



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



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|----------------------------------|---|------------------------|
| In the matter of: |) | |
| |) | |
| |) | ISCR Case No. 09-06031 |
| SSN: |) | |
| |) | |
| Applicant for Security Clearance |) | |

Appearances

For Government: Braden M. Murphy, Esq., Department Counsel
For Applicant: *Pro se*

November 15, 2010

Decision

LOUGHRAN, Edward W., Administrative Judge:

Applicant mitigated Financial Considerations security concerns. Eligibility for access to classified information is granted.

Statement of the Case

On March 12, 2010, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, Financial Considerations. The action was taken under Executive Order (EO) 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) implemented by the Department of Defense on September 1, 2006.

Applicant answered the SOR on April 3, 2010, and requested a hearing before an administrative judge. The case was assigned to another administrative judge on July 13, 2010, and reassigned to me on August 4, 2010. DOHA issued a notice of hearing on

August 16, 2010, as amended on August 19, 2010. The hearing was convened as scheduled on September 16, 2010. The Government offered Exhibits (GE) 1 through 5, which were received without objection. Applicant testified and submitted Exhibits (AE) A through H, which were received without objection. The record was held open for Applicant to submit additional information. Applicant submitted documents that were marked AE I through L and admitted without objection. Department Counsel's memorandum is marked Hearing Exhibit (HE) I. DOHA received the transcript of the hearing (Tr.) on September 24, 2010.

Findings of Fact

Applicant is a 35-year-old employee of a defense contractor. He served on active duty in the United States military from 1995 until he was honorably discharged in 2004. He has an associate's degree and is a graduate of a specialty school. He was married and divorced twice before his current marriage. He has three children, one with each wife. He also has two stepchildren.¹

Applicant admitted he was financially irresponsible while he was in the military. His finances further suffered after his discharge, when he had periods of unemployment. He attended a specialty school and worked full-time for a period. After he graduated the specialty school, he accepted a job that did not pay much, but helped him gain experience in his profession. Applicant had debts that became delinquent, and he fell behind on his child support.²

Applicant realized he needed to make changes in his life. He accepted the job with his current employer in May 2009. His job requires him to travel to Iraq and Afghanistan for extended periods. He is paid while he is working overseas, but not while he is home. He receives a high salary while he is overseas, which makes up for his lack of income while home. He started taking steps to address his delinquent debts after he accepted his current job. He was between trips during the hearing. He did not make payments on his delinquent debts while he was home. He credibly testified he would resume paying his debts when he returned to working overseas.³

The SOR alleges 13 delinquent debts totaling about \$18,181. Except as specifically stated below, the allegations were established through credit reports and Applicant's admissions. The delinquent debts raising security concerns in Applicant's case are addressed in the diagram below.

¹ Tr. at 20-21, 26-27, 31, 34; GE 1.

² Tr. at 20-23, 27-29; Applicant's response to SOR; GE 3.

³ Tr. at 23-25, 30, 44-46.

| SOR | AMOUNT | STATUS | EVIDENCE |
|--|---------------|---|------------------------------|
| 1.a Collection company/ telephone company | \$334 | Paid May 2010. | Tr. at 34-35; GE 5; AE E. |
| 1.b. Medical debt | \$830 | Plans to pay when returns to work. | Tr. at 35-36; AE E. |
| 1.c. Collection company/ telephone company | \$427 | Paid May 2010. | Tr. at 36-37; AE I. |
| 1.d. Credit card | \$1,927 | Paid \$500 April 2010. Plans to pay \$1,427 balance when returns to work. | Tr. at 37-38; AE D, I. |
| 1.e. Bank | \$441 | Paid. | Tr. at 40; GE 5. |
| 1.f. Bank | \$540 | Payment plan. Paid \$35 August 2010. Balance of \$138. | Tr. at 38-39; GE 5; AE C. |
| 1.g. Collection company/credit card | \$2,286 | Plans to pay when returns to work. | Tr. at 40-41. |
| 1.h. Child support | \$615 | Paid arrears. Current. | Tr. at 41-42; GE 5. |
| 1.i. Finance company/ repossessed car loan | \$9,767 | Plans to pay after smaller debts are paid. | Tr. at 42-44. |
| 1.j. Collection company/utility company | \$163 | Paid September 2009. | Tr. at 46-48; GE 4, 5; AE J. |
| 1.k. Returned check | \$791 | Paid. | Tr. at 48-49; GE 2, 4, 5 |
| 1.l. Collection company | \$42 | Paid. | Tr. at 49-50; AE H, K. |
| 1.m. Collection company | \$18 | Disputed as paid in 2005. Not on three most recent credit reports. | Tr. at 49; GE 2, 4, 5; AE H. |

In summary, Applicant paid or settled six debts; he brought his child support obligations current; he disputed one account; he made payments on two accounts; and he has not made any payments on three debts. Applicant plans to resume paying the remaining five debts after he returns to work overseas.

Applicant received financial counseling while he was in the military, but he candidly confessed that he was young and did not pay much attention to the classes. After he started working at his current job, he received financial advice from his aunt,

who is not an expert but is knowledgeable on financial matters. She recommended that he pay his smallest debts first, and then work his way to the larger debts. His current financial situation is stable. He manages his large income when he is overseas to offset the periods while he is home and not earning a salary.⁴

Applicant submitted letters attesting to his outstanding job performance, dependability, competence, and dedication.⁵

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 to be 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, administrative judges apply the guidelines 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 the 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

⁴ Tr. at 52-60.

⁵ AE A, B.

extrapolation of potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that adverse 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. Two are potentially applicable in this case:

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

Applicant accumulated a number of delinquent debts and was unable or unwilling to pay his obligations for a period. The evidence is sufficient to raise the above disqualifying conditions.

Five Financial Considerations Mitigating Conditions under AG ¶ 20 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 admitted that he was financially irresponsible while he was in the military. He had periods of unemployment and underemployment after he left the military. In May 2009, Applicant accepted a job that pays very well while he is overseas. He does not receive a salary while he is home between trips. Applicant listened to his aunt about addressing his finances. He has made great strides in resolving his debts. He paid a number of debts and plans to resume paying his remaining debts after he returns overseas. In ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008), the Appeal Board discussed an applicant's burden of proof under these mitigating factors:

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." See, e.g., ISCR Case No. 05-01920 at 5 (App. Bd. Mar. 1, 2007). 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. See, e.g., ISCR Case No. 02-25499 at 2 (App. Bd. Jun. 5, 2006). All that is required is that an applicant demonstrate that he has ". . . established a plan to resolve his financial problems and [has] taken significant actions to implement that plan." See, e.g., ISCR Case No. 04-09684 at 2 (App. Bd. Jul. 6, 2006). 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. See, e.g., ISCR Case No. 06-25584 at 4 (App. Bd. Apr. 4, 2008). 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.

I find that Applicant acted responsibly under the circumstances and made a good-faith effort to pay or otherwise resolve his debts. I further find clear indications that his financial problems are being resolved and are under control. AG ¶¶ 20(c) and 20(d) are

applicable. Applicant does not rate full mitigation under AG ¶¶ 20(a) and 20(b) because some of his financial problems were caused by his irresponsibility and he still has several debts to address.

Applicant disputed owing the \$18 debt alleged in SOR ¶ 1.m. He credibly testified that he paid the debt. The debt is not listed on the three most recent credit reports in evidence. AG ¶ 20(e) is applicable to that debt.

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.

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. I have incorporated my comments under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

I considered Applicant's honorable service in the U.S. military. Applicant readily admits that he was irresponsible about his finances for years. He decided he needed to make changes in his life and accepted a job that requires him to travel to Iraq and Afghanistan for extended periods. He is paid very well while he is overseas, but nothing while he is home between trips. Since he accepted that position, he has paid a number of debts and has plans to pay his remaining debts. As indicated above, an applicant is not required to establish that he has paid 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. I find that Applicant has established a plan to resolve his financial problems and has taken significant action to implement that plan. His finances do not constitute a security concern.

Overall, the record evidence leaves me without questions or doubts about Applicant's eligibility and suitability for a security clearance. I conclude Applicant has mitigated Financial Considerations security concerns.

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.m: 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.

Edward W. Loughran
Administrative Judge