



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ISCR Case No. 09-01254
)
)
Applicant for Security Clearance)

For Government: Nicole Noel, Esquire, Department Counsel
For Applicant: *Pro Se*

December 16, 2009

Decision

DAM, Shari, Administrative Judge:

Based upon a review of the record evidence as a whole, eligibility for access to classified information is denied.

On August 25, 2008, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP). On July 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 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 August 20, 2009, and requested a hearing before an administrative judge. On September 10, 2009, DOHA assigned the

case to me. On September 21, 2009, DOHA issued a Notice of Hearing, setting the case for October 15, 2009. The case was heard as scheduled. Department Counsel offered Exhibits (GE) 1 through 6 into evidence without objection. Applicant testified and called one witness. The record remained open until October 30, 2009, to give Applicant an opportunity to submit information. Applicant timely submitted three exhibits that I marked as Applicant Exhibits (AE) A through C and admitted into evidence. DOHA received the hearing transcript on October 24, 2009.

Findings of Fact

In his Answer, Applicant admitted all of the allegations contained in Paragraph 1 of the SOR. Those admissions are set forth herein.

Applicant is 37 years old and married for 17 years. They have three children, ages 17, 15, and 7. He has an 18-year old daughter from a previous relationship, whom he no longer supports. He has worked at various jobs during and since completing high school. From May 2002 to June 2008, he was a business system analyst for a bank. In June 2008, he began a position as a quality assurance engineer with a federal contractor. In his first yearly performance evaluation, he received an outstanding overall rating from his supervisor. (AE C.)

Beginning in 2004, Applicant and his family suffered several personal losses. His brother died in March 2004. His father died in September 2004. His oldest brother died in October 2005, and his nephew died in January 2007. In January 2008, his father-in-law died. Over the course of those four years, he financially assisted his parents and family. As a consequence, he extinguished \$1,100 of his savings, withdrew money from his retirement funds, and began accumulating debt because he could not afford to assist with other family member's bills and pay his immediate family's obligations. (Tr. 54, 57.)

Applicant's annual income for 2004 was about \$38,000. In 2005 and 2006, he earned \$40,000. In 2007, he earned \$41,000. In 2008, his salary increased to \$48,000. From 2004 until 2008, he estimated that he spent well over \$15,000 of his income on funeral and living expenses for other family members. (Tr. 60-63.) Applicant testified that in July 2008, he contacted a bankruptcy attorney about filing a Chapter 13 petition in order to resolve his delinquent debts. The attorney told him that he did not earn enough money to establish a repayment plan as required under a Chapter 13.

In August 2008, Applicant completed an e-QIP and disclosed that he had delinquent debts. In October 2008, a government investigator interviewed him about his debts and gave him a copy of his September 2008 credit bureau report (CBR). (GE 3, 4.) In his May 2009 response to government Interrogatories, he acknowledged that he owed 15 delinquent debts and explained in a letter that the debts were the result of family deaths and additional financial burdens that he assumed. (GE 5)

In May 2009, he contacted another bankruptcy lawyer who confirmed the previous attorney's conclusion and recommended that he file a Chapter 7 bankruptcy. (GE 5 at 23; AE B.) In order to file a Chapter 7 bankruptcy petition, the lawyer requires a retainer of \$1,386. Applicant has sent the lawyer \$600, in \$50 increments, and intends to complete the payments in the next couple months. (Tr. 34.) In the interim, the lawyer advised him not to pay any of his delinquent debts because they will be included in the bankruptcy. (Tr. 40.) He will continue paying his mortgage. (Tr. 36, 40.) He has not obtained credit counseling to date, but will participate in it as part of the bankruptcy proceeding. (Tr.38.)

The July 2009 SOR alleged that Applicant accumulated approximately \$40,000 in delinquent debts owed to 15 creditors. The accounts underlying the debts were opened between April 2005 and June 2007, and became delinquent between March 2007 and March 2009. Applicant acknowledged that none of them are paid or resolved. Of that debt, Applicant owes \$13,193 (¶ 1.l) on a 2006 automobile repossession. (Tr. 48.) The \$7,294 debt listed in ¶ 1.m, and the \$6,256 debt listed in ¶ 1.n, are related to funeral expenses for his father and brother. (Tr. 49-50.) The remaining debt is attributable to items he purchased for his immediate family and for other family members.

According to his October 2009 budget, Applicant's net monthly income is \$4,204, and his expenses are \$3,840, leaving him a remainder of \$363 at the end of the month to cover any other expenses. Included in his expenses are his mortgage, car loan, an orthodontic payment, and two other loans, one of which is related to the repayment of monies he withdrew from his 401(k). (Tr. 57.) Applicant had good credit until late 2006 when he started to fall behind in his financial obligations as a result of the family problems.¹ He emphasized that he was able to purchase his first house in November 2004 and his second home in September 2006.

Applicant's wife testified. She is carefully monitoring and managing the family finances. In order to reduce their expenses, she negotiated with their bank a reduction of their monthly mortgage payment. (Tr. 60-61.) They are no longer providing support to family members.

Applicant understands "what it is to be responsible, it's just that sometimes the events are out of your control." (Tr. 69.) Although he has reduced his financial assistance to his family, he does believe that it is important to help with one's family problems. (*Id.*) He is regaining control of his finances and will resolve the delinquent debts when the Chapter 7 bankruptcy is completed.

¹According to the September 2008 credit bureau report, Applicant was paying many of his debts on time and had closed several accounts after paying them. (GE 3)

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 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.

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.

According to 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 to obtain 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 an 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."

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.

AG ¶ 19 describes two conditions that could raise a security concern and may be disqualifying in this case:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant's delinquent debt began accumulating between March 2007 and March 2009. He has been unable to manage or resolve his debts to date. The evidence is sufficient to raise these potentially disqualifying conditions.

After the government produced substantial evidence of those disqualifications, the burden shifted to Applicant to produce evidence and prove a mitigating condition. AG ¶ 20 provides three conditions that could mitigate security concerns raised under this guideline:

- (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; and
- (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 debts began accumulating March 2007 and continued into March 2009, as a consequence of five deaths in the family and his family's need for financial

assistance. Those circumstances were outside of his control. In July 2008, he sought legal advice for help in establishing a repayment plan for the debts. Because he did not earn sufficient income to file a Chapter 13 bankruptcy, he was advised to file a Chapter 7 bankruptcy. For the next year, he did not take any other action to responsibly manage or address his debts as they were accumulating; I find AG ¶ 20(b) has limited application in this case.

Applicant has not obtained credit counseling and there are no clear indications that his delinquent debts are being resolved or paid. AG ¶ 20(c) cannot apply. In May 2007, he retained a bankruptcy attorney to file a Chapter 7 bankruptcy as soon as he completes payments on a retainer. He admitted that he has not attempted to resolve or pay any of the debts since learning of the government's concerns in October 2008, other than to decide to file bankruptcy in the future. AG ¶ 20(d) does not 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). They include the following:

- (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 include 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 37-year-old married man, who began working for a federal contractor in June 2008. His supervisor gave him an outstanding performance rating for his first annual review. From 2004 until January 2008, he lost five family members. Out of a sense of family responsibility, he assumed funeral and living expenses for other family members, resulting in significant financial obligations that he could not afford and did not manage. After consulting an attorney in July 2008 and learning that his budget was insufficient to accommodate a Chapter 13 bankruptcy, he did not take any action to resolve or pay his debts (even the small debt of \$134 alleged in ¶ 1.a) until May 2009 when he spoke to another lawyer. He has now decided to file a Chapter 7 bankruptcy and discharge \$40,000 of delinquent debts. He

began making payments on a retainer to a lawyer, which must be paid in order to initiate the proceeding.

While I appreciate Applicant's loyalty and sense of responsibility to his family, I have concerns about his decision to provide a large amount of financial support that he could not afford and which he now intends to discharge through a bankruptcy. I am aware that up to late 2006, he had a good credit rating and is managing his current financial obligations. However, it is too early at this time to determine that he has responsibly resolved his delinquent debts or established a consistent track record of paying his financial obligations. Overall, the record evidence leaves me with questions as to Applicant's eligibility and suitability for a security clearance at this time. For all these reasons, I conclude Applicant did not mitigate the security concerns arising under 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:	AGAINST APPLICANT
Subparagraphs 1.a through 1.o:	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

SHARI DAM
Administrative Judge