



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----, -----) ISCR Case No. 09-06058
SSN: -----)
)
Applicant for Security Clearance)

Appearances

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

December 8, 2010

Decision

WHITE, David M., Administrative Judge:

Applicant endured several periods of unforeseen unemployment due to the severe downturn in the construction industry in 2008. Several of his debts became delinquent, including his home mortgage. He relocated to obtain his present employment, has resolved all of his formerly delinquent debts, and has mitigated the resulting security concerns. Based upon a review of the case file, pleadings, and exhibits, eligibility for access to classified information is granted.

Applicant submitted a security clearance application (SF 86) on May 22, 2009.¹ On March 26, 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).² 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

¹Item 5.

²Item 1.

adjudicative guidelines effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant answered the SOR in writing (AR) on April 19, 2010, and requested that his case be decided by an administrative judge on the written record without a hearing.³ Department Counsel submitted the Government's written case on July 7, 2010. On July 8, 2010, a complete copy of the File of Relevant Material (FORM)⁴ was mailed to Applicant, and he was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of his receipt of the FORM. Applicant returned the signed document acknowledging receipt of his copy of the FORM on July 18, 2010, and submitted a timely written response on August 8, 2010. Applicant made no objection to consideration of any evidence submitted by Department Counsel, but did submit additional comments and evidence for consideration. Department Counsel had no objection to the admissibility of Applicant's response to the FORM (AFR). I received the case assignment on August 31, 2010.

Findings of Fact

Applicant is a 32-year-old employee of a defense contractor, where he was hired in May 2009. He served as an Electronics Technician in the Navy from August 1997 to September 2006, when he was honorably discharged at pay grade E-5. He held a Secret security clearance during most of his enlistment, and earned two Navy-Marine Corps Achievement Medals. He is married, but separated from his wife pending a future divorce. They have two children, ages nine and six.⁵ In his response to the SOR, he admitted both of the factual allegations in SOR.⁶ Applicant's admissions, including his responses to the SOR, to the FORM, and to DOHA interrogatories,⁷ are incorporated in the following findings.

After Applicant left the Navy in 2006, he was hired as a union laborer by the construction company where his wife's father was the superintendent. Although the job involved seasonal layoffs for a few months each winter, it paid very well. He and his wife purchased a house in June 2007, with a mortgage loan of \$231,000. Monthly payments on this loan were \$1,877. At the time, he was earning sufficient income that his wife did not need to work and started attending school. In August 2007, she took out a \$4301 student loan for this purpose.⁸

³Item 4.

⁴The Government submitted 12 Items in support of the SOR allegations.

⁵Items 5 and 6; AFR.

⁶Item 4.

⁷Items 6, 7, and 8.

⁸Items 5, 6, and 10; AFR.

Applicant's credit problems began when he was laid off due to the sharp downturn in the construction industry in 2008. He was only able to find work during 10 of the 17 months between December 2007 and May 2009, when he began his current job. His wife quit school and began working, and he collected unemployment compensation, but their income was insufficient to meet all of their bills. They stopped making mortgage payments in November 2008, and their lender began foreclosure proceedings in May 2009. As of March 2010, the past-due amount was \$30,124, as alleged in SOR ¶ 1.b. Applicant listed his delinquent mortgage loan and six other delinquent credit accounts, totaling \$23,629, on his May 2009 SF 86.⁹

Applicant's current job pays well, and includes substantial amounts of time working overseas. Since he began working again, he has repaid all of his formerly delinquent debt except for his home mortgage. His wife's student loan was reportedly paid as agreed on his June 2009 credit report, but was reported to be 180 days past due in the amount of \$214 on his March 2010 credit report. Appellant had mistakenly believed that his wife was going to pay this debt, and did not realize it was delinquent until he received the SOR listing it at ¶ 1.a. In June 2010, he negotiated a payment plan with the collection agency holding the debt, and began making the agreed payments.¹⁰

In March 2009, Applicant contacted his mortgage lender to attempt to negotiate a modification that would permit him to keep the house. The process took a long time due to the large number of borrowers undergoing similar problems. He maintained regular correspondence with the lender, and was eventually offered a "Forbearance Plan Agreement" in December 2009. The plan called for him to make three monthly payments of \$1,999, as a show of good faith, after which the lender would set a new payment plan. Since this required payments that were higher than the original payments, Applicant rejected this offer and listed his house for sale. After the house remained on the market for 90 days without selling, his lender informed him that he and the property qualified for resolution of the debt through the Deed in Lieu of Foreclosure process. Under this program, which Applicant intends to accept upon his return from overseas during the autumn of 2010, the lender will accept a deed transferring ownership of the house to it in full satisfaction of the loan amount, with no right to pursue any deficiency claim.¹¹

Applicant provided no evidence of financial counseling. The budget information he provided on a personal financial statement, submitted with his interrogatory response dated February 17, 2010, showed a monthly surplus of \$1,108.¹² Applicant submitted letters from three current and former program managers under whom he performed work on Government programs. All three described his outstanding character,

⁹Item 5; Item 10 at 2; Item 11; AFR.

¹⁰Item 6 at 1; Item 11 at 4; Item 10 at 2; AFR.

¹¹Items 6, 7, and 8; AFR.

¹²Item 6 at 8.

trustworthiness, integrity, and work performance; and expressed their confidence in his ability to successfully hold a security clearance.¹³ I was unable to evaluate his credibility, demeanor, or character in person since he elected to have his case decided without a hearing.

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 (DCs) and mitigating conditions (MCs), 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, these guidelines are applied in conjunction with the factors listed in AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶¶ 2(a) and 2(c), the entire process is a conscientious scrutiny of applicable guidelines in the context 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 the 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, "[t]he 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." Section 7 of Executive Order 10865 provides: "[a]ny determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned."

A person applying for access to classified information seeks to enter 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

¹³AFR.

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.

Analysis

Guideline F, Financial Considerations

The security concerns relating to the guideline for financial considerations are 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.

Department Counsel argued that the evidence established security concerns under two Guideline F DCs, as set forth in AG ¶ 19:

(a) inability or unwillingness to satisfy debts; and

(c) a history of not meeting financial obligations.¹⁴

Applicant was unable to satisfy some of his debts starting in late 2008. He had no prior history of financial problems. In May 2009, he separated from his family to accept his current job and resolved all his delinquent debt except his mortgage loan. He has been actively engaged with his mortgage lender seeking to resolve that debt, and has been offered full satisfaction through a Deed in Lieu of Foreclosure agreement that he intends to execute upon his pending return from work overseas. The evidence initially supported security concerns under DCs 19(a), and 19(c), thereby shifting the burden to Applicant to rebut, extenuate, or mitigate those concerns.

The guideline includes four conditions in AG ¶ 20 that could mitigate security concerns arising from Applicant's financial difficulties:

(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

¹⁴FORM at 4.

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; and

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant's delinquent debts arose over a brief period preceding his security clearance application, and were largely resolved by the time the SOR was issued. The circumstances under which the delinquencies occurred were largely beyond his control since they resulted from his unexpected unemployment due to the sharp downturn in the construction industry during 2008. He relocated to accept a good-paying job after it became clear that the local economy was not going to improve in time to resolve his debts. His current income is sufficient for him to have resolved all former delinquencies, and makes it unlikely that financial difficulties will recur. These circumstances do not cast doubt on Applicant's reliability, trustworthiness or good judgment. The evidence accordingly supports substantial mitigation under MCs 20(a) and 20(b).

Although Applicant did not undergo financial counseling, he realized what he needed to do to pay his debts and has done so. As of the close of the record, the only remaining delinquent debt was his home mortgage, and he had an offer from the creditor to fully satisfy that debt by transferring ownership of the home through a Deed in Lieu of Foreclosure agreement. Applicant intends to accept this offer, which will eliminate that debt. MCs 20(c) and 20(d) are therefore fully applicable to mitigate any ongoing security concerns formerly arising from these debts. Applicant did not dispute any SOR-listed debt, so MC 20(e), concerning disputed debts, is inapplicable.

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 relevant facts and circumstances surrounding this case. Applicant is a mature and experienced individual, who suffered through several unforeseen periods of unemployment due to the economic downturn in 2008. He relocated to accept his current employment, and promptly resolved all of the delinquent debts that arose due to his temporary inability to pay them. He had no prior history of financial problems, and is sufficiently solvent with his present income to avoid future financial difficulties.

Applicant's only delinquent debt remaining as of the close of the record was his home mortgage, and he plans to accept the creditor's offer to fully resolve that debt by transferring ownership in lieu of foreclosure proceedings as soon as he returns from working overseas. Applicant has eliminated any potential for pressure, coercion, exploitation, or duress, and demonstrated that such problems are unlikely to continue or recur. His current and former project managers unanimously praise his responsibility, dedication, and integrity.

Overall, the record evidence creates substantial confidence as to Applicant's present eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has fully 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 ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant

Conclusion

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

DAVID M. WHITE
Administrative Judge