



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



In the matter of:)
)
) ISCR Case No. 09-02259
 SSN:)
)
 Applicant for Security Clearance)

Appearances

For Government: John B. Glendon, Esquire, Department Counsel
For Applicant: *Pro se*

February 24, 2010

Decision

METZ, John Grattan, Jr., Administrative Judge:

On 1 July 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.¹ Applicant answered the SOR 13 July 2009, requesting a hearing. DOHA assigned the case to me 4 September 2009, and I convened a hearing 7 October 2009. DOHA received the transcript (Tr.) 14 October 2009.

Findings of Fact

Applicant admitted the SOR allegations. He is a 63-year-old access control manager employed by a defense contractor since November 2008. He has not previously held an industrial clearance.

¹DOHA acted under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1990), as amended; Department of Defense (DoD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive), and the revised adjudicative guidelines (RAG) effective within DoD on September 1, 2006.

The SOR alleges, government exhibits confirm, and Applicant admits, 21 delinquent accounts totaling over \$52,000. Applicant has retained counsel to resolve these debts through a chapter 7 bankruptcy discharge. Filing the petition has been delayed as Applicant gathered the necessary documentation. Filing has also been delayed because Applicant's wife has health problems that limit her mobility, and bankruptcy law requires her presence in court when the debts are discharged. Applicant paid the filing fees in April 2009 and anticipated filing the bankruptcy petition by the end of October 2009.

Applicant served in the U.S. Marine Corps for over 20 years, retiring in 1985 as a Master Sergeant (paygrade E-8). During his career, he received many military awards. He served as the Officer-in-Charge of the Marine Security Guard Detachment in a U.S. Embassy. His duties there included not only the overall security of the embassy and its personnel, but the personal security of visiting officials from the highest level of the U.S. Government and foreign dignitaries. For most of his career, he had access to classified information at the top secret level.

After retiring from the Marine Corps, Applicant returned to school and obtained the necessary certifications to become a mortgage broker. Between 1985 and 2001, he worked for several companies processing mortgage applications and arranging loans for home buyers. Those former employers praise the quality of his work, and his honesty and integrity.

In 2001, Applicant and his wife started their own mortgage company, and for several years the business was quite successful. However, the business collapsed with the collapse of the mortgage market in 2006-2007. Applicant refinanced his house and took out a second mortgage to try and save his business, without success. He fell behind on his mortgages, as well on the credit accounts he used to manage his cash flow. Applicant closed only three loans in early 2008, and by the time he got his current job in November 2008, he had been effectively unemployed for 11 months.

After getting this job in November 2008, Applicant made double payments on his mortgages to bring them current, which he accomplished in September 2009. However, he recognized that the most sensible course of action on his remaining debt was chapter 7 bankruptcy.

Policies

The Revised Adjudicative Guidelines (RAG) list factors to be considered in evaluating an Applicant's suitability for access to classified information. Administrative judges must assess both disqualifying and mitigating conditions under each issue fairly raised by the facts and circumstances presented. Each decision must also reflect a fair and impartial commonsense consideration of the whole-person factors listed in RAG ¶ 2(a). The presence or absence of a disqualifying or mitigating condition is not determinative for or against Applicant. However, specific adjudicative guidelines should be followed where a case can be measured against them, as they represent policy

guidance governing the grant or denial of access to classified information. Considering the SOR allegations and the evidence as a whole, the relevant, applicable, adjudicative guideline is Guideline F (Financial Considerations).

Security clearance decisions resolve whether it is clearly consistent with the national interest to grant or continue an Applicant's security clearance. The government must prove, by something less than a preponderance of the evidence, controverted facts alleged in the SOR. If it does so, it establishes a *prima facie* case against access to classified information. Applicant must then refute, extenuate, or mitigate the government's case. Because no one has a right to a security clearance, the Applicant bears a heavy burden of persuasion.

Persons with access to classified information enter into a fiduciary relationship with the government based on trust and confidence. Therefore, the government has a compelling interest in ensuring each Applicant possesses the requisite judgement, reliability, and trustworthiness of those who must protect national interests as their own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an Applicant's suitability for access in favor of the government.

Analysis

The government established a case for disqualification under Guideline F. Applicant owes an enormous amount of money that he cannot realistically repay. However, this inability, not unwillingness, to pay does not constitute a history of financial problems.² Applicant's financial problems have been confined to a short period beginning in 2006.

Applicant satisfies important aspects of the mitigating factors for financial concerns. While his financial difficulties were both recent and multiple, they were confined to a relatively short period. They certainly occurred under circumstances not likely to recur.³ The debts were largely due to circumstances beyond his control, but he acted responsibly in addressing his debts. Under the circumstances of this case, redeeming his past-due mortgages and addressing his unsecured debt through Chapter 7 bankruptcy is the responsible course of action.⁴ Similarly, Applicant will undergo credit counseling as part of the bankruptcy process and his current personal finances are under control.⁵

²¶ 19.(a) inability or unwillingness to satisfy debts; (c) a history of not meeting financial obligations.

³¶ 20.(a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur .

⁴¶ 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.

⁵¶ 20.(c) the person has received or is receiving counseling for the problem and there are clear indications that the problem is being resolved or is under control.

The real security concern in this case boils down to a whole-person issue. Despite the size of the debt, the circumstances surrounding it are such that there is no reasonable risk that Applicant would resort to illegal activity to obtain funds to pay it. Further, Applicant has a nearly 40-year track record of performing his fiduciary duties, to his country and his clients, in an exemplary manner. I conclude Guideline F for Applicant.

Formal Findings

Paragraph 1. Guideline F: FOR APPLICANT

Subparagraph a-u: For Applicant

Conclusion

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance granted.

JOHN GRATTAN METZ, JR
Administrative Judge