



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



In the matter of:)	
)	
-----)	ISCR Case No. 09-05049
SSN: -----)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Paul DeLaney, Esquire, Department Counsel
For Applicant: *Pro se*

December 16, 2010

Decision

HOWE, Philip S., Administrative Judge:

On May 13, 2009, Applicant submitted his Security Clearance Application (SF 86). On February 4, 2010, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) 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 (AG) effective within the Department of Defense on September 1, 2006.

Applicant acknowledged receipt of the SOR on February 11, 2010. He answered the SOR in writing on March 1, 2010, and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on March 31, 2010. The case was assigned originally to another administrative judge on April 6, 2010. I received the case assignment on April 19, 2010, on a case reassignment based on workload considerations. DOHA issued a Notice of Hearing on April 29, 2010, and I convened the

hearing as scheduled on May 28, 2010. The Government offered Exhibits 1 through 8, which were received without objection. Applicant testified and submitted Exhibits A through E, without objection. DOHA received the transcript of the hearing (Tr.) on June 8, 2010. I granted Applicant's request to keep the record open until June 10, 2010, to submit additional matters. On June 10, 2010, he submitted Exhibits F to H, without objection. The record closed on June 10, 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 all but one of the factual allegations contained in the SOR, with explanations. He denied the factual allegation in ¶ 1.b of the SOR. He also provided additional information to support his request for eligibility for a security clearance.

Applicant is 31 year old, unmarried, and works for a defense contractor as a field service representative. He has worked for that employer for the past two years. Prior to this employment, Applicant was an independent contractor installing cable lines for various companies. (Tr. 23-26; Exhibit 1)

Applicant owes six delinquent debts totaling \$15,300 as listed in the SOR. His financial difficulties arose from his failure to pay state and federal income taxes for the years 2003 to 2008. As an independent contractor he was required to deduct his own withholding and sending the taxes to the Internal Revenue Service (IRS) and state tax authorities where he worked. His other debts resulted from his lack of attention to, or money for, paying those debts. (Tr. 28-44, 67, 72; Exhibits 2-8)

The first debt Applicant owes is \$11,526 to the IRS for a federal tax lien (Subparagraph 1.a). Applicant's total income tax debt is \$24,000 owed for the years 2003, 2004, 2006, and 2007. Applicant was an independent contractor during those years and failed to set aside any withholding funds with which to pay his income taxes. Simultaneously in those years he failed to file income tax returns with the federal government. As time went by he then became afraid to try to correct his situation. He hired a commercial firm to rectify his past due taxes and prepare the 2008 income tax return. He hired another commercial income tax preparer firm to prepare his 2009 federal income tax return. He also is preparing the state tax returns for those years. He paid those state taxes in 2010. He now has an installment payment agreement with the IRS to pay \$400 monthly for 60 months to pay the 2003, 2004, 2006, and 2007 tax years. His total payments will be \$24,000, the amount he owes the IRS. He started making those payments in April 2010. These debts are being resolved by payment or installment agreements. (Tr. 19-44, 67, 72; Exhibits 2-8, D, E, G, H)

Applicant owes \$1,650 on a credit card (Subparagraph 1.b). He paid this debt in April 2010. He claims he made payments in 2008. He finished making payments in 2010. This debt is resolved. (Tr. 46-49; Exhibits 2-8, B, C)

Applicant owes \$659 on a credit card debt (Subparagraph 1.c). He paid this debt on April 15, 2010. The debt is resolved. (Tr. 49-51; Exhibits 2-8, B)

Applicant owes \$405 on a medical debt since December 2005 (Subparagraph 1.d). Applicant paid this debt on June 3, 2010. This debt is resolved. (Tr. 52; Exhibits 2-8, F)

Applicant owes a bank \$467 on checking account overdrafts. Applicant was using the float on his deposits to write checks. That banking practice was stopped by Applicant's bank some years ago, but he continued to owe this debt (Subparagraph 1.e). Applicant paid this debt on April 7, 2010. This debt is resolved. (Tr. 54-56; Exhibits 2-8, A)

Applicant's final delinquent debt listed in the SOR is \$593 owed on an early termination fee for a cell phone account (Subparagraph 1.f). This debt is unpaid. Applicant wanted to arrange to pay his taxes first before resolving this debt. His intention is to pay a lump sum to repay this debt. It is unresolved. (Tr. 57, 58; Exhibits 2-8)

Applicant lives with his grandmother when he is in his work area. He helps her with her household expenses. His truck is fully paid. On the weekends he lives with his mother in another state. He has \$2,000 in one credit union checking account and \$400 in another checking account. Applicant is saving his money to build a cash reserve for the future and any unanticipated expenses that might arise. His net remaining income monthly is now \$1,600. Applicant does not have any credit cards. He has two bank debit cards he uses for monthly expenses. (Tr. 59-65, 70; Exhibit 3)

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 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 the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance 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 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 relating to the guideline 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 at AG ¶ 19 contains nine disqualifying conditions that could raise security concerns. Three conditions are applicable to the facts found in this case:

- (a) inability or unwillingness to satisfy debts;

(c) a history of not meeting financial obligations; and

(g) failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same.

Applicant accumulated \$15,300 in delinquent debt from 2003 to the present time that remained unpaid. Applicant has 6 delinquent debts listed in the SOR. He failed to file state and federal income tax forms for seven years. These three disqualifying conditions apply.

The guideline in AG ¶ 20 contains six conditions that could mitigate security concerns arising from financial difficulties. Two conditions may be 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;

(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; and,

(f) the affluence resulted from a legal source of income.

Applicant's failure to pay his state and federal income taxes and several other debts occurred recently. His actions constitute a pattern of behavior regarding his finances. There were no unusual circumstances that prevented him from paying his taxes and his debts. He did not exercise good judgment in failing to file his income tax returns. AG ¶ 20 (a) does not apply.

Applicant's financial problems were not beyond his control. He did not act responsibly in failing to pay his debts and his income taxes. AG ¶ 20 (b) does not apply.

Applicant is currently paying his debts in an orderly manner. He ceased procrastinating about them and focused on making regular payments. Therefore, there are clear indications from the evidence he presented that the financial problems are under control and being resolved. AG ¶ 20 (c) applies.

Applicant was able to focus his efforts to pay all but one phone debt by the time of the hearing. Based on his current progress in repaying his delinquent debts, it is likely Applicant will have the last debt paid soon. He intends to pay it. He paid five debts, including getting his Federal and state tax returns filed. AG ¶ 20 (d) applies because of Applicant's good-faith efforts to repay his delinquent debts.

Applicant did not present any reasonable basis to dispute the debts. He did not provide any documents to assert any basis for a debt dispute. AG ¶ 20 (e) does not apply.

There is no evidence or discussion at the hearing about any affluence being an issue. AG ¶ 20 (f) does not apply.

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 an 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.

AG ¶ 2(c) requires each case must be judged on its own merits. 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 was a working adult who failed for seven years to file and pay his federal and state income taxes. He also allowed debts for goods and services he purchased to be unpaid. He showed at the hearing he has taken responsible actions to resolve his debts. He hired a tax service to file his past due tax returns. He entered a \$400 per month installment payment agreement with the IRS. He made lump sum payments to the state tax authorities. He

also resolved all but one commercial debt. He will resolve that debt now that he has his income tax problems being resolved. Applicant prefers to make lump sum payments on his debts, as shown by his hearing testimony and his past actions. He is credible on his declared intention to pay this debt.

Reviewing all the facts in the case there is no potential for pressure, coercion, exploitation, or duress because Applicant resolved five of the six debts listed in the SOR. He has a plan to pay the sixth debt. He has the savings and income to pay that debt quickly. He changed his attitude and practices on his taxes. He took responsibility for the filing and payment of all taxes.

Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising from his 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

Subparagraph 1.a to 1.f: 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.

PHILIP S. HOWE
Administrative Judge