



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 09-03613
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Eric Borgstrom, Esquire, Department Counsel
For Applicant: *Pro se*

January 20, 2010

Decision

CURRY, Marc E., Administrative Judge:

Applicant mitigated the government’s financial considerations security concern. Clearance is granted.

On July 23, 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 revised adjudicative guidelines (AG) promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant answered the SOR on March 1, 2009, admitting the allegations set forth in SOR subparagraphs 1.a, 1d, and 1.e, and denying the allegations set forth in SOR subparagraphs 1.b, 1.c, 1.f, and 1.g. He requested a hearing, and the case was assigned to me on August 31, 2009. On September 28, 2009, a Notice of Hearing was

issued scheduling the case for October 9, 2009. The day of the hearing, Applicant moved for a continuance because of problems retaining an attorney. Department Counsel did not object, and I granted Applicant's motion, rescheduling the hearing for November 9, 2009. The hearing was held as rescheduled. I received nine government exhibits, identified as Government Exhibits (GE) 1-9, and eight Applicant exhibits, identified as Applicant's Exhibits (AE) A-H. Also, I received Applicant's testimony. At Applicant's request, I left the record open at the conclusion of the hearing to allow him to submit additional exhibits. Within the time allotted, he submitted four additional exhibits that I marked and received as Applicant's AE I through L. The transcript was received on November 17, 2009.

Preliminary Ruling

Department Counsel stipulated that Applicant satisfied the delinquent debts listed in SOR subparagraphs 1.a, 1.e, and 1.f (Tr. 8).

Findings of Fact

Applicant is a 51-year-old married man with three children, ages 25, 22, and 17. He earned a GED in 1975 and is a certified electrician (Tr. 16). He has been self-employed since 1987 (Tr. 16). For the past four years, he has worked as a subcontractor for a defense contractor. Applicant installs video-teleconferencing equipment in hotel conference rooms that the military uses during staff meetings (Tr. 76). According to a longtime business associate, he is "conscientious, dependable, and trustworthy" (AE E).

In the late 1990s, Applicant was working on a large corporate contract (GE 2 at 29). In furtherance of the project he was contracted to perform, Applicant spent approximately \$16,000 on operating expenses that he anticipated being reimbursed per the contractual agreement (Tr. 23). In late 2001, the company that retained his services began struggling financially, and abruptly stopped paying Applicant (*Id.*). Ultimately, the client went out of business, and never paid Applicant. Applicant considered suing the delinquent client (Tr. 23). Based upon his attorney's advice, Applicant decided to forego litigation (Tr. 23). Applicant's business expenses gradually became delinquent.

In addition to operating a video-teleconferencing business, Applicant owned a tanning salon with his wife (Tr. 78). In 2004, they entered an agreement with the owner of a shopping plaza to open another tanning salon (Tr. 79). Under the agreement, Applicant was to renovate the property at his expense. In exchange, the landlord was to waive rent for the months that Applicant was renovating the property.

Subsequently, a dispute arose between the landlord and Applicant that resulted in Applicant withdrawing from the deal without finishing the renovations (Tr. 79). In 2005, the landlord sued Applicant (GE 8). The court ruled in the landlord's favor and entered a judgment for \$39,676 (*Id.*).

By 2006, Applicant had accrued approximately \$128,000 of delinquent debt, including two judgments (SOR subparagraphs 1.a and 1.f¹), three business credit cards (SOR subparagraphs 1.b, 1.c, and 1.e), and a business line of credit (SOR subparagraph 1.d). That year, Applicant began meeting with a credit counselor (AE G). The counselor initially advised Applicant to file bankruptcy, but Applicant decided to address his debts “in a more responsible manner” (*Id.*).

In September 2007, Applicant refinanced his home (GE 2 at 10). He used the cash from the refinancing to satisfy approximately \$79,225 of his debt, including both judgments and one of the credit cards.²

Applicant contends that he no longer is responsible for the debt listed in SOR subparagraph 1.b because the creditor wrote it off, and he declared the delinquent amount as income on his 2007 federal income tax return (Tr. 28, 29; GE 2 at 9). Neither the account number nor the amount of the debt referenced on the IRS tax return correspond with the account number and amount of the debt as listed on Applicant’s credit report (GE 5 at 1). I find that SOR subparagraph 1.b remains outstanding.

SOR subparagraph 1.c is a charge account in the amount of \$1,800 that is allegedly delinquent. Applicant contacted the creditor in September 2009, and negotiated a settlement for \$1,500 (GE H at 1). He paid it, as agreed, the following month (AE H at 3).

SOR subparagraph 1.d is a business line of credit that became delinquent in the early 2000s after Applicant’s main client stopped paying him (Answer at 16). As of March 2009, the balance was approximately \$9,000 (GE 2 at 28). It remains outstanding (Tr. 62).

Approximately three years ago, Applicant retained an investment advisor (AE G). According to his investment advisor, Applicant’s “financial stability has increased significantly, due to his diligence and determination to improve his financial condition” (*Id.*).

In addition to meeting with the investment advisor, Applicant continues to meet with his credit counselor (AE F). According to the credit counselor, the process of resolving these debts has been difficult (*Id.*), For example:

[m]any of the creditors involved have sold the debts, ceased to be in business, have changed names (some numerous times), or have no viable contact that has information regarding the outstanding debt. What

¹SOR subparagraph 1.f is the judgment against Applicant stemming from his dispute about the commercial rental property. SOR 1.g is a duplicate. The judgment appeared twice on Applicant’s credit report because the landlord filed suit twice in different jurisdictions (*cf.* AE B and C).

²These are the delinquencies that Department Counsel stipulated were satisfied at the beginning of the hearing.

we have accomplished to date has been the result of significant man hours of telephone work, letters, and research at various courthouses. A number of the judgments were erroneously filed in the wrong county, which has resulted in significant duplication of efforts to get them cleared (*Id.*).

Currently, Applicant's business is thriving. This past year, his salary doubled from \$125,000 per year to \$250,000 per year (Tr. 52). He has approximately \$40,000 deposited in his corporate checking account and \$4,000 in his personal checking account (Tr. 58; Answer at 5). Also, he has \$8,000 invested in a corporate certificate of deposit (Tr. 58). Each month, he pays an extra \$100 toward his home mortgage (Tr. 54). As of the date of the hearing, he was two months ahead on his mortgage payments (Tr. 54). He maintains a budget.

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the revised 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 together with the factors listed in the adjudicative process. 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."

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.

Analysis

Guideline F, Financial Considerations

Under this guideline, "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 (AG ¶ 18). Here, Applicant's history of financial problems triggers the application of AG ¶¶ 19(a), "inability or unwillingness to satisfy debts," and 19(c), "a history of not meeting financial obligations."

Applicant's financial difficulties were not caused by extravagant or irresponsible spending. Instead, they were caused by a business downturn in the early 2000s, and exacerbated by a good-faith dispute related to a business venture in 2004 that led to a judgment against him. Since then, Applicant retained an investment advisor and a credit counselor to help him address his debts, and refinanced his home, using the remaining cash to satisfy approximately \$79,225 of his delinquent debt. Currently, Applicant's business is thriving, and he has ample money to satisfy his remaining delinquencies. AG ¶¶ 20(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," 20(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 20(d), "the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts," apply.

Approximately \$48,000 of Applicant's delinquencies remain outstanding. Nearly \$40,000 constitutes one debt, as listed in SOR subparagraph 1.b. The evidence Applicant provided failed to establish that it was satisfied, as he asserted. Nevertheless, Applicant successfully demonstrated both that he has been diligently attempting to identify and satisfy his delinquent debts, and that he has the ability to satisfy them regardless of whether \$8,000 remains outstanding, as he contends, or \$48,000 is outstanding, as the record evidence indicates. In reaching this conclusion, I was particularly cognizant of the arduous nature of identifying the current credit account assignees, as described by Applicant's credit counselor.

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 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.

Applicant's financial difficulties stemmed from business struggles rather than irresponsible spending. He has been working diligently to organize his finances and satisfy his delinquent debt. Currently, he has satisfied more than half of them, and has ample financial resources to satisfy the remainder. Upon evaluating this case in the context of the whole person concept, I conclude Applicant has mitigated the financial considerations security concern. Clearance is granted.

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 - 1.g:	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.

MARC E. CURRY
Administrative Judge