



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



In the matter of:)	
)	
-----)	ISCR Case No. 09-03057
SSN: -----)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Pamela C. Benson, Esquire, Department Counsel
For Applicant: *Pro se*

August 19, 2010

Decision

HOWE, Philip S., Administrative Judge:

On November 7, 2008, Applicant submitted his Security Clearance Application (SF 86). He re-signed it on January 28, 2010. On September 30, 2009, 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 (AG) effective on September 1, 2006.

Applicant acknowledged receipt of the SOR on October 9, 2009. He answered the SOR in writing on November 16, 2009, and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on January 28, 2010, and I received the case assignment on January 29, 2010. DOHA issued a Notice of Hearing on January 29, 2010, and I convened the hearing as scheduled on February 23, 2010. The Government offered Exhibits 1 through 7, which were received without

objection. Applicant testified and did not submit any exhibits at the hearing. DOHA received the transcript of the hearing (Tr.) on March 5, 2010. I granted Applicant's request to keep the record open until April 1, 2010, to submit additional matters. On April 1, 2010, he submitted Exhibits A to L, without objection. The record closed on April 1, 2010. 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 admitted the factual allegations in ¶ 1 of the SOR with explanations. He also provided additional information to support his request for eligibility for a security clearance.

Applicant is 42 years old and unmarried. He has worked for the same defense contractor for the past 17 years as a software engineer. Applicant has held a security clearance during his employment. No security violations occurred during that time. Applicant earns an annual six-figure salary for his software work. He owns his own home. (Tr. 13-18; Exhibit 1)

Applicant has 12 delinquent debts listed in the SOR. The amount owed is about \$114,000, including the mortgage value of his house that was once in foreclosure. Without the house debt the amount owed is about \$70,000. He stated he plans to pay his debts. Applicant explained he put his work first and did not timely address his delinquent debts. He also suffers from diabetes and depression. He has not sought treatment for his depression. He admitted he procrastinates about his financial obligations. Applicant has not obtained financial counseling. (Tr. 23, 35-40, 52, 74)

The current status of Applicant's debts is as follows:

1. Applicant owes a car rental company \$2,822 on a judgment obtained after the rented car was damaged in an accident (Subparagraph 1.a). Applicant allowed a friend to drive the car and he was involved in an accident. Applicant pays \$250 every two months on this debt. It is being resolved. (Tr. 19, 20; Exhibits 2-7, C, G)
2. Applicant owes \$19,890 on a credit card debt (Subparagraph 1.b). No payments have been made and the debt is unresolved. (Tr. 20, 51; Exhibits 2-7)
3. Applicant owes \$577 on a satellite television service for failing to return the box used for transmission (Subparagraph 1.c). This debt is resolved by Applicant's payment on April 1, 2010, of a settlement amount of \$288.26. (Tr. 21; Exhibits 2-7, A, C)
4. Applicant owed \$179 on a telephone bill (Subparagraph 1.d). The debt was paid. (Tr. 21; Exhibits 2-7, A)

5. Applicant owed \$250 on a medical debt (Subparagraph 1.e). He claims it is the same debt as listed in Subparagraph 1.h for \$250. He paid \$257 on April 1, 2010, to resolve this debt that has been in collection since August 2004. The debt is resolved. (Tr. 21, 25; Exhibits 2-7, A, C)
6. Applicant owed a grocery store \$94 on a check returned because of insufficient money in the account (Subparagraph 1. f). This debt was paid April 1, 2010. The debt is resolved. (Tr. 22; Exhibits 2-7, C)
7. Applicant's mortgage was being foreclosed when the SOR was written (Subparagraph 1.g). He is current in the payments. The arrearage payments are resolved. (Tr. 23-25; Exhibits 2-7, F)
8. Applicant owed \$131 on a medical debt (Subparagraph 1.i). He paid this account and another one in April 2010. This debt is resolved. (Tr. 25; Exhibits 2-7, C, E)
9. Applicant owed his local library \$84 for a book not returned (Subparagraph 1.j). Applicant paid this debt on April 1, 2010. The debt is resolved. (Tr. 26; Exhibits 2-7, C)
10. Applicant owes a bank \$8,122 on a credit card debt (Subparagraph 1.k). He has not yet paid this debt and is not certain the basis for the debt. He will pay it when he researches the amount and the creditor if it is a valid debt, otherwise he will dispute it. The debt is currently unresolved. (Tr. 26-29; Exhibits 2-7)
11. Applicant owed \$109 to another grocery store chain for a check returned by the bank for insufficient funds (Subparagraph 1.l). This debt was paid April 1, 2010. The debt is resolved. (Tr. 29; Exhibits 2-7, B)
12. Applicant failed to file his 2006 and 2007 state and federal income tax forms (Subparagraphs 1.m to 1.p). Applicant thought he filed them but refiled them this year. Each return shows a refund is due to Applicant. The failure to file the income tax returns is resolved. (Tr. 29, 30; Exhibits 2-7, H-K)

Applicant admits he lost control of his finances over time. He took \$40,000 from his retirement account to pay his taxes in years past. He had a tax garnishment from 2003 to 2005 that he paid. He has a current garnishment of his wages to pay a credit card debt not listed in the SOR. A judgment for the debt exists, and the debt was about \$60,000. He has been garnished for that debt for the past two years. Each garnishment took about 25% of his monthly income to repay the debts.

Applicant lived in a hotel for the past six months because a water pipe broke in his house about a year ago and he procrastinated in having it repaired. Before moving to the hotel, he showered at work and lived at his house. Consequently, he spent \$1,000 monthly on hotel costs coupled with \$500 monthly on food because he eats at restaurants most of the time. He moved out of that hotel on April 1, 2010. Applicant is also repaying a loan from his retirement account taken to buy a new car. He pays \$100 monthly on that loan. Applicant does not have credit cards. His current monthly income is about \$820 after his mortgage of \$1,250 and other expenses are paid. (Tr. 35-48; Exhibit D)

Policies

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 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.

Under 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 as to obtaining 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 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 at AG ¶ 19 contains nine disqualifying conditions that could raise security concerns. Two conditions are applicable to the facts found in this case:

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

Applicant accumulated \$114,000 in delinquent debt from 2004 to the present time that remains unpaid. Applicant has 12 delinquent debts listed in the SOR.

The guideline in AG ¶ 20 contains six conditions that could mitigate security concerns arising from financial difficulties. Two conditions may be applicable:

- (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 is paying his debts in an orderly manner currently. He ceased procrastinating about them and focused on making regular payments. Therefore, there

are clear indications from the evidence he presented that the financial problems are under control and being resolved. AG ¶ 20 (c) has partial application.

Applicant was able to focus his efforts after the hearing to pay all but two large debts. At the same time he is paying a garnishment. Based on his current progress in repaying his delinquent debts, it is likely Applicant will have those two debts paid soon. He intends to pay them. He paid 10 debts and filed his tax returns. The refunds, after deductions for penalties, should allow him to repay a substantial part of the remaining debt. AG ¶ 20 (d) applies because of Applicant's good-faith efforts to repay his delinquent debts.

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 an 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.

AG ¶ 2(c) requires each case must be judged on its own merits. 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 is an industrious person at work, who previously allowed his personal finances to languish,. He suffers from depression and diabetes, which conditions have in all probability played a role in his financial delinquencies. While those conditions do not excuse his tardy financial repayment plans on his delinquent debts, they do help to provide background for his financial situation. Applicant acknowledged that he is responsible for paying his debts. He has stopped spending as he did in the past on credit card purchases. There seems little likelihood for recurrence of future over-spending, as he is aware of the negative effect additional financial problems could have on his employment. He has paid or is paying his delinquent debts and resolved all tax matters, so pressure and coercion are not possible. Applicant resolved all but two of the delinquent debts listed in the SOR. He has about \$28,000 remaining on two credit cards to investigate and pay.

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 mitigated 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 to 1.p: For Applicant

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.

PHILIP S. HOWE
Administrative Judge