



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 09-05211
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Gregg Cervi, Esquire, Department Counsel
For Applicant: *Pro se*

August 6, 2010

Decision

LYNCH, Noreen A., Administrative Judge:

On March 24, 2010, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F (Financial Considerations). 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).

On April 15, 2010, Applicant answered the SOR and requested a hearing. DOHA assigned the case to me on May 20, 2010. DOHA issued a Notice of Hearing on June 28, 2010, and I convened the hearing as scheduled on July 22, 2010. Department Counsel offered four exhibits, which were admitted without objection as Government Exhibits (GE) 1-4. Applicant testified on his own behalf and offered six exhibits, which were admitted without objection as Applicant Exhibits (AE) A-F. I kept the record open until August 6, 2010, for Applicant to submit additional documents. Applicant timely submitted two additional documents, which were accepted into the record and marked

as AE G and H. DOHA received the transcript (Tr.) on July 30, 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 denied the factual allegations in ¶ 1.a through 1.e.

Applicant is a 42-year-old employee of a defense contractor. He graduated from high school in 1986. He is married and has two children. (GE 1) He has been with his current employer since February 2009. (Tr.8)

Applicant served in the United States Air Force (USAF) from September 1986 until his retirement, as a Msgt (E-7), in September 2007. (AE A) While in the USAF, he attended training and Airman Leadership School. He held a security clearance during his military career. Applicant deployed to Iraq on two separate occasions in 2004 and 2006. (AE A) Applicant served as a section chief for aircraft maintenance at the time of his retirement. Applicant receives a Veterans Administration (VA) disability. (AE B)

After Applicant's second deployment to Iraq in 2006, he experienced sleeplessness, anger, and hypersensitivity. He sought counseling at the Life Skills Center at the hospital on base. He received some counseling and reported that he was diagnosed with post traumatic stress disorder (PTSD). He was prescribed medication. (GE 2)

When Applicant retired in 2007, he was diagnosed with an anxiety disorder. He was placed on medication to help alleviate the symptoms. Applicant's medications caused side-effects such as memory loss. He stated that he could not drive due to his condition.

Applicant had a difficult transition from the military to civilian employment in part due to his anxiety. He worked as an independent insurance agent when he first retired in 2007. He stopped his work in this field in May 2008 due to his inability to focus and adjustment to various medications. (Tr. 24) He could not drive. After speaking to his VA counselor, Applicant was hospitalized for a short period. (Tr. 24)

Applicant was unemployed or underemployed from the latter part of 2008 until February 2009. He worked part time as a ranch hand on a farm. (Tr. 25) During this time, Applicant did not earn much income. He was living on his retirement and VA disability. He fell behind on his mortgage and used credit cards to supplement his income.

The SOR alleges five delinquent debts, a judgment and delinquent credit card debt. The approximate total for Applicant's debts is \$12,000 (GE 6). The current status of Applicant's delinquent debts is described below.

The debt alleged in SOR ¶ 1.a is for a judgment filed in February 2009 for a charged-off credit card account in the amount of \$4,683. Applicant arranged for automatic payments from his checking account as soon as he was gainfully employed in February 2009. (AE C) Applicant has paid this judgment in full for a total of \$5,000. (AE G)

The debt alleged in SOR ¶ 1.b for \$2,578 is in a repayment plan. Applicant has paid approximately \$1,000. His last documented payment of \$100 was dated May 31, 2010. (AE D) He expects to increase monthly payments since the account listed in SOR 1.a is paid in full. (Tr. 34)

The debt alleged in SOR ¶ 1.c. for \$1,011 is a duplicate of the account listed in SOR 1.a, which is paid in full. (AE F)

The debt alleged in SOR ¶ 1.d for \$4,549 is in a repayment status. Applicant has paid approximately \$1,250 since 2009. (AE E) He continues to make payments in the amount of \$100 a month. (Tr. 35).

The debt alleged in SOR ¶ 1.e that was past due for 120 days in the approximate amount of \$9,715 is in repayment status. Applicant has already paid approximately \$1,650. (AE F) His monthly payment is \$150.

When Applicant received the SOR, he had already been making payments on the debts alleged. He received financial counseling as part of a routine training program while on active duty. (Tr. 37). Applicant's current monthly net income is approximately \$8,342, which included his wife's monthly net salary of \$1,487. (GE 2) He is current with his monthly expenses. He has no car payment. His net monthly remainder is approximately \$1,391. He has a savings account.

At the hearing, Applicant was forthright and candid about his current ability to work. Since the end of 2008, his medication has stabilized his medical condition. He continues to see a VA counselor. He is fit and able to work. He emphasized that prior to his retirement in 2007, he had no financial difficulties. His anxiety disorder prompted the unemployment. He has a history of paying his bills and living within his means. He wants to sell his house and move near his present work site. (Tr. 40) He acknowledged at the hearing that his mother loaned him \$5,000 so that he could buy a parcel of land for \$10,000 to build a ranch. (Tr. 41) The land is paid for, and Applicant is regularly paying his mother for her loan. Applicant's goal is to be debt free.

Applicant has received numerous decorations, medals and campaign ribbons during his military service to include: an Iraq Campaign Ribbon, Global War on Terrorism Expeditionary Medal, Korean Service Medal, Air Force Commendation Medal with three oak leaf clusters, Air Force Achievement Medal with three oak leaf clusters, National Defense Service Medal with one service star and a USAF NCO PME Graduate Ribbon with two oak leaf clusters. (AE A)

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 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 debts⁶ is potentially disqualifying. Similarly under AG & 19(c), a history of not meeting financial obligations⁶ may raise security concerns. Applicant accumulated delinquent debts on various accounts after he retired in 2007. He had a 2009 judgment in the amount of \$4,683. 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.⁶ Applicant still has some unresolved delinquent debts. However, he is now 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.⁶ Applicant's inability to work full time in 2008 due to his anxiety disorder created his financial difficulties. He sought part time work as a ranch hand to support himself until he began his current employment. As soon as Applicant obtained his current employment in 2009, he began to address and resolve his delinquent debts. This mitigating condition applies.

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 control⁶ 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.⁶ Applicant received financial counseling when he was in the military as part of a routine program. Applicant has a history of paying his bills. He has resolved the majority of his delinquent debts. He has a payment plan for the other two

delinquent debts in the SOR. He has sufficient income to pay his bills. His efforts are sufficient to carry his burden in this case. I conclude these mitigating conditions 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 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 served in the USAF for nearly 21 years. He had a security clearance during his military career. He deployed to Iraq on two separate occasions. He received many medals and awards during his military service. He retired in 2007. During his transition to civilian life, he had difficulties due to an anxiety disorder. This disorder prevented him from gainful employment in 2008 and part of 2009. He received counseling and prescription medications. The medications had side effects which exacerbated his difficulties and added to his financial problems.

Applicant began paying his delinquent bills after his disorder was addressed, and as soon as he became gainfully employed in February 2009. He paid two accounts and his other accounts are in repayment status. He was candid and forthright at the hearing about his land purchase. He wants to be debt free. He supports his family. He is on the right track. He is now stable and able to work in a position that will render him financially stable.

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.

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.e: 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.

NOREEN A. LYNCH
Administrative Judge