



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 09-05014
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Alison O’Connell, Esquire, Department Counsel
For Applicant: *Pro se*

June 7, 2010

Decision

LYNCH, Noreen A., Administrative Judge:

On January 12, 2010, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F (Financial Considerations) and Guideline E (Personal Conduct). DOHA acted 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 on September 1, 2006.

On February 3, 2010, Applicant answered the SOR and requested a hearing. DOHA assigned the case to me on March 4, 2010. DOHA issued a Notice of Hearing on March 16, 2010, and I convened the hearing as scheduled on April 7, 2010. Department Counsel offered eight exhibits, which were admitted as Government Exhibits (GE) 1-8, without objection. Applicant testified on his own behalf and presented the testimony of four witnesses. He offered 17 exhibits, which were admitted as Applicant Exhibits (AE) A-Q, without objection. DOHA received the transcript (Tr.) on April 21, 2010. Based

upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

Findings of Fact

In his Answer to the SOR, Applicant admitted the factual allegations in ¶¶ 1.a through 1.g, and 1.i through 2.b. He denied the factual allegation in ¶ 1.h.

Applicant is a 35-year-old employee of a defense contractor. He graduated from high school in 1993, and attended college from 1997 until 1999. He is married and has three children. (GE 1) He has been with his current employer since February 2009. (Tr. 45)

Before Applicant's current employment, he worked in the construction field. He and his family moved frequently due to the nature of the work. He describes the pay as "really good." However, he realized that the constant moves created higher expenses. He explained that he and his family lived in hotels. He also noted that they always ate their meals at a restaurant. (Tr. 39) Sometimes, they would rent an apartment for a few months, but when the job ended they would move. He was not able to save any money. He also was paying student loans and other debts that his wife had acquired before they were married. (Tr. 39) He left the construction field for more stable employment (with less income) in 1997, but he acknowledged that they lived above their means. He also explained that he was never taught how to budget money. (Tr. 38) He explained that they filed bankruptcy in 1999 due to financial difficulties, and a surgery needed for his son. (Tr. 40) The bankruptcy was discharged in April 2000. (GE 8)

Applicant returned to the construction field after the bankruptcy in 2000. He admits being irresponsible with money. (Tr. 40) He and his family traveled from site to site and again found themselves in debt. He was unemployed from late 2003 to early 2004. (Tr. 56) He paid some debts but acknowledged that he acquired new debt from 2000 until 2005. Part of the new debt resulted from a failed attempt to purchase a home. In 2005, Applicant could not obtain a debt consolidation loan from his bank to resolve his delinquent debts. (AE M)

At the hearing, Applicant explained that he had paid some debts that do not appear on the SOR. He maintained that he was also trying to buy a house for his family so that they could stop renting. (Tr. 62) He attempted to save some money for a down payment. His mother had a medical emergency in October 2009, and Applicant traveled to another state to help her. (Tr. 63) He was also denied a loan to consolidate debt in 2009.

The SOR alleges ten delinquent debts. The approximate total for Applicant's debts is \$10,445 (GE 6). The current status of Applicant's delinquent debts is described below.

The debt alleged in SOR ¶ 1.a is for a charged-off credit card account in the amount of \$520. Applicant paid the account in full on February 8, 2010. (AE A)

Applicant resolved the debt alleged in SOR ¶ 1.b for \$7,649. He is making monthly payments of \$630 on the account that was settled for \$3,124. (AE B) The account will be paid by June 30, 2010. (Tr. 19)

Applicant admits the debt alleged in SOR ¶ 1.c. for \$79. The account is for a medical bill. The account is now paid in full. (AE C)

Applicant resolved the debt alleged in SOR ¶ 1.d for \$102. This medical account is paid.(AE D)

Applicant resolved the debt alleged in SOR ¶ 1.e for \$601. The account is now paid. (AE E)

Applicant resolved the debt alleged in SOR ¶ 1.f for \$121. This account is paid.(AE F)

Applicant resolved the debt alleged in SOR ¶ 1.g for a dental bill in the amount of \$383. He paid the account on February 5, 2010. (AE G)

Applicant denied the debt alleged in SOR 1.h for a medical bill in the amount of \$78 because the account had been paid in September 2009. (AE H)

Applicant resolved the debt alleged in SOR 1.i for a cell phone bill in the amount of \$791. He paid the account on January 25, 2010. (AE I)

Applicant admits the debt alleged in SOR 1.j for \$121. He paid the account on January 21, 2010. (AE J)

When Applicant received the SOR, he worked with his supervisor to develop a Financial Monitoring Plan. (AE N) He explained that he did not know about some of the small medical bills before receiving the SOR. He also did not believe that he owed on the "Progressive account." (Tr. 90) He asked his supervisor for advice and assistance to ensure that he would have an adequate plan to resolve his delinquent debts.

Applicant's current annual income is approximately \$65,000. (GE 2) He is current with his monthly expenses. He has no car payment. His net monthly remainder is approximately \$1,500. He has a savings account. Applicant has one credit card. (Tr. 76) He has obtained financial counseling. He follows a budget. (Tr. 91)

When Applicant completed his February 24, 2009 security clearance application, he read section 26(g) and 26(h) concerning financial records. In that application, he answered "No" to question 26(g) concerning any debts turned over to a collection agency, and "No" to question 26(h) concerning any accounts or credit cards suspended,

charged-off, or cancelled for failing to pay as agreed. (GE 1) Applicant denied any deliberate intent to mislead the government. He apologized for answering the questions incorrectly. He claimed he answered the questions to the best of his ability at the time.

At the hearing, Applicant was forthright and candid about his answers on the 2009 security clearance application. He was unable to complete the form online. He brought the security clearance application to work. He was advised by his supervisor to complete it as quickly as possible so that he could start work. (Tr. 69) At the time he completed the application, he did not have any information with him concerning any outstanding accounts. He admits that he copied information from his 2004 form. On that form, he did list his 2000 bankruptcy. He explained that “not having specific information requested on the form, it would be better to provide that to the investigator that performed the interview.” (Tr 70)

Applicant referred to the directions on the application form. He stated that he knew he could “update or provide clarification details for any information he provided in the form.” He explained that during the interview with the investigator in May 2009, they went over a credit report and the various accounts in question. In answer to questions at the hearing, Applicant explained that when he and his family were traveling, he did not receive collection notices from collection agencies. He admitted it was the wrong approach, but he believed he was answering the questions to the best of his ability. I find his testimony credible.

Applicant’s current supervisor describes him as a professional who exhibits excellent conduct. Applicant is a valuable asset to the company, and he has held an interim security clearance with no difficulties. (Tr. 106)

Applicant’s supervisor submitted a letter of reference in addition to testifying at the hearing. (AE O) He acknowledged that he would monitor Applicant in the future for any problems that may arise. He described Applicant’s good judgment and maturity. He also noted that Applicant spoke to him after completing his 2009 security clearance application about the delinquent debts. (Tr. 113) He offered that Applicant did not thoroughly understand the questions concerning the financial records on his security clearance application. His supervisor did not believe Applicant’s intent was to deceive especially since he was paying on all the delinquent debts. (Tr. 117)

Applicant’s team lead from 2004 until 2008, testified that Applicant is a responsible employee. (Tr. 121) He gets the job done. Applicant’s team lead also recommended him for a supervisory position. He testified that he is honest and trustworthy. The team lead also submitted a letter of reference recommending Applicant for a top secret clearance. (AE P)

Applicant’s brother-in-law described him as a family man who takes responsibility for providing for his family. He testified that Applicant works very hard and has often taken multiple jobs. (Tr. 126)

Applicant's brother testified that they worked together on certain jobs. He attested to his brother's integrity. (Tr. 132)

Applicant submitted a letter of reference from his Bishop who described him as honest, upright and fair. He has known Applicant for several years. He believes that Applicant works hard to "keep his priorities in line." (AE Q)

Applicant's system administrator described Applicant as having a high degree of integrity. He recommended him for a top secret clearance. (AE Q)

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 and mitigating conditions, which must be considered 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, 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, 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 to obtain 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 safeguard classified information.

Such decisions entail a certain degree of legally permissible extrapolation of or about potential, rather than actual, risk of compromise of classified information.

Section 7 of Executive Order (EO) 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. 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 filed for bankruptcy in 1999, for which the debts were discharged in 2000. Applicant accumulated delinquent debts on various accounts by his own admission from 2000 until 2005. His credit reports confirm the debts. The evidence is sufficient to raise these disqualifying conditions.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. Under AG ¶ 20(a), the disqualifying condition may be mitigated where 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 still has some unresolved delinquent debts. He is in a stable financial situation and has a plan for the unresolved debt. This mitigating condition applies in part.

Under AG & 20(b), the disqualifying condition may be mitigated 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.[@] Applicant had some unemployment in 2003-2004. He also changed employment from the construction field to the computer industry with a lower rate of pay. However, he acknowledged not curtailing his spending habits. He acknowledged that his son's surgery was only part of the reason that he filed for

bankruptcy in 1999. Applicant has addressed his delinquent debts beginning in 2009. This mitigating condition applies in part.

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 received formal financial counseling. He has resolved the majority of his delinquent debts. He has a payment plan for the last delinquent debt. He follows a budget. He sought guidance from his employer and developed an action plan. He could not obtain a consolidation loan in 2005 or 2009 to address his delinquent debts earlier in time. His efforts are sufficient to carry his burden in this case. I conclude these mitigating conditions apply.

Guideline E, Personal Conduct

The security concern for Personal Conduct is set out in AG ¶ 15:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to cooperate with the security clearance process.

The guideline notes several conditions that could raise security concerns. Under AG ¶ 16(a), "deliberate omission, concealment, or falsification of relevant facts from any personnel questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities" is potentially disqualifying.

In this case, when Applicant completed his February 2009 security application, he did not answer "yes" to section 26(g) or 26(h) concerning his financial record. He denied the allegation concerning a falsification of his answer to delinquent debts. He admitted that he should have answered differently. He was candid, forthright, and credible in his testimony that he would explain and clarify his financial record to the investigator when interviewed. He had already listed the 1999 bankruptcy in an earlier security clearance application. I find that he did not deliberately falsify his 2009 security clearance application.

When a falsification allegation is controverted or denied, the government has the burden of proving it. Proof of an omission, standing alone, does not establish or prove an applicant's state of mind when the omission occurred. An administrative judge must consider the record evidence as whole to determine whether there is direct or circumstantial evidence concerning an applicant's state of mind at the time the omission occurred. ISCR Case No. 03-09483 at 4 (App. Bd. Nov. 17, 2004) (explaining holding in

ISCR Case No. 02-23133 at 5 (App. Bd. Jun. 9, 2004)). Thus, AG ¶ 16(a) does not apply in this case. I find for Applicant on SOR ¶¶ 2.a and 2.b.

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 must 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 and conclude they are sufficient to overcome the government's case. Applicant has worked all his life. He worked in the construction field for many years so that he could support his wife and family. He also recognized the problems with a transient life. He attempted to enter the computer field but had to accept a much reduced level of pay. Applicant filed for bankruptcy in 1999, and the delinquent debts were discharged in 2000. This was a legal means of resolving his debt.

Applicant paid the student loans that his wife had incurred before their marriage. He also paid her other debts. He helped his mother when she was ill. He tried to obtain a loan consolidation but was denied.

Applicant admits that he did not curb his spending when he changed jobs. He also had a few months of unemployment in 2003-2004. He acknowledged that he incurred more debt until 2005. During that time, he also tried to purchase a house and he supported his wife and three children. He is a hard worker. He received a well paying job in 2009 and again tried to obtain a loan to consolidate his debts. He was denied. Applicant resolved to pay his delinquent debts and has done so. He paid all the debts alleged in the SOR except one. The last debt is in a payment plan which ends in June 2010. He is more mature and is now financially stable. He now understands how to budget and is serious about his employment future. He is recommended by his

employer and team lead. He has letters of reference from various individuals who have known him for a period of time. He was candid and forthright at the hearing.

Applicant explained why he answered the questions concerning his financial record with a “No.” I found his explanations credible. He did not falsify his February 2009 security clearance application.

Overall, the record evidence leaves me without questions and doubts about Applicant’s eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has mitigated the security concerns arising under financial considerations and personal conduct.

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: through 1.g:	For Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraph 2.a:	For Applicant
Subparagraph 2.b:	For Applicant

Conclusion

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

NOREEN A. LYNCH
Administrative Judge