



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
XXXXXXXXXX, XXXXX) ISCR Case No. 09-04628
SSN: XXX-XX-XXXX)
)
Applicant for Security Clearance)

Appearances

For Government: Jennifer I. Goldstein, Esq., Department Counsel
For Applicant: *Pro se*

July 30, 2010

Decision

TUIDER, Robert J., Administrative Judge:

Applicant has mitigated security concerns pertaining to Guideline F (financial considerations). Clearance is granted.

Statement of the Case

On April 22, 2009, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP). On September 9, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing security concerns under Guideline F (financial considerations) for Applicant. 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 after September 1, 2006.

Applicant answered the SOR on September 28, 2009, and DOHA received his answer on September 29, 2009. Department Counsel was prepared to proceed on

October 27, 2009. The case was assigned to me on November 5, 2009. DOHA issued a notice of hearing on January 12, 2010, scheduling the hearing for January 28, 2010. The hearing was held as scheduled.

The Government offered Government Exhibits (GE) 1 through 8, which were received without objection. The Applicant offered Applicant Exhibits (AE) A through C, which were received without objection, and he testified on his own behalf.

I held the record open until February 12, 2010, to afford the Applicant the opportunity to submit additional documents on his behalf. Applicant timely submitted AE D through R, which were received without objection. DOHA received the hearing transcript (Tr.) on February 12, 2010. The record closed on February 12, 2010.

Findings of Fact

Applicant admitted all of the SOR allegations with explanations. His admissions are incorporated herein as findings of fact. After a thorough review of the evidence, I make the following additional findings of fact.

Background Information

Applicant is a 56-year-old materials management analyst, who has worked for his defense contractor employer since August 1986. He seeks to retain his security clearance, which he has held since approximately 2004. Maintaining a security clearance is essential for Applicant to remain in his current position. (GE 1, GE 2, AE O, Tr. 12-15.)

Applicant did not list any degrees or diplomas on his e-QIP. He served in the U.S. Marine Corps from June 1972 to June 1978, and was honorably discharged as a private first class (pay grade E-1). (GE 1, Tr. 15-16.)

Applicant was previously married from March 1976 to June 1990. The marriage ended by divorce. He has one adult daughter from that marriage, who is independent and lives near the Applicant. (GE 1, Tr. 16-17.)

Financial Considerations

Applicant's background investigation addressed his financial situation and included the review of his April 2009 e-QIP, his August 2009 responses to DOHA Interrogatories, his 1996 U.S. Bankruptcy case summary; as well as his May 2004, April 2009, August 2009, October 2009, and January 2010 credit reports. Applicant's SOR identified a 1996 Chapter 7 Bankruptcy and seven separate debts totaling \$20,528. (GE 1 – 8; SOR ¶¶ 1.a. – 1.h.)

Applicant filed for Chapter 7 bankruptcy in October 1995 and was awarded a discharge in February 1996. He was unable to produce any of his bankruptcy-related

paperwork because all of his household contents were destroyed in an April 2000 fire. Applicant filed bankruptcy to recover from his post divorce-related expenses. (GE 7, Tr. 19-23; SOR ¶ 1.a.)

In 2007, Applicant's tax preparer was arrested on suspicion of income tax fraud. Applicant had used his services for a number of years. The state tax authorities had determined that the tax preparer had underreported his clients' income over the years thus netting his clients a higher refund than warranted. The end result was that Applicant owed state tax arrearages of \$649 for 2003, \$1,295 for 2004, and \$1,306 for 2005. Applicant completed paying off his state tax arrearages in 2009. Faced with an unplanned and significant tax debt, Applicant fell behind on payments to his creditors. (GE 2, Tr. 23-31, 56-62.)

In April 2008, Applicant retained the services of a debt consolidation firm (DCF). Applicant enrolled all of his SOR debts with the DCF except for a charged-off credit card account for \$3,975 (SOR ¶ 1.c.), which he paid in full in January 2010. (AE A, AE G, AE P, Tr. 28-32, 35-36.) Applicant has continuously made monthly payments to the DCF since April 2008 by direct debit. Initially, his monthly payments were \$405. They were later reduced to \$345 in October 2009. (AE E.) Of the six remaining SOR debts, two have been settled and paid. Those are charged-off credit card accounts in SOR ¶¶ 1.b. and 1.g. for \$2,552 and \$1,698, respectively. The remaining four SOR debts are being actively monitored and pursued by the DCF. Applicant's documentation itemizes the settlement status of each remaining debt. Those four debts will be paid as the requisite funds accrue in Applicant's client trust account. (AE B, AE D, AE E, AE H, AE J, AE K, AE L, AE M, AE N, Tr. 31-56, 62-66.)

In conclusion, Applicant has paid, settled, or made good-faith efforts to repay or resolve all debts alleged. Applicant remains current on the rest of his monthly bills. His budget reflects a net monthly remainder of \$208 and demonstrates that he maintains a modest lifestyle and is living within his means. (AE F.)

Character Evidence

Applicant submitted a reference letter from his manager. His manager stated that Applicant's contribution "is paramount to our operation in research and development." He further stated that Applicant showed "great integrity, responsibility, and ambition" and that he is a "dependable team player." Applicant's manager strongly recommended that Applicant's security clearance be renewed. (AE C.)

Applicant submitted his most recent work performance evaluation covering the period of December 2008 to December 2009. His manager was his rating official and echoed the comments in his reference letter. (AE O.) Applicant also submitted a 2006 Certificate of Appreciation for his program support and a 2009 Exceptional Performance Certificate in recognition of his program support. (AE Q, AE R.)

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the AG. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are 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 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, 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 in seeking 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 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 of 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

Upon consideration of all the facts in evidence, and after application of all appropriate legal precepts, factors, and conditions, including those described briefly above, I conclude that a relevant security concern exists under Guideline F (financial considerations). AG ¶ 18 articulates the security concern relating to financial problems:

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.

AG ¶ 19 provides two financial considerations disqualifying conditions that could raise a security concern and may be disqualifying in this case: "(a) inability or unwillingness to satisfy debts," and "(c) a history of not meeting financial obligations." Applicant's history of delinquent debt is established by his admissions and the evidence presented. As indicated in SOR ¶¶ 1.a. to 1.h., he filed for bankruptcy in 1995 and more recently accumulated seven debts totaling \$20,528 that were in various states of delinquency for several years. The Government established the disqualifying conditions in AG ¶¶ 19(a) and 19(c).

Five financial considerations mitigating conditions under AG ¶¶ 20(a) through (e) are potentially applicable:

(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's conduct does not warrant full application of AG ¶ 20(a) because there is more than one delinquent debt and his financial problems are not isolated. Although Applicant has made progress in resolving his debts, four debts remain unpaid. Therefore, his debt is "a continuing course of conduct." See ISCR Case No. 07-11814 at 3 (App. Bd. Aug. 29, 2008) (citing ISCR Case No. 01-03695 (App. Bd. Oct. 16, 2002)). He receives partial credit under AG ¶ 20(a) because the debt "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." Under AG ¶ 20(b), Applicant receives partial credit because the shortcomings of his tax preparer were largely beyond his control; however, he remained responsible for the accurate submission of his tax returns. Once Applicant became aware of his tax arrearages, he took corrective action to refile and pay all taxes owed.¹

AG ¶ 20(c) is not applicable because Applicant did not seek financial counseling. He has, however, produced evidence that establishes that he is living within his means and regained his financial responsibility. Furthermore, there is sufficient information to establish full mitigation under AG ¶ 20(d).² Applicant has paid, is paying, or has otherwise resolved his debts. AG ¶ 20(e) is not applicable because Applicant did not dispute the legitimacy of any of his debts. His 1995 Chapter 7 Bankruptcy filing lacks security significance both because of the passage of time, and because it followed the financial fallout he experienced following his divorce.

¹"Even if Applicant's financial difficulties initially arose, in whole or in part, due to circumstances outside his [or her] control, the Judge could still consider whether Applicant has since acted in a reasonable manner when dealing with those financial difficulties." ISCR Case No. 05-11366 at 4 n.9 (App. Bd. Jan. 12, 2007) (citing ISCR Case No. 99-0462 at 4 (App. Bd. May 25, 2000); ISCR Case No. 99-0012 at 4 (App. Bd. Dec. 1, 1999); ISCR Case No. 03-13096 at 4 (App. Bd. Nov. 29, 2005)). A component is whether he maintained contact with his creditors and attempted to negotiate partial payments to keep his debts current.

²The Appeal Board has previously explained what constitutes a "good-faith" effort to repay overdue creditors or otherwise resolve debts:

In order to qualify for application of [the "good-faith" mitigating condition], an applicant must present evidence showing either a good-faith effort to repay overdue creditors or some other good-faith action aimed at resolving the applicant's debts. The Directive does not define the term 'good-faith.' However, the Board has indicated that the concept of good-faith 'requires a showing that a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation.' Accordingly, an applicant must do more than merely show that he or she relied on a legally available option in order to claim the benefit of [the "good-faith" mitigating condition].

(internal citation and footnote omitted) ISCR Case No. 02-30304 at 3 (App. Bd. Apr. 20, 2004) (quoting ISCR Case No. 99-9020 at 5-6 (App. Bd. June 4, 2001)).

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.

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. AG ¶ 2(c).

There is evidence against mitigating Applicant's conduct. The SOR lists a 1995 Chapter 7 bankruptcy and seven debts totalling \$20,528 that were at one time or another in various states of delinquency. Following his tax problems, he failed to keep his accounts current, showing financial irresponsibility and lack of judgment. This fact alone raises sufficient security concerns to merit further inquiry.

The mitigating evidence under the whole-person concept is more substantial. Applicant's record of military service and good employment weighs in his favor. He has accumulated 24 years of faithful and loyal service in the defense industry. Applicant has no security violations during the last five years he has held a clearance. He is a law-abiding citizen. He has made a good-faith effort to pay or resolve his SOR debts. As soon as he recognized he had a problem with his debts, he retained the services of a DCF in April 2008, long before DOHA issued him an SOR. His monthly expenses are current. The Appeal Board has addressed a key element in the whole-person analysis in financial cases, stating:

In evaluating Guideline F cases, the Board has previously noted that the concept of "meaningful track record" necessarily includes evidence of actual debt reduction through payment of debts." However, an applicant is not required, as a matter of law, to establish that he has paid off each and every debt listed in the SOR. All that is required is that an applicant demonstrate that he has ". . . established a plan to resolve his financial problems and taken significant actions to implement that plan." The Judge can reasonably consider the entirety of an applicant's financial situation and his actions in evaluating the extent to which that applicant's

plan for the reduction of his outstanding indebtedness is credible and realistic. See Directive ¶ E2.2(a) (“Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination.”) There is no requirement that a plan provide for payments on all outstanding debts simultaneously. Rather, a reasonable plan (and concomitant conduct) may provide for the payment of such debts one at a time. Likewise, there is no requirement that the first debts actually paid in furtherance of a reasonable debt plan be the ones listed in the SOR.

ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) (internal citations omitted). Applicant is making a significant contribution to the national defense. His company fully supports him and recommends him for a security clearance. He made mistakes, and debts became delinquent. There is, however, simply no reason not to trust him. He has paid his debts or is paying down his debts. Furthermore, he has established a “meaningful track record” of debt payments. These factors show responsibility, rehabilitation, and mitigation. After weighing the disqualifying and mitigating conditions, and all the facts and circumstances in the context of the whole person, I conclude he has mitigated the financial considerations security concerns.

I take this position based on the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), my careful consideration of the whole person factors and supporting evidence, my application of the pertinent factors under the adjudicative process, and my interpretation of my responsibilities under the adjudicative guidelines. Applicant has fully mitigated or overcome the Government’s case. For the reasons stated, I conclude he is eligible for access to classified information.

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.h.:	For Applicant

Conclusion

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue Applicant’s eligibility for a security clearance. Eligibility for a security clearance is granted.

Robert J. Tuidor
Administrative Judge

