



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



In the matter of:)	
)	
-----)	ISCR Case No. 09-01561
SSN: -----)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Gregg A. Cervi, Esquire, Department Counsel

For Applicant: *Pro se*

April 28, 2010

DECISION

ROSS, Wilford H., Administrative Judge:

Applicant submitted his Questionnaire for National Security Positions (Standard Form 86), on November 6, 2008. (Item 5.) On November 2, 2009, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing the 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 (AG) effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant submitted an undated Answer to the SOR, and requested that a decision be made without a hearing. Department Counsel submitted a File of Relevant Material (FORM) to Applicant on February 22, 2010. Applicant received the FORM on March 2, 2010, and was given 30 days to submit any additional information. Applicant submitted additional information on March 12, 2010. Department Counsel did not object to my considering this information, and it is admitted into the record as Applicant Exhibit

A. The case was assigned to me on March 26, 2010. Based upon a review of the written record, eligibility for access to classified information is granted.

Findings of Fact

Applicant is 46, and married. He is employed by a defense contractor and seeks to obtain a security clearance in connection with his employment.

Guideline F, Financial Considerations

The Government alleges that Applicant is ineligible for clearance because he is financially overextended and therefore at risk of having to engage in illegal acts to generate funds. Applicant admits all the factual allegations in the SOR. Those admissions are hereby deemed findings of fact.

1.a. Applicant admitted that he was indebted to a collection agency in the amount of \$338. He submitted documentary evidence from the creditor stating that this account was settled in November 2009. (Item 4 at 2-3.)

1.b. Applicant admitted that he owed \$3,450 for a past due account. He submitted evidence showing that he has a payment arrangement with this creditor, and that he has been making consistent monthly payments to the creditor in fulfillment of that arrangement. This debt has been reduced to \$2,100. (Item 4 at 4-5; Applicant Exhibit A at 2.)

1.c. Applicant admitted that he was indebted to a collection agency in the amount of \$268. He submitted documentary evidence from the creditor stating that this account was settled in September 2009. (Item 4 at 6-7.)

1.d. Applicant admitted that he was indebted to a collection agency in the amount of \$962. He submitted evidence showing that he has a payment arrangement with this creditor, and that he has been making consistent monthly payments to the creditor in fulfillment of that arrangement. Applicant states in Applicant Exhibit A that this item has now been paid in full. (Item 4 at 8-9.)

1.e. Applicant admitted that he was indebted to a collection agency in the amount of \$298. He submitted documentary evidence from the creditor stating that this account was settled in June 2009. (Item 4 at 10-11.)

1.f. Applicant admitted that he was indebted to a collection agency in the amount of \$275. He submitted documentary evidence stating that this account was settled in November 2009. (Item 4 at 12-13.)

1.g. Applicant admitted that he was indebted to a home builder for a deficiency balance on a foreclosed mortgage account in the amount of \$20,3100. This company was the defendant in a class action lawsuit concerning its actions with regards to people

like the Applicant. Applicant is a Class Member. The “Final Order & Judgement Approving Settlement, Certifying Settlement Class, and Dismissing Action” states, in part:

12. Defendant [home builder] shall (a) forego all collection efforts and waive its right to collect from and sue Class Members for deficiency balances on the Accounts, and refrain from assigning, selling, transferring, or otherwise attempting to collect from Class Members for the deficiency balances, (b) request the Credit Reporting Agencies to delete the trade line associated with the Account of each Class Member for whom sufficient identifying information is contained in Defendant’s readily searchable computer media, to the extent such trade line is present, and cease all credit reporting on the Accounts of Class Members to the Credit Reporting Agencies. (Item 9 at 4-5.)

This debt has been resolved by this law suit. (Item 4 at 14-22, Item 6 at 6-7, and Item 9.) (See Footnote 8 in FORM.)

Mitigation

Applicant’s current financial situation is stable. His financial difficulties arose primarily because of unemployment issues. (Item 6 at 4-7.) In his response to Financial Interrogatories, he submitted documentary evidence that he had resolved several additional debts beyond those listed in the SOR. (Item 6 at 12-17, 23, and 26.) He also submits that he is “attending free counseling [*sic*] and debt management education” classes. (Applicant Exhibit A at 2.)

Applicant submitted letters of recommendation from his current supervisor, and a past supervisor. Both state that he has kept his employer fully informed about his financial situation, that he is an asset to the employer, and recommend that he receive a security clearance. (Applicant Exhibit A at 4-5.)

Policies

Security clearance decisions are not made in a vacuum. 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 and mitigating conditions, which are to be used as appropriate 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 over-arching 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. In addition, the administrative judge may also rely on his own common sense, as well as his knowledge of the law, human nature and the ways of the world, in making a reasoned 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. Security clearance decisions include, by necessity, consideration of the possible risk that 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.

Finally, as emphasized in Section 7 of Executive Order 10865, “Any determination under this order . . . 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.” 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" is potentially disqualifying. Similarly under AG ¶ 19(c), "a history of not meeting financial obligations" may raise security concerns. Applicant, by his own admission, had over \$25,000 in past due debts, all of which have been due and owing for several years. The evidence is sufficient to raise these potentially disqualifying conditions.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Under AG ¶ 20(a), the disqualifying condition 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." In addition, AG ¶ 20(b) states that the disqualifying conditions may be mitigated 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." As stated above, Applicant's financial difficulties arose primarily because of unemployment issues. He documented serious and long-standing attempts to resolve his past due debts. The record shows that he has paid all but one of his legitimate debts, and that the remaining debt is not being collected by the creditor due to a law suit. At all times he has acted responsibly. These two mitigating conditions apply.

Applicant has initiated a good-faith effort to pay off his creditors. As stated above, all but one have been paid. Indeed, he paid several debts before issuance of the SOR. Accordingly, AG ¶ 20(d) is applicable.

Applicant's current financial situation is stable. He is able to pay his current indebtedness in a timely manner. I find that "there are clear indications that the problem is being resolved or is under control," as required by AG ¶ 20(c).

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 relevant circumstances. 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. 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.

I considered the potentially disqualifying and mitigating conditions in light of all the relevant facts and circumstances surrounding this case. Applicant had some financial problems, but his current financial condition is stable. Under AG ¶ 2(a)(2), I have considered the facts of the Applicant's debt history. He has worked hard over the past year to resolve all of his indebtedness. Based on the record, I find that there have been permanent behavioral changes under AG ¶ 2(a)(6). Accordingly, I find that there is little to no potential for pressure, coercion, exploitation, or duress (AG ¶ 2(a)(8)); and that there is no likelihood of recurrence (AG ¶ 2(a)(9)).

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 has mitigated the security concerns arising from his financial situation.

On balance, I conclude that Applicant has successfully overcome the Government's case opposing his request for a security clearance. Accordingly, the evidence supports granting his request for a security clearance.

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.g.: For Applicant

Conclusion

In light of all of the circumstances presented by the record, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

WILFORD H. ROSS
Administrative Judge