



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



In the matter of:)
)
) ISCR Case No. 09-07005
)
)
Applicant for Security Clearance)

Appearances

For Government: Jeff A. Nagel, Esquire, Department Counsel
For Applicant: *Pro se*

April 15, 2011

Decision

MASON, Paul J., Administrative Judge:

After his father-in-law died in 2006, Applicant decided to pay for part of his mother-in-law's mortgage. Then, his wife saw her income decrease from \$52,000 to \$36,000 a year. The extra mortgage and reduced income caused Applicant to become delinquent with six of his accounts. To Applicant's credit, he has settled three of the accounts and has plans in place to resolve the remaining three accounts. Eligibility for access to classified information is granted.

Statement of the Case

Applicant completed and certified his Electronic Questionnaire for Investigations Processing (e-QIP)(GE 1) on November 15, 2008. He was interviewed by an investigator from the Office of Personnel Management (OPM) on December 9, 2008, and July 23, 2009.

Summaries of his interviews appear in Applicant's interrogatory answers dated December 30, 2009. Applicant agreed with the investigator's interview summaries and that the summaries could be used at a hearing to determine his security suitability.

On February 23, 2010, DOHA issued a Statement of Reasons (SOR) detailing security concerns under financial considerations (Guideline F) and personal conduct (Guideline E). 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) implemented by the Department of Defense on September 1, 2006.

Applicant submitted his answer to the SOR on March 29, 2010. DOHA issued a Notice of Hearing on June 21, 2010, for a hearing on July 14, 2010. The hearing was held as scheduled. At the hearing, six exhibits (GE 1 through 6) were admitted in evidence (without objection) in support of the government case. Applicant testified. Applicant's four exhibits (AE A through AE D) were admitted without objection. In the time allowed to submit post-hearing exhibits, Applicant supplied five exhibits (AE E through AE I). Department Counsel interposed no objection to the exhibits. Applicant's exhibits AE A through AE I are now in the record. DOHA received the transcript (Tr.) on July 21, 2010. The record closed on July 28, 2010.

Findings of Fact

The SOR alleges security concerns raised under the financial considerations guideline (six allegations) and the personal conduct guideline (two allegations). The six financial allegations total approximately \$76,850. Two of the six accounts are delinquent mortgage accounts. The remaining four accounts represent credit cards. Applicant admitted all six delinquent financial allegations. He admitted the two personal conduct allegations, but denied his "no" answers constituted a deliberate intention to deceive the Government. He indicated that his wife has always handled their finances because his employment requires travel. He did not obtain a copy of a credit report before filling out the e-QIP in October 2008. (GE 2; Answer to SOR)

Applicant is 50 years old. He married his wife in August 1990. He has four children whose ages range from 15 to 25 years old. After 20 years of military service, Applicant received an honorable discharge from the United States Navy in February 2001. He has been employed as a senior engineer for the past two years.

Financial Considerations

Applicant's financial problems began in 2006 when his father-in-law died, and he decided to pay part of his mother-in-law's mortgage. (Tr. 34) Then, Applicant's wife had her income reduced from \$52,000 to \$36,000. (GE 2; Tr. 34)

The delinquent accounts will be discussed in the order they appear in the SOR. In 2005, Applicant and his wife obtained a credit card (¶ 1.a, \$3,803) that became delinquent in 2007. (GE 4) On December 14, 2009, Applicant entered into a settlement agreement with the creditor for \$1,521, requiring four payments of \$380 between December 2009 and March 2010. Applicant made the four payments and the account was settled. GE 6 shows the account was settled for less than the full amount.

The next account, (¶ 1.b, \$1,152), is a credit card creditor, whose account became delinquent in January 2008. GE 5 indicates the account was settled for less than the full amount.

In 2002, Applicant purchased a mobile home for approximately \$60,000, with financing of \$53,000 that was financed by the credit union lender (¶ 1.c, \$33,440) Applicant's monthly mortgage payments were \$636. After his wife's income was cut in 2006, he could no longer afford the mortgage and he requested the lender to retrieve the home. Applicant did not believe he owed the credit union anything since he voluntarily relinquished the home. (Tr. 18) Under a loan modification agreement, Applicant made several payments in 2008 and five monthly payments of \$150 in 2010. As of July 2010, the balance is \$32,690. (AE F)

Applicant purchased his home in 2005 for approximately \$350,000. Applicant's mortgage was \$2,500 a month. The original mortgagee sold the account to a new mortgagee, but continued to accept Applicant's mortgage payments. Applicant is involved in a lawsuit with the new mortgagee (AE E) to recoup his mortgage payments that he paid to the original mortgagee.¹ The property is currently being administered by a third mortgagee (¶ 1.d, \$32,291). Mortgage payments on this property have been suspended pending resolution of the lawsuit. Anticipating a successful resolution of the lawsuit, Applicant will then be able to pay off the arrears and bring the mortgage to a current status. (Tr. 45, 55)

Applicant was 60 days past due on an account to a discount hardware store (¶ 1.e, \$974). On March 8, 2010, Applicant settled the account for \$775. (AE B)

¹ See, also AE A containing copies of documented payments to the new lender.

The SOR at ¶ 1.f alleges Applicant owes \$5,987 for a military credit card transferred for collection in August 2006. Applicant opened this account while in the military. (Tr. 51) He has been making monthly payments of \$204 on the balance (\$5987) since at least December 2009. (GE 2) Regular monthly payments by allotment have reduced the balance in July 2010 to \$5,030. (AE H)

Applicant settled the accounts identified in ¶¶ 1.a, 1.b, and 1.e. He is paying the military charge card listed in ¶ 1.f. He is abiding by a monthly payment schedule to satisfy the creditor in ¶ 1.c. Concerning the creditor in ¶ 1.d, anticipating a ruling in his favor, he will be able to pay the arrears and restore the mortgage to a current status. (Tr. 45)

Personal Conduct

¶¶ 2.a and 2.b of the SOR allege that Applicant falsified material facts in two locations of an e-Qip on October 7, 2008. Under ¶ 2.a, he answered “no” to Section 28a. (In the last 7 years, have you ever been over 180 days delinquent on any debt(s)?) Under ¶ 2.b, he also answered “no” to Section 28b. (Are you currently over 90 days delinquent on any debt(s)?) Applicant admitted he answered “no” to both questions, but was unaware of his financial status in October 2008 because his wife had always handled the finances since he was in the military. (GE 2; Answer to SOR; Tr. 53) He indicated he was not trying to deceive the Government about his finances. Applicant realizes he should be more of a participant in the family’s financial decision-making, and has since become more involved by discussing bills with his wife. (Tr. 53-54) I find that Applicant did not deliberately furnish false information in response to the two financial questions on his e-QIP.

Character Evidence

Three character references were submitted on Applicant’s behalf. Witness A has been Applicant’s friend since they were both in the Navy 22 years ago. Witness A has been Applicant’s coworker during the completion of various military projects and always considered Applicant exemplified a high quality work-ethic. Witness B and Witness C, Applicant’s coworkers for the past five years on different assignments, are impressed by Applicant’s honesty and trustworthiness.

During his Navy career, Applicant received several awards and letters of recognition. In March 1984, he received a letter of appreciation for his service. He was awarded “Sailor of the Quarter” for his performance and leadership during the month of August 1984. In May 1988, he was officially recognized for his expertise in assuring that message traffic was properly handled.

Applicant received recognition for his service in the Middle East between October 1988 and January 1989. He received the “Navy Achievement Medal” for professional

accomplishments between October 1988 and February 1991. In February 1990, Applicant received a promotion to Radioman First Class for his leadership qualities and the positive example he set for his subordinates.

Applicant submitted an appraisal which indicates his overall rating met and occasionally exceeded standards required by his position. Though the appraisal carries a date of May 2010, there is no designated rating period. The appraisal contains names but no signatures. (AE G)

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the AG. Each guideline lists potentially disqualifying conditions and mitigating conditions, which are required to be used to the extent they apply in evaluating an applicant's eligibility for access to classified information.

The administrative judge's ultimate goal is to reach a fair and impartial decision that is based on common sense. The decision should also include a careful, thorough evaluation of a number of variables known as the "whole-person concept" that brings together all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision. 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 about the potential, rather than actual, risk of compromise of classified information.

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 for obtaining a favorable security decision.

Analysis

Financial Considerations

The security concern for financial considerations is set forth 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.

There are two disqualifying conditions under AG ¶ 19 that may apply:

AG ¶ 19(a) (*inability or unwillingness to satisfy debts*); and

AG ¶ 19(c) (*a history of not meeting financial obligations*).

The record demonstrates that Applicant developed financial problems in 2006 after his father-in-law died, and he decided to help his mother-in-law pay her mortgage. Then, his wife's income was reduced from \$52,000 to \$36,000. By February 2010, Applicant was unable to pay six delinquent debts totaling \$76, 860. AG ¶¶ 19(a) and 19(c) apply. There is no evidence of extravagant spending, drug abuse, or gambling.

Four conditions under AG ¶ 20 could potentially mitigate Applicant's delinquent indebtedness:

AG ¶ 20(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*);

AG ¶ 20(b) (*the conditions that resulted in the financial problem were largely beyond the person's control, and the person acted responsibly under the circumstances*); and

AG ¶ 20(d) (*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*).

The record shows the six listed accounts became delinquent in 2007 and 2008. Applicant is unlikely to purchase another mobile home in the future now that he knows that returning the home to the lender still constitutes a repossession. Whether property is returned to the lender or he repossesses it before the contract completion, if he does not get the fair market value at auction, the lender can still seek the difference from Applicant. Concerning the new mortgagee in ¶ 1.d, Applicant is confident the litigation will end in his favor, allowing him to pay off the arrears and restore the mortgage to a current status. Based on Applicant's successful efforts in settling ¶¶ 1.a, 1.b, and 1.e, and continuing his regular payments of ¶ 1.f and ¶ 1.c, AG ¶ 20(a) applies in part. AG ¶ 20(d) is given greater weight because Applicant settled three of six delinquent debts, and has plans in place to repay the others.

Taking on more debt in 2006 with his mother-in-law's mortgage entitles Applicant to no mitigation under AG ¶ 20(b) because it was a decision entirely within his control. However, Applicant could not have anticipated his wife's sudden loss of income. The record reflects the income reduction caused four credit cards to become delinquent and the mobile home repossession. Once Applicant discovered he could no longer support the mobile home, he took steps to relinquish the home. Though he still has to pay \$150 a month to repay the difference after auction, the current amount is much more manageable with his other financial responsibilities. Considering the evidence as a whole, including the fact Applicant has settled with three of the six listed creditors, he has "acted reasonably under the circumstances," and receives substantial mitigation under AG ¶ 20(b). The financial guideline is found in his favor.

Personal Conduct

Paragraph 15 of the AG sets forth the security concern for personal conduct:

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 provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

The following disqualifying condition under ¶ 16 may apply:

AG ¶ 16(a) deliberate omission or falsification of relevant facts from any personnel security questionnaire to determine security clearance eligibility or trustworthiness.

The focus of AG ¶ 16(a) is the intentional concealment or omission of material information from an e-QIP. An omission is intentional if it is done knowingly and willfully. The guideline does not apply to negligent or unintentional omissions of material information where the appellant forgot about it, or had a good-faith belief the information did not need to be reported. Having carefully weighed the surrounding circumstances of why Applicant answered "no" to Section 26a. (debts over 180 days delinquent in the last 7 years) and 26b. (debts over 90 days delinquent), I conclude that Applicant was not deliberately trying to deceive the Government about his delinquent debts. Because his job requires travel, he has always had his wife handle their finances. Moreover, he did not have a credit bureau report available when he completed the e-Qip in October 2008. Although Applicant concealed material facts about his financial history, he did conceal the information deliberately. No mitigation is required.

Whole-Person Concept

In evaluating Applicant's security clearance worthiness, I have examined the evidence under the disqualifying and mitigating conditions of the financial guideline. I have also weighed the circumstances within the context of nine variables known as the whole-person concept. In evaluating the relevance of an individual's conduct, the administrative judge should consider the following factors:

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 the participation was 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.

Applicant is 50 years old and has been married almost 20 years. The military records indicate an impressive 20-year military career punctuated by a promotion just before his honorable discharge in February 2001. His character evidence demonstrates he is an honest and trustworthy employee who meets the standards of his employment position.

In 2006, Applicant's father-in-law died. Applicant deserves respect for agreeing to pay a portion of his mother-in-law's mortgage so that she could stay in her house. He did not anticipate his wife's income would be cut and have an impact on his ability to pay his own obligations. The fact that Applicant worked out a reasonable payment plan to repay the mobile home lender weighs in his favor. Applicant's resolution of three accounts for less than the full balance demonstrates additional good judgment by Applicant in responsibly handling his financial obligations. Applicant's documented action in addressing his delinquent debt while committing more time to the family finances justifies a finding in his favor under the financial guideline. Having weighed and balanced the entire record, in the context of the whole person, Applicant has mitigated the adverse evidence under the financial considerations guideline.

Formal Findings

Paragraph 1 (Guideline F): FOR APPLICANT

Subparagraph 1.a through 1.f: For Applicant

Paragraph 2 (Guideline E): FOR APPLICANT

Subparagraph 2.a and 2.b: For Applicant

Conclusion

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

Paul J. Mason
Administrative Judge