



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



In the matter of:)
)
) ISCR Case No. 09-03772
)
)
Applicant for Security Clearance)

Appearances

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

June 9, 2010

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant mitigated the Government's security concerns under Guideline F, Financial Considerations. Applicant's eligibility for a security clearance is granted.

On December 7, 2009, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) detailing the security concerns under Guideline F. 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 January 25, 2010, and requested a hearing before an administrative judge. The case was assigned to me on April 29, 2010. DOHA issued a Notice of Hearing on May 5, 2010. I convened the hearing as scheduled on May 25, 2010. The Government offered Exhibits (GE) 1 through 8. Applicant did not

object and they were admitted. Applicant testified and offered Exhibits (AE) A through F, which were admitted without objection. DOHA received the hearing transcript (Tr.) on June 2, 2010.

Findings of Fact

Applicant admitted the allegations in SOR ¶¶ 1.a and 1.c, and denied ¶ 1.b. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is 44 years old. He received his General Equivalency Diploma and completed one year of community college. He served in the Army National Guard. He also served in the Army Reserves and received a General Discharge Under Honorable Conditions for not drilling. He later reenlisted in the Army Reserves and received an Honorable Discharge. He is married and has two children. He has worked for a federal contractor since November 2008.¹

The debt in SOR ¶ 1.a (\$1,020) is a medical debt. Applicant's daughter needed surgery and he believed the insurance company was responsible for paying this debt. He disputed the debt with the insurance company. They did not pay the debt. He stated he got tired of disputing it with them, and to resolve it he paid the total amount in January 2010. The debt was about two-and-half years old.²

The debt in SOR ¶ 1.b (\$13,723) is a judgment for a car accident lawsuit. Applicant credibly testified that he was never in a car accident. He does not know if his driver's license was lost or stolen, but it was missing. He believes someone had his license and was in the accident. He was never properly served with notice for the lawsuit. He hired an attorney and had the judgment vacated. The lawsuit continued and was scheduled for trial. He stated the reason the case was not dismissed was because he could not prove he was not involved in the accident. Applicant was offered a settlement on the case. He realized it would cost him more money to pay a lawyer to fight the lawsuit than if he paid the \$2,000 settlement offer. He accepted the settlement. He is to make four payments of \$500. He made one payment on April 30, 2010, and is required to make three more monthly payments and the case will be resolved. He provided a copy of a credit report that shows the judgment is deleted from it.³ Applicant credibly testified that he was unaware of the judgment until he was told of it during his background interview with an Office of Personnel Management investigator.⁴

¹ Tr. 35-39.

² Tr. 19-22; AE E.

³ Tr. 28-35, 43-54, 63-64; AE A and B.

⁴ Tr. 30, 32.

The debt in SOR ¶ 1.c (\$699) was for a utility bill. Applicant stated the bill was in his wife's name and he was unaware that it had not been paid. It was a final bill before they moved. He paid the bill.⁵

Applicant and his wife experienced periods of unemployment and had difficulty paying some of their bills. Both are now employed. All of their past bills are paid and they are paying their monthly bills on time. Applicant's payment plan on SOR ¶ 1.b is current. They have only one credit card and it is paid on time.⁶

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. 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. 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, 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 security 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

⁵ Tr. 22-28; AE C and D.

⁶ Tr. 66-70.

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 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 raise security concerns. I have considered all of the disqualifying conditions under AG ¶ 19 and especially considered:

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

Applicant had two delinquent debts that were unpaid until recently and a disputed judgment. I find there is sufficient evidence to raise the above disqualifying conditions.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. I have considered the following mitigating conditions under AG ¶ 20:

- (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;

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

(e) 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.

Applicant had two debts that were delinquent. He has paid the debts. He disputed one debt with the insurance company, and although he believed he was not responsible for it, he paid it to resolve it. He was unaware of a utility debt that was in his wife's name and was unpaid. It was for services on a residence where they no longer lived. He paid the debt. Applicant disputes the judgment. He hired a lawyer and had it vacated. Although he continues to dispute that he was involved in an accident, which is the claim, he realizes it will cost him more money to litigate the lawsuit than to settle it. He has chosen to pay the settlement and has a payment plan to resolve it. He has made one payment in the four-payment plan.

I find mitigating condition AG ¶ 20(a) applies. The circumstances of Applicant's delinquent debts are unlikely to recur. Two of the debts, the medical account and the judgment, were disputed. The other debt was due to a move and is resolved. Applicant's actions do not cast doubt on his current reliability, trustworthiness, or good judgment.

I find mitigating condition AG ¶ 20(b) applies. The circumstances of the judgment were beyond Applicant's control. He disputes he was involved in a car accident, which is the cause of action for the lawsuit. Being fraudulently sued is an unusual circumstance. He had the judgment vacated and was going to litigate the action until it became cost-prohibitive. I find Applicant acted responsibly under the circumstances.

I find mitigating conditions AG ¶¶ 20(c), 20(d), and 20(e) apply. There are clear indications Applicant's financial issues are resolved. His delinquent debts are paid and he has a payment plan to resolve the judgment. Although he believed he was not responsible for a medical debt and disputed it with the insurance company, he paid it to resolve it. Applicant had a reasonable basis to dispute the medical debt and the judgment. He provided documentary evidence to substantiate his disputes and resolution of the issues.

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.

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 had two delinquent debts and a judgment. He disputed the medical debt with his insurance company, but paid it to resolve it. He vacated the judgment and instead of litigating the issue, he has accepted a settlement offer and is paying it through a payment plan. The final debt was an oversight and when he learned it was delinquent, he paid it. Overall, the record evidence leaves me with no questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising under the guideline for 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-1.c:	For Applicant

Conclusion

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

Carol G. Ricciardello
Administrative Judge