanie Hess, Esquire, Department Counsel
For Applicant: *Pro Se*

December 18, 2009

Decision

LYNCH, Noreen A., Administrative Judge:

Applicant answered and signed his Security Clearance Application (SF-86) on July 28, 2008. On July 23, 2009, the Defense Office of Hearings and Appeals (DOHA) issued 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.

On August 26, 2009, Applicant answered the SOR and requested a hearing. I received the case on September 18, 2009. On October 1, 2009, a Notice of Hearing was issued scheduling the hearing for October 30, 2009. The hearing was convened as scheduled. Department Counsel submitted five exhibits (GE) 1-5, without objection. Applicant introduced four exhibits (AE) A-D, without objection. The documents were admitted into the record. Applicant testified on his own behalf. I left the record open until

November 6, 2009, so that Applicant could submit additional information. He submitted an additional packet which was marked as AE E, without objection. The transcript (Tr.) was received on November 9, 2009. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

Findings of Fact

In his Answer to the SOR, Applicant denied the factual allegations in ¶¶ 1.a through 1.p of the SOR with explanation.

Applicant is a 57-year-old employee of a defense contractor. He served in the United States Air Force from 1970 until 1991, when he retired (AE E). Since April 2008, Applicant has been employed as a Facility Manager with his current employer (Tr.18). He has held a top secret clearance since 1988 (Tr. 19). Applicant has more than 30 years of employment in his field. He is married and has four stepchildren (GE 1).

In 2005, Hurricane Katrina devastated the area where Applicant worked as a project manager. For two years, Applicant stayed with his 68 employees who lost almost everything. As a result of the devastation, his wife, who is older and has some health issues, left the area and moved to another state. During those two years (until June 2007) he provided for himself and his wife living in another state (Tr. 21). This created financial difficulties above and beyond the havoc that the hurricane created. His wife was retired and living on a fixed income. Applicant was supporting her and paying household expenses for two residences.

Applicant used a credit card to help pay for expenses. He was not able to pay his bills in a timely manner. Prior to July 2005, Applicant had no difficulties with his financial situation. He had no debt and was earning a good salary (Tr. 23). His credit was good.

Applicant's mother and father died during this very difficult time. His mother died right before Katrina. His father died in 2007. He explained that he was taught how to be responsible and was not happy with the situation that occurred with his finances.

Applicant was candid explaining the horror that occurred after the hurricane. He tried to help his employees, three of whom had nowhere to live. The interruption of daily life was incredible. He expended most of his energy trying to stabilize his employees and to help the work project. He arranged for donations from his family around the country for some employees in an amount of \$2,000 (Tr. 44). He attempted to carry on a daily existence despite the living nightmare. He admitted that some mail that he received was thrown away. He had a difficult time paying attention to bills in the mail when he did receive them (Tr. 20). He does not believe this excuses him, but he was concerned about the lives of the people around him (Tr. 20). The priority was to survive. When his wife left, he was distraught and even threw away mail. His accounts became delinquent.

In 2007, Applicant's wife sold the house she was living in. When Applicant moved to be with her, they rented an apartment. Applicant found employment when he relocated to be with his wife, but took a \$30,000 pay cut. It was not until 2008, when he obtained his current employment, that he recovered the reduction in wages. In 2008, Applicant's wife required surgery.

The SOR alleges delinquent debts totaling approximately \$79,000 (GE 5). Applicant contacted Consumer Credit Counseling in April 2008, immediately after he was hired by his current employer. He attended financial counseling and created a budget. He had already contacted the counseling organization earlier but did not have the money to implement the payment plan (Tr. 26). He chose this organization because they do not require an exorbitant up-front fee (Tr. 27). He met with them and arranged a payment plan to cover his debts. In June 2008, the first funds were automatically transferred from his checking account (AE C). This agency does not negotiate away interest and late fees, thus the amount of money owed does not reflect the original amount of debt that Applicant owed to creditors. Applicant has paid two other debts that are not listed on the SOR. The debts were for a line of credit from a credit union. He paid approximately \$4,000 (Tr. 28). He also paid \$4,500 for federal tax due from tax year 2005.

The current status of Applicant's delinquent debts is as follows: Applicant pays \$1,610 a month through the Consumer Credit Counseling payment plan for accounts listed in the SOR (AE C). Applicant pays a monthly amount of \$315 for the account listed in SOR ¶ 1.c. The balance is approximately \$11,000 down \$4,000. The accounts listed in SOR ¶ 1.e, 1.f, 1.m and 1.n are paid in full. Three additional accounts will be paid in full by the end of December 2009. Applicant will apply the extra money to other accounts (Tr. 38). Applicant has paid more than half the original delinquent amount alleged in the SOR. He estimates that he owes \$36,000 in delinquent debt.

Applicant's net monthly income is approximately \$5,943, which includes his military retirement income (GE 2). He is current with his monthly expenses of \$3,425 (AE D). He has no credit cards (Tr. 31). Applicant has a retirement account and saves an amount of money each month. He does not have a car loan.

Applicant received many decorations and awards during his 21 year career in the military. His awards and medals include an Air Force Commendation with an Oak Leaf Cluster, Air Force Achievement Medals, Air Force Good Conduct Medal with four Oak Leaf Clusters and an Air Force Longevity Service Medal with four Oak Leaf Clusters. He earned an Air Force Overseas Service Short Tour Ribbon with one Oak Leaf Cluster. He retired as a Master Sergeant in 1991.

Applicant is described by his supervisor as an outstanding and dedicated employee (AE E). In 2008, he received an award and Certificate of Appreciation for outstanding job performance (AE E).

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 required 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, 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^o is potentially disqualifying. Similarly under AG & 19(c), a history of not meeting financial obligations^o may raise security concerns. Applicant accumulated delinquent debts on many accounts for several years. He owed approximately \$79,000. He did not make any payments in 2005 or 2006. His credit reports confirm the debts. The evidence is sufficient to raise these disqualifying conditions.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Under AG ¶ 20(a), the concern may be mitigated where 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.^o Applicant had no difficulty with his finances until Hurricane Katrina devastated the state in summer 2005. He attempted to help his employees through this horrific time. He did not make payments on his bills. He stayed in the state to help with the project. His wife left the state and he had additional expenses. His judgment may have been clouded with the terrible waste and devastation that occurred. This was not typical behavior for this career military man. He has addressed the delinquent debts and did not shirk his responsibility when he was able to concentrate on life in 2007. His lower pay caused some delay in his payment plan, but he has been consistent with his payments since April 2008. His judgment and reliability are not at issue at this time. This mitigating condition applies.

Under AG & 20(b), it may be mitigating where 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.^o This mitigating condition applies in part based on the reasoning above. In addition, his wife was ill and this caused an additional hardship.

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 is potentially mitigating under AG & 20(c). Similarly, AG & 20(d) applies where the evidence shows the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts. Applicant received financial counseling, and created a budget. He began his repayment plan and has an organized plan to resolve the remaining debts. He has paid more than half of the original debt. His efforts are sufficient to carry his burden in this case. I conclude these 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 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 served in the military for 21 years and received many awards and decorations. He has worked for defense contractors for many years. He has held a top secret security clearance since 1988 without any problem. He is rated as outstanding by his employer. He served his employer during Katrina and remained at the site after the hurricane to help. He had personal hardship at the time as well. He was very distressed at the overall situation and tried to handle things as best as he could given the horrible situation.

Applicant obtained counseling and started to repay his creditors prior to the SOR. He has consistently paid a monthly amount of \$1,610 since obtaining his current position. Several accounts are already paid in full. He is saving money. He is responsible and has the ability to pay his debts.

Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I

conclude Applicant has mitigated the security concerns arising under the financial considerations security guideline.

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.p.	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.

NOREEN A. LYNCH
Administrative Judge