



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----, -----) ISCR Case No. 09-03732
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Fahryn E. Hoffman, Esquire, Department Counsel
For Applicant: *Pro se*

November 15, 2010

Decision

WHITE, David M., Administrative Judge:

Applicant incurred numerous delinquent debts during the ten years preceding his current employment, largely during downturns in the private-sector construction business. Many of his debts arose from medical treatment of his intermittent back problems. Both he and his recently-married wife now have good incomes from secure jobs, and they have resolved all but two of his former delinquencies. He has both the means and every intention to resolve these remaining debts, and remain solvent in the future. He is a responsible and trustworthy individual, and met his burden to mitigate security concerns arising from his financial situation. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

Applicant submitted a security clearance application (SF 86) on February 6, 2009. On October 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 *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* that went into effect within the Department of Defense on September 1, 2006.

Applicant answered the SOR in writing (AR) on November 19, 2009, and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on February 11, 2010, and the case was assigned to me on May 13, 2010. DOHA issued a Notice of Hearing on July 9, 2010, and I convened the hearing as scheduled on August 19, 2010. The Government offered exhibits (GE) 1 through 7, which were admitted without objection. Applicant offered exhibits (AE) A through D, which were admitted without objection, and testified on his own behalf. His wife also testified. I granted Applicant's request to leave the record open until September 13, 2010, for submission of additional evidence. DOHA received the transcript of the hearing (Tr.) on August 27, 2010. Applicant timely submitted AE E through K, which were also admitted without objection, and the record was closed as scheduled.

Findings of Fact

Applicant is a 40-year-old employee of a defense contractor, where he has worked since November 2008. He served on active duty in the Army from 1988 to 1992, and was honorably discharged in paygrade E-4. He recently married his second wife, and has one child for whom he pays child support to his former wife, with whom he shares custody. His wife has two children in their late teens, one of whom lives with them.¹ In his response to the SOR, Applicant admitted all but two of the factual allegations in SOR ¶ 1.a through 1.n, with some explanations. He denied SOR ¶¶ 1.g and 1.j.² Applicant's admissions, including his statements in response to DOHA interrogatories,³ are incorporated in the following findings.

Applicant held various construction jobs during the ten years before obtaining his current employment. His earnings fluctuated with the economic and building cycles, and he was not good at managing his money. He suffers from a spinal condition that often required him to obtain medical services for which he did not have insurance. Many of the SOR-listed debts resulted from these medical issues. The remaining debts involved consumer credit he obtained for normal living expenses, but could not afford to repay. The current status of the SOR-listed debts is described in the following paragraphs.⁴

Applicant still owes the judgment debt alleged, in the amount of \$9,389, in SOR ¶ 1.a. He checked the court records before his hearing, and reported that the amount due

¹Tr. 89-90, 94-95, 100-101, 112-113; GE 1.

²AR.

³GE 3; GE 4.

⁴Tr. 37, 56-58.

has risen to more than \$12,000 due to the interest that continues to accrue.⁵ The SOR misidentified the judgment creditor for this debt as being the same one that obtained the judgment described in SOR ¶ 1.b. All of Applicant's record credit bureau reports (CBRs) identify the creditor as the same one to whom he was alleged to owe \$13,092, on a later date, in SOR ¶ 1.l. According to Applicant's explanation to the Office of Personnel Management (OPM) investigator during his interview on March 20, 2009, he originally obtained a \$5,000 consumer loan from Beneficial Finance (which is also known as, and owned by HSBC). All of the record CBRs indicate that Beneficial/HSBC sold this debt to the creditor alleged in SOR ¶¶ 1.a and 1.l in November 2007. This company obtained the SOR ¶ 1.a judgment in September 2008. They have continued to report it on Applicant's CBRs as a collection account, with ever-increasing interest and/or fees. Applicant indicated no knowledge of any separate debt to this creditor during his OPM interview, and surmised that it was a duplicate collection action. He and his wife have not yet contacted this creditor, since they have been resolving many of his other delinquencies first. Although he admitted owing both debts, I conclude that he was confused by the misidentification of the judgment creditor in the SOR, and that the debts alleged in SOR ¶¶ 1.a and 1.l represent the same debt that has grown to about \$13,000 due to interest after the 2008 judgment.⁶

Applicant also still owes the \$1,139 judgment debt alleged in SOR ¶ 1.b. This represents a judgment obtained by the collection agency for the two medical debts that were owed by Applicant as alleged in SOR ¶¶ 1.h and 1.i.⁷

The four medical debts, alleged in SOR ¶¶ 1.c, 1.d, 1.e, and 1.f, are all in collection with a different company. Applicant and his wife entered into an agreement with this creditor to repay all four of them, starting in December 2009, at a rate of \$200 per month. All payments since then have been paid as agreed. With imputed interest, the total of all payments over 32 months will be \$6,478 to resolve these debts.⁸

Applicant denied owing the \$86 debt alleged in SOR ¶ 1.g, and successfully disputed it with the credit bureau who removed it from his CBR effective December 1, 2009. That alleged debt appeared on his February 2009 and August 2009 CBRs, but does not appear on his February 2010 CBR.⁹

Applicant's remaining delinquent debts alleged in SOR ¶¶ 1.j, 1.k, 1.m, and 1.n, and originally totaling \$13,662, have been paid in full under his changed circumstances

⁵AE C at 11; AE D1; Tr. 63-65.

⁶GE 2 at 3, 6; GE 3 at 5, 6; GE 5 at 1, 3; GE 6 at 1, 3.

⁷AE E through AE H; Tr. 63, 84-88.

⁸AE C at 11; AE D2; Tr. 56-63.

⁹GE 2 at 8; GE 5 at 2; GE 6; AE D3; Tr. 83-84.

described below.¹⁰ In addition, he reported and documented full payment of eight other debts that did not appear in the SOR. Six of those debts, totaling about \$2,300, were for medical bills involving more recent treatment. One involved a \$300 legal bill for an attorney who Applicant consulted for advice on debt resolution after receiving his SOR. The last one involved an Internal Revenue Service collection of a \$2,100 tax delinquency that was incurred when Applicant erroneously claimed head-of-household status for 2007, due to his misunderstanding of child-support issues.¹¹

Applicant and his current wife have known each other for about six years. They dated for about a year before becoming engaged in October 2009. They married in January 2010. Applicant's wife is an accountant and office manager, who has held her present job for about 14 years. She earns over \$50,000 per year, and Applicant now earns about \$60,000 per year as a electrician for a base operations support contractor. In November 2009, Applicant informed his then-fiancee about his delinquent debt. In her words, she was "overwhelmed, disappointed." She undertook to teach him financial responsibility and management, and to resolve his debt problems. He sold the mobile home in which he had been living since his divorce, and moved into her home after their marriage. While keeping him fully involved in the process, she managed their joint resources to substantially reduce his previously delinquent debt as described above. Their monthly budget reflects a surplus of over \$1,850 per month available for food, clothing, entertainment, gifts, medical co-pays, and delinquent debt reduction. About \$800 per month is available for the latter purpose. According to the foregoing analysis, only the judgment debts in SOR ¶¶ 1.a (or 1.l) and 1.b remain unresolved, since the agreed upon \$200 monthly payments toward the four medical debts alleged in SOR ¶¶ 1.c through 1.f are included among the family's budgeted expenses. Applicant and his wife mistakenly estimated that they still owed almost \$31,000 of Applicant's original delinquencies described above, since they included both of the debts alleged in SOR ¶¶ 1.a and 1.l. I conclude that their remaining delinquent debt is no more than the \$13,227 most recently reported by that collection agency (for his original \$5,000 loan), plus the \$1,139 judgment in SOR ¶ 1.b (plus any interest on that debt). If they cannot negotiate a cheaper settlement on the large debt, the total will be somewhat over \$15,000. With at least \$800 per month to put toward those debts, these two debts will be repaid in about 18 months.¹²

Applicant has long resisted advice from others that he seek bankruptcy relief, because he wanted to repay his debts. Both he and his wife persuasively and credibly testified that they have every intention to continue their present efforts to resolve his remaining debts. He has kept his work supervisors and family members fully informed of his financial situation, and is under no present duress due to his debts.¹³

¹⁰AE D4; AE D5; AE D6; AE D7; Tr. 69-73, 76-81.

¹¹AE C at 11; AE D8; Tr. 66-69; 73-76; 81-83.

¹²AR; AE B; AE C at 8-10; Tr. 40-54, 113-116.

¹³Tr. 37, 50-53, 105, 109-111.

Applicant's supervisor described him as "an exemplary and trustworthy employee," who emphasizes safety and has assumed increasing responsibilities. His general manager formally recognized his extraordinary support and effort for the month of January 2010. A Navy lieutenant who has become a close personal friend through their mutual work as Boy Scout leaders vouched for Applicant's outstanding character, integrity, and trustworthiness. He also commended Applicant's honesty with all concerned about his prior financial difficulties and his intention to resolve all of his financial obligations now that he has the means to do so.¹⁴ The Boy Scout Troop Committee Chairman under whom Applicant performed Scoutmaster and Assistant Scoutmaster duties praised his outstanding work and character. Applicant also made them aware of his financial situation, and was nevertheless entrusted to manage the Troop's funds and budget, which he did without any problems.¹⁵

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 (DCs) and mitigating conditions (MCs), which are to be used 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 AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶¶ 2(a) and 2(c), the entire process is a conscientious scrutiny of applicable guidelines in the context 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 the 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.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, "[t]he 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 as to obtaining a favorable clearance decision." Section 7

¹⁴AE C at 1-4.

¹⁵AE I; AE J; Tr. 107-108.

of Executive Order 10865 provides: “[a]ny determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.”

A person applying for access to classified information seeks to enter 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 concerns relating to the guideline for financial considerations are 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 evidence raised security concerns under two Guideline F DCs, as set forth in AG ¶ 19(a) “inability or unwillingness to satisfy debts”; and ¶ 19(c) “a history of not meeting financial obligations.” Applicant’s history of delinquent debt stretches back about ten years, and continues, in part, at present. The burden accordingly shifts to Applicant to rebut, explain, extenuate or mitigate these facts and the resulting security concerns.

The guideline includes four conditions in AG ¶ 20 that could mitigate security concerns arising from Applicant’s financial problems:

- (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; and

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

A relatively small portion of Applicant's delinquent indebtedness is ongoing, but arose under circumstances that have substantially changed and improved. Until obtaining his present well-paying and secure job in November 2008, his income was subject to the whims and variations of the construction market. His back problems would flare up sporadically, requiring uninsured medical attention and affecting his ability to work. He recently married a highly responsible and capable woman with substantial income of her own from her long-held job as an accountant and office manager. His former inability to satisfy some debts is therefor unlikely to recur and does not cast doubt on his current reliability, trustworthiness, or good judgment. This establishes mitigation under AG ¶ 20(a).

Partial mitigation under AG ¶ 20(b) was also established. Applicant's delinquencies arose during business downturns, and largely consisted of medical bills from his intermittent back problems. After his divorce in 2002, he prioritized his child support obligations, and never missed those payments even during bad economic times. He declined to discharge his obligations through bankruptcy, despite encouragement from others to do so, because he wanted to make good on his obligations. Over the past year, and especially since marrying his current wife last January, he has made impressive strides in that direction.

Applicant sought counseling from an attorney, but more significantly sought the help and guidance of his wife to address his financial problems. She is highly capable and dedicated to resolving those issues with him, while educating him on good financial practices and management. They are almost a year into an agreement with the collection agency holding four medical debts under which they are repaid at the rate of \$200 per month. Their only other unresolved debts, which they intend to address next, involve two judgment debts which they have the means to fully repay with 18 months. Thus, additional mitigation was established under AG ¶¶ 20(c) and (d).

As the Appeal Board has ruled concerning the successful mitigation of security concerns arising from financial considerations, "[a]n applicant is not required to show that [he] has completely paid off [his] indebtedness, only that [he] has established a reasonable plan to resolve [his] debts and has 'taken significant actions to implement

that plan.”¹⁶ This applicant, with significant help and resolve from his wife, has established and substantially implemented an effective plan to resolve the debts that could formerly have given rise to security concerns. He also demonstrated his commitment to avoiding future financial problems, and a solvent budget that will permit him to do so.

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):

- (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 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 pertinent facts and circumstances surrounding this case. Applicant incurred a moderate amount of delinquent debt, primarily due to downturns in the private-sector construction industry and intermittent medical problems. He has always intended to repay these debts when able to do so. His recent marriage has substantially changed his financial circumstances, and enabled him to successfully resolve his delinquencies. He has undertaken and followed through on an aggressive but workable program to do so. He is a mature and responsible individual, and recurrence of financial problems is quite unlikely. His openness with all concerned about his financial situation, and proactive efforts to achieve resolution of his debts have eliminated any ongoing potential for pressure, coercion, exploitation, or duress. The strong testimonials to his good character, integrity, and trustworthiness by supervisors, fellow Boy Scout leaders, and his very capable wife further evidence his reliability and responsibility.

Overall, the record evidence creates substantial confidence as to Applicant’s present eligibility and suitability for a security clearance. He fully met his burden to mitigate the security concerns arising from his financial considerations.

¹⁶ISCR Case No. 06-12930 at 2 (App. Bd. Mar. 17, 2008) (quoting ISCR Case No. 04-09684 at 2-3 (App. Bd. Jul. 6, 2006)).

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F: FOR APPLICANT

Subparagraphs 1.a through 1.n: For Applicant

Conclusion

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

DAVID M. WHITE
Administrative Judge