



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ISCR Case No. 09-02134
)
)
Applicant for Security Clearance)

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

November 23, 2010

Decision

DAM, Shari, Administrative Judge:

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

On April 19, 2010, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) 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 that were effective in the Department of Defense on September 1, 2006.

Applicant answered the SOR in writing on June 13, 2009, and requested a hearing before an administrative judge. On July 26, 2010, DOHA assigned the case to another administrative judge and on August 9, 2010, reassigned the case to me. On September 7, 2010, DOHA issued a Notice of Hearing, setting the case for September

22, 2010. The case was heard as scheduled. Department Counsel offered Government Exhibits (GE) 1 through 11 into evidence without objection. Applicant testified. He offered Applicant Exhibits (AE) A through K into evidence without objection. DOHA received the hearing transcript (Tr.) on September 30, 2010. The record remained open until October 18, 2010, in order to provide Applicant time to submit additional documents. On October 18, 2010, Applicant submitted a letter and Exhibits L through V that were admitted into the record without objection from Department Counsel.

Findings of Fact

In his Answer to the SOR, Applicant admitted all allegations contained in Paragraph 1 of the SOR, except those contained in Paragraphs 1.h, 1.i, 1.j, 1.k, 1.r, and 1.t, which he denied and provided explanations and documents. His admissions are incorporated herein.

Applicant is 48 years old and married. He and his wife have three children. The youngest child still lives with them. His wife has three children from a former marriage. Applicant earned a bachelor's degree in electrical engineering in 1987. Since graduating from college, he has been employed most of the time, except from December 2005 to April 2006. (Tr. 33.) In June 2007, he started his current position as a test engineer with a defense contractor. He recently received a raise and envisions a strong future with the company. (Tr. 70.)

Applicant's financial problems began in 2001 to 2002, when he and his wife became embroiled in an expensive custody contest with his wife's former husband, who abducted his stepsons. In 2001, his wife also experienced severe cervical problems. (Tr. 59.) In 2003, his wife had a heart attack that further exacerbated their financial situation, as they incurred additional medical bills. (Tr. 35.) While accruing that debt, Applicant contacted their insurance company regarding payment of outstanding medical bills. He also spoke with the creditor who held an automobile loan to inform the creditor of their difficulties. (Tr. 36.) Prior to 2001, he did not have financial problems and managed his bills on his salary. (Tr. 59.) Sometime after these difficulties started, Applicant and his wife separated for a period of time in 2006, requiring him to pay child support and her living expenses. (Tr. 75.) They subsequently reconciled. (Tr. 68.)

In 2007, Applicant's home state filed a tax lien for 2004 income taxes. Applicant asserted that he timely filed his tax return and paid his taxes, but apparently the state lost his return. He paid the outstanding \$3,146 lien and it was released. (AE G.) He also paid an outstanding medical debt of \$557. (Ex. J.) These debts were not listed in the SOR.

Based on credit bureau reports from 2008 and 2009, the SOR alleged that Applicant accumulated 22 delinquent debts between 2004 and 2007, totaling \$19,767. Thirteen of those debts are medical debts. The status of each debt listed in the SOR is set out in AE A and documented by Applicant's exhibits. A summary of the delinquent debts' status is as follows:

1. Thirteen debts, totaling \$2,019, are paid. They are listed in SOR ¶¶ 1.a, 1.c, 1.f, 1.g, 1.h, 1.i, 1.j, 1.m, 1.n, 1.p, 1.q, 1.r, and 1.t. Eleven of them are medical debts that were incurred in 2007 and 2008. (AE E, L, I, F, N, and D.)
2. Applicant is making monthly payments of \$40 and \$75 on two debts that are listed in SOR ¶¶ 1.b and 1.o, respectively. They total \$1,836. (Tr. 38, 47; AE L, M.)
3. Applicant disputed the \$938 credit card debt listed in SOR ¶ 1.k because it was not his debt. It was deleted from his credit report. (Tr. 44; AE C.)
4. Applicant has not paid six debts that total \$14,974 and are referenced in SOR ¶¶ 1.d, 1.e, 1.l, 1.s, and 1.u. The debt listed in ¶ 1.l for \$5,845 is owed to a creditor for an unpaid balance for his wife's automobile loan that they could not afford after they separated and was subsequently repossessed. (Tr. 76.)

Applicant submitted a budget. His net monthly income is \$6,161. His expenses are \$5,673, including payments on two repayment plans, and leaves about \$488 at the end of the month for other expenses. (AE O.) He is not incurring additional debt. (Tr. 69.) He fully intends to pay all of his debts and "eventually get everything resolved." (Tr. 95.) He has been paying the smaller debts first, and will soon be able to address larger debts. (Tr. 91.)

Applicant submitted performance evaluations over the course of his career. His most recent appraisal from June 2009 to June 2010, rated him as performing "satisfactorily" and "exceeding expectations" in different categories. (AE S.) An evaluation from 2004 noted that Applicant "Consistently Meets Performance Expectations." (AE P.)

Applicant testified credibly. He was organized and well informed about his financial situation during the hearing. He stated he would never jeopardize the nation's security in exchange for money. (Tr. 92.)

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines (AG) 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 the applicant or proven by Department Counsel and has the ultimate burden of persuasion to obtaining a favorable clearance decision.” 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.”

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.

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 notes two disqualifying conditions that could potentially raise security concerns in this case:

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

The evidence raised security concerns under the above disqualifying conditions. Applicant's history of accruing delinquent debt began in 2004. He was unable to pay his debts in the past, some of which remain unpaid. The burden accordingly shifts to Applicant to rebut, explain, extenuate, or mitigate these facts and the resulting security concerns.

The guideline includes conditions in AG ¶ 20 that could mitigate financial security concerns:

- (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;
- (d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts;
- (e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue; and,
- (f) the affluence resulted from a legal source of income.

AG ¶ 20(a) has some application. Applicant began accumulating delinquent debt between 2004 and 2006, as a result of his wife's 2001 and 2003 medical issues, a 2002 child custody suit, and a 2006 marital separation. Although some of his indebtedness is ongoing, the circumstances underlying the debts are unlikely to recur because he and his wife have reconciled and the child custody issues are resolved, and do not cast doubt on his current reliability, trustworthiness, or good judgment. Similarly, those

circumstances were beyond his control. He testified that he attempted to responsibly manage some of his medical debts and the outstanding automobile loan while they were accumulating, which evidence is sufficient to establish a partial application of AG ¶ 20(b).

Applicant presented persuasive evidence to trigger the application of AG ¶ 20(c) and AG ¶ 20(d). Applicant did not obtain credit counseling, but he submitted evidence that his financial situation is slowly coming under control. He established a workable budget to resolve delinquent debts. He made a good-faith effort to pay 13 of the 22 delinquent debts and negotiated repayment plans for two debts. Although he has not been financially able to pay the remaining six debts that total about \$15,000, he intends to pay them as money becomes available. He has not incurred additional debt and paid two non-listed SOR debts.

Applicant presented evidence that he successfully disputed one debt that was not his debt, resulting in its deletion from his credit report and triggering the application of AG ¶ 20(e). There is no evidence to support the application of AG ¶ 20(f).

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 48-year-old man, who submitted documentation of a successful employment history over the years. He did not experience financial problems until 2001, when family circumstances arose that lead to the accumulation of debt beginning in 2004. To-date, he has paid and resolved \$4,793 of the \$19,767 SOR-listed debt and paid \$3,700 to resolve two debts not listed. At this time, he has demonstrated his commitment to avoiding future financial problems and a budget that will permit him to resolve the remaining \$15,000 of debt, albeit slowly. His

candor regarding his financial situation and proactive efforts to achieve resolution of the debts has eliminated any ongoing potential for pressure, coercion, exploitation, or duress.

Given Applicant's credible testimony, budget, and awareness of the negative effect that additional delinquent debts may potentially have on his employment, similar financial problems are unlikely to recur. The Appeal Board has addressed a key element in the whole-person analysis in financial cases stating:

In evaluating Guideline F cases, the Board has previously noted that the concept of 'meaningful track record' necessarily includes evidence of actual debt reduction through payment of debts.' However, an applicant is not required, as a matter of law, to establish that he has paid off each and every debt listed in the SOR. All that is required is that an applicant demonstrates that he has '. . . established a plan to resolve his financial problems and taken significant actions to implement that plan.' The Judge can reasonably consider the entirety of an applicant's financial situation and his actions in evaluating the extent to which that applicant's plan for the reduction of his outstanding indebtedness is credible and realistic. See Directive ¶ E2.2 (a) ('Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination.') There is no requirement that a plan provide for payments on all outstanding debts simultaneously. Rather, a reasonable plan (and concomitant conduct) may provide for the payment of such debts one at a time. Likewise, there is no requirement that the first debts actually paid in furtherance of a reasonable debt plan be the ones listed in the SOR.¹

Overall, the record evidence leaves me without questions as to Applicant's 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 section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	FOR APPLICANT
Subparagraphs 1.a through 1.u:	For Applicant

¹ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) (internal citations omitted).

Conclusion

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

SHARI DAM
Administrative Judge