



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ISCR Case No. 09-03111
)
)
Applicant for Security Clearance)

For Government: Stephanie C. Hess, Esquire, Department Counsel
For Applicant: *Pro se*

April 26, 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 November 13, 2008, Applicant submitted an Electronic Questionnaire for Investigation Processing (e-QIP). On October 22, 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 Adjudicative Guidelines (AG) effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant answered the SOR in writing on November 20, 2009, and requested a hearing before an administrative judge. On February 2, 2010, DOHA assigned the case to me. On February 5, 2010, DOHA issued a Notice of Hearing, setting the case for

February 24, 2010. The case was heard as scheduled. Department Counsel offered Government Exhibits (GE) 1 through 4 into evidence without objection. Applicant testified. He offered Applicant Exhibits A through D into evidence without objection. AE A is Applicant's Amended Answer. DOHA received the hearing transcript on March 4, 2010

Findings of Fact

In his Answer to the SOR, Applicant admitted the allegations contained in ¶¶ 1.a. through 1.d, 1.f, 1.i, and 1.k through 1.m. He denied the allegations contained in ¶¶ 1.e, 1.g, 1.h, 1.j, and 1.n.

Applicant is 36 years old and married to his second wife. He was married to his first wife from 1993 until 1997. He has a 14-year-old daughter from that marriage. He has two children, ages 11 and 7, from another relationship. He served in the U.S. Army from 1991 to 1996. He was an E-4 at the time of his honorable discharge. He held a Top Secret security clearance while in the Army. (GE 1 at 40.) He recently completed six hours of college credit.

In October 2008, Applicant began working for a defense contractor as a data analyst in the health system that serves the Air Force. From 1998 to October 2008, he held various jobs, and was also unemployed from July 2005 to October 2005. (GE 1.) Periodically, he has worked both as a full-time and part-time certified scuba diving instructor.

According to the credit bureaus reports (CBR), Applicant began accumulating delinquent debts in April 2002 up to January 2009. He attributed them to periods of underemployment and medical bills for his children when he did not have insurance. (Tr. at 50.) In a June 2009 Financial Statement that he submitted with Interrogatories, he stated that "I am paying child support for 3 children and this job is allowing me to reestablish myself financially. I am in the process of paying off my creditors a little at a time." (GE 2 at 61.)

Based on credit bureau reports (CBR) from December 2008, February 2009, and September 2009, the SOR alleged that Applicant accumulated 14 delinquent debts totaling \$14,790. The status of each debt is as follows:

1. (¶ 1.a) This \$5,359 debt arose after Applicant started an on-line shopping site. After working in the business for one month, he decided that he did not want to continue the business and returned all supplies. He attempted to settle the matter with the creditor and does not believe that he owes said amount. The correct amount is \$4,098 as alleged in ¶ 1.n, which is a duplicate debt. (Tr. at 22-25.) It is unresolved.
2. (¶ 1.b) The \$85 debt is owed to a storage company since March 2007. He contacted the creditor for an invoice three weeks ago, in order to pay the

debt. He has not received a response. He stated that he intended to follow up with the creditor. (Tr. at 26.) The debt is unresolved.

3. (¶ 1.c) The \$428 debt is owed to a cellular phone company. He called the company to set up an installment payment plan. The company demanded payment in full. He intends to begin sending small payments in the future. (Tr. at 27.) The debt is unresolved.
4. (¶ 1.d) The \$539 debt is owed to a bank for a duplicate salary payment he received from a previous employer. In November 2009, he worked out a settlement for \$269, consisting of six monthly payments of \$44. He has not sent a payment to date. (AE C; Tr. at 28, 42) The debt is unresolved.
5. (¶ 1.e) The \$316 debt is owed to a credit card company. He negotiated a settlement for \$221. He agreed to make monthly payments to pay off the \$114 balance, and transfer the remaining \$107 balance to a new credit card that he will promptly pay. He sent the creditor \$40. (AE B; Tr. at 29.) The debt is being resolved.
6. (¶ 1.f) The \$481 debt is owed to a credit card company. He contacted the creditor about making a future payment arrangement within 30 days. (Tr. at 30.) The debt is unresolved.
7. (¶ 1.g) Applicant denied the \$419 debt owed to a former apartment complex. He lived there but claims he paid the debt in 2001 or 2002. The new owner of the complex asserted that it did not have a record of the payment. He disputed the debt in late 2009 and it was re-affirmed on the February 2009 CBR. (GE 2 at 63.) However, it does not appear on the August 2009 CBR. (GE 3 at 63; GE 3; Tr. at 30-32.) The debt appears to be resolved.
8. (¶ 1.h) The \$423 debt is owed to a jewelry company. Applicant claims he never purchased jewelry from that store and disputed the debt with the credit bureau. The debt was re-affirmed on the February 2009 CBR, but does not appear on an October 2009 CBR.¹ (Tr. at 32-36.) The debt is unresolved.
9. (¶ 1.i) The \$117 debt is owed for medical services he received. He made a \$10 payment on the bill. (Tr. at 36-37.) The debt is being resolved.
10. (¶ 1.j) The \$1,317 debt was owed to a cellular company. He contacted the company which agreed to bi-monthly payments of \$50 that he will begin within 60 days. (Tr. at 37-38.) The debt is unresolved.

¹Applicant testified that he would submit the October 2009 CBR post-hearing. (Tr. at 36.) He did not do so.

11. (¶ 1.k) The \$420 debt is owed to a creditor for a cash advance. He contacted the company to set up a \$40 monthly repayment plan that he will begin within 60 days. The debt is unresolved.
12. (¶ 1.l) The \$492 debt is owed to a bank for unpaid checks that his former wife wrote. He will pay this debt through monthly payments after paying other debts. (Tr. at 39-41.) The debt is unresolved.
13. (¶ 1.m) The \$301 debt is owed to a bank for unpaid checks written by his former wife. He intends to pay them after he pays other debts. (Tr. at 40.) The debt is unresolved.
14. (¶ 1.n) This \$4,098 debt is a duplicate of the debt alleged in ¶ 1.a. (GE 4 at 9.)

In summary, Applicant owes approximately \$9,341 in delinquent debt. He contacted a credit counseling company about resolving them. After a free consultation, he decided that it would be more prudent to allocate \$300 per month toward the reduction of his debts rather than pay the company \$350 monthly to contact the creditors, negotiate a settlement, and manage his accounts. (Tr. at 43.) Since then, he spoke to his creditors about establishing monthly payment plans. (Tr. at 45.) He made payments on two debts. He intends to make small monthly payments on one or two debts at a time, until they are all paid. He does not earn enough money to pay all of them immediately. (Tr. at 45.)

Applicant submitted a budget in May 2009. His net monthly income was \$1,721 after standard deductions and child support payments of \$450 were deducted for his three children. (Tr. at 46.) The child support is being paid through a garnishment. He believes he owes about \$14,000 in child support arrears for his oldest child, which is being resolved through the garnishment. (Tr. at 47.) After paying monthly expenses, he has about \$300 remaining at the end of the month. (Tr. at 42.) His friend is establishing a spreadsheet for his expenses and debts, so that he can slowly manage and pay off his debts.² (Tr. at 52.) His current wife has lupus and is unable to work. He is not incurring additional expenses and does not use credit cards. (Tr. at 49.)

Applicant's supervisor wrote a letter on his behalf. He stated that Applicant is one of his "top performers in both quality and quantity of work completed. Other than a singular episode with his finances, in which, he took action to correct, [Applicant] is a great worker and an essential member of this unit." (AE D.)

²Applicant testified that he would submit a copy of the spreadsheet post-hearing. (Tr. at 52.) He did not do so.

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 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 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."

Analysis

Guideline F, Financial Considerations

The security concern 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 potentially 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 began accumulating delinquent debt in April 2002, which he has been unwilling or unable to resolve until recently. The evidence is sufficient to raise these potentially disqualifying conditions.

After the Government produced substantial evidence of those two disqualifications, the burden shifted to Applicant to produce evidence and prove a mitigating condition. The guideline includes five conditions that could mitigate security concerns arising from financial difficulties. Under AG ¶ 20(a), the disqualifying condition may be mitigated when "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." Applicant's financial worries arose in 2002 and continue to date. Hence, the problems are ongoing. This condition does not apply.

Under AG ¶ 20(b), it may be mitigating 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." Some of Applicant's debt accumulated as a result of medical bills and insufficient income for a number of years. Those circumstances were outside of his control. Because he did not present any evidence indicating that he attempted to manage his debts until 2009, this mitigating condition has limited application.

Evidence that "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" is potentially mitigating under AG ¶ 20(c). Similarly, AG ¶ 20(d) applies where the evidence shows "the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts." Applicant did not participate in financial credit counseling, but he did meet with a credit counselor for a free consultation. After that meeting, he

decided to personally contact his creditors and negotiate small monthly payments. To date, he has made payments on two debts and will begin repaying other debts in the near future, as money is available. There is some evidence to demonstrate that his financial obligations are slowly coming under control and that he is making an effort to repay creditors. These two mitigating conditions have partial application.

In late 2008, Applicant disputed debts listed on his credit bureau reports. As a result, two creditors were deleted from his February 2009 CBR. There is some evidence to support the application of AG ¶ 20(e) that provides mitigation when “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.”

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) 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 36-year-old man, who honorably served in the Army for five years and held a Top Secret security clearance. His current supervisor considers him to be an asset to his department. In 2002, Applicant began experiencing financial difficulties that resulted in the accumulation of delinquent debt that he did not begin to address until 2009. Some of those difficulties related to medical expenses and others occurred as a result of insufficient income over the years. Since obtaining a position with a defense contractor in October 2008, his financial situation has slowly improved. In 2009, he started taking steps to resolve his financial obligations by contacting his creditors. The delinquent debts alleged on the SOR total less than \$10,000 and are manageable on his limited income. He understands the importance of paying off these debts and the employment

