



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



In the matter of:)	
)	
-----)	ISCR Case No. 09-07972
)	
Applicant for Security Clearance)	

Appearances

For Government: Melvin A. Howry, Esquire, Department Counsel

For Applicant: *Pro se*

November 22, 2011

Decision

ROSS, Wilford H., Administrative Judge:

Applicant submitted his Electronic Questionnaire for Investigations Processing (e-QIP), on September 16, 2009. (Government Exhibit 1.) On or before December 17, 2010, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant, which detailed security concerns under Guidelines F (Financial Considerations) and E (Personal Conduct). 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 for SORs issued after September 1, 2006.

Applicant answered the SOR in writing on January 10, 2011, and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on February 7, 2011. This case was assigned to me on February 14, 2011. DOHA issued a notice of hearing on April 4, 2011, and I convened the hearing as scheduled on May 11, 2011. The Government offered Government Exhibits 1 through 7, which were

received without objection. Applicant testified on his own behalf, and submitted Applicant Exhibits A through C, also without objection. The record was left open at the Applicant's request for the submission of additional documentation. Applicant submitted Applicant Exhibit D on May 17, 2011. This exhibit was received without objection. DOHA received the transcript (Tr) of the hearing on May 26, 2011. The record closed on May 26, 2011. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

Findings of Fact

Applicant is 30, divorced in January 2011, and a high school graduate. He is employed by a defense contractor and seeks a security clearance in connection with his employment in the defense industry. In his Answer to the SOR, Applicant denied all of the allegations in the SOR. He also provided additional information supporting his request for a security clearance.

Paragraph 1 (Guideline F - Financial Considerations)

The Government alleges in this paragraph that Applicant is ineligible for clearance because he is financially overextended and therefore at risk of engaging in illegal acts to obtain funds.

Applicant's primary current debt issues concern the two mortgages on a condominium (condo) he bought in 2006. Like many home purchasers at that time, Applicant elected to buy the condo with "80/20" loans. In other words, he had a first mortgage for 80% of the purchase price, and a second mortgage for 20% of the purchase price, which covered the down payment.

For the first two years after he purchased the condo, Applicant was able to make the mortgage payments through a combination of rent income and his own income. In 2008 several events happened: Applicant changed jobs, his income fell because of the global economic crisis, his renter left and Applicant was unable to rent the condo, the housing market collapsed in his home state, and the value of the condo plummeted as a result.

Applicant owed approximately \$311,224 on the condo, but the property was not worth nearly that much. On April 20, 2010, Applicant signed the property back to the mortgage holder through the use of a deed in lieu of foreclosure. It was accepted on June 24, 2010. (Applicant Exhibit C.) He testified regarding his earlier attempts to resolve the debt:

Actually, before I tried this [deed in lieu], I tried to sell the property. We weren't getting any takers, so we started lowering the price. People still weren't taking, so I was just looking at the steps, and they said the first thing to do is sell - - sell the home. If you can't sell the home, try short

sale. If you can't do a short - - well, first even like the modification, I tried to do that. It was denied, so I tried to sell it. I couldn't sell it. I tried the short sale.

The short sale almost worked. They - - we tried to sell it, or the offer came in at 225,000, I believe, and Carrington basically said it's not high enough, and then after that, I - - the only thing I could think of to do was just - - the next step before foreclosure was deed in lieu of foreclosure, so I just started the process of that, and I finally completed that on June 24, 2010. (Tr at 37-38.)

Applicant Exhibit D is a copy of the Estimated Statement of the short sale. It is dated October 6, 2009. It shows that the actual proposed price was \$220,000.

Applicant had recently received communication from the mortgage company about a possible deficiency. However, as of the date the record closed, it was uncertain what, if anything, Applicant still owed the mortgage company. (Tr at 40-45.)

As for his current financial status, it is stable. Applicant has paid off all of his formerly past-due debts, as further described below, and there is no other past-due indebtedness. As of July 2011 his truck would be paid off and he would then have an additional \$317 per month of disposable income. (Government Exhibit 4; Applicant Exhibit A; Tr at 56-60.)

Paragraph 2 (Guideline E - Personal Conduct)

The Government alleges in this paragraph that Applicant is ineligible for clearance because he made false statements on official documents during the clearance screening process.

Applicant filled out an official questionnaire on September 16, 2009. In that questionnaire he answered, "No," to questions 26.g., h., m., and n. These questions ask Applicant whether, in the last seven years, he had any debts turned over to a collection agency, had any account or credit card charged off for failing to pay as agreed, had been over 180 days delinquent on any debts, or was then currently over 90 days delinquent on any debts? His denials were false answers to relevant questions concerning Applicant's debt situation. (Government Exhibit 1.)

Slightly over three weeks later, on October 9, 2009, Applicant was interviewed by a government investigator. The subsequent report states:

[Applicant] stated that he didn't report the credit issues on his case paperwork because he was under the belief that because he was actively clearing up the problems they didn't have to be reported. [Applicant] stated that he was contracted to a credit counseling service located in the Midwest that is clearing up his credit problems. [Applicant] contracted with

the credit counseling service over the internet. [Applicant] stated that he is making monthly payments via allotment to the counseling service. Applicant stated that his counselor . . . has assured him everything is being handled. [Applicant] does not dispute any of the amounts or the accounts listed on his credit report. He takes full responsibility for all of his debts and is actively trying to resolve his credit issues. (Government Exhibit 3 at 3.)

Applicant provided documentation showing that he had signed on with the debt resolution company in December 2008. (Government Exhibit 4 at 5-13.) This is before the Applicant began work with his defense industry employer. He testified:

So as far as my saying, no, that I wasn't delinquent was to my understanding from the company that they were taking care of everything, and I had signed over the - - I guess the power of attorney for them to handle on my behalf, so they said basically I am paying them to make the payments to those companies, so they were handling it for that first - -the first year or whatever that I was - - before I got into this company here. (Tr at 46.) (See Tr at 53-54.)

After about a year of paying this company over \$200 a month for small results, Applicant took it upon himself to resolve his debts. By May 2010 he had successfully done that. (Government Exhibit 4 at 36-38; Tr at 54-56.)

Mitigation

Applicant submitted a series of work-related recognitions. The dates of the documents range from April 2009 through July 2010. (Applicant Exhibit B.)

Policies

Security clearance decisions are not made in a vacuum. 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 as appropriate 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. In addition, the administrative judge may also rely on his or her own common sense, as well as knowledge of the law, human nature, and the ways of the world, in making a reasoned decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that, “Any 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, 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. Security clearance decisions include, by necessity, consideration of the possible risk that 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.

Finally, as emphasized in Section 7 of Executive Order 10865, “Any 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.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Paragraph 1 (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 debts” is potentially disqualifying. Similarly under AG ¶ 19(c), “a history of not meeting financial obligations” may raise security concerns. Applicant was unable to pay the mortgages on his condo, eventually resulting in his returning the property to the mortgage holder by the means of a deed in lieu. The evidence is sufficient to raise these potentially disqualifying conditions, requiring a closer examination.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. Mitigating Condition ¶ 20(a) states that the disqualifying conditions 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.”

Under AG ¶ 20(b), the disqualifying conditions 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.” In addition, evidence that “the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts” is also mitigating under ¶ 20(d). With the possible exception of his mortgage, Applicant has paid all of his remaining past-due debts.

The Applicant has acted in a way that shows good judgment, making the best he could out of a difficult situation. The decision to submit a deed in lieu to the mortgage company was not made lightly, and Applicant attempted to resolve the situation in several different ways. The housing downturn is obviously a situation out of the Applicant’s control, and he did act responsibly under his particular circumstances.

Applicant has not received financial counselling. However, as found above, his current financial situation is stable. I find 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 control,” as required by AG ¶ 20(c). All of these mitigating conditions apply to the facts of this case. (See ISCR Case No. 09-08533 (App. Bd. Oct. 6, 2010).) Paragraph 1 is found for Applicant

Paragraph 2 (Guideline E, Personal Conduct)

The security concern for Personal Conduct is set out in AG ¶ 15:

Conduct involving questionable judgment, lack of candor, dishonesty or unwillingness to comply with rules or regulations can raise questions about an individual’s reliability, trustworthiness and ability to protect classified information.

Turning to Applicant's alleged falsification of his questionnaire, I have considered the disqualifying conditions under AG ¶ 16 and especially considered the following:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities.

When a falsification allegation is controverted or denied, as in this case, the Government has the burden of proving it. Proof of an omission, standing alone, does not establish or prove an applicant's state of mind when the omission occurred. An administrative judge must consider the record evidence as a whole to determine whether there is direct or circumstantial evidence concerning an applicant's state of mind at the time the omission occurred. See ISCR Case No. 03-09483 at 4 (App. Bd. Nov. 17, 2004) (explaining holding in ISCR Case No. 02-23133 at 5 (App. Bd. Jun. 9, 2004)).

Applicant is not financially sophisticated, and it is obvious that he trusted the debt resolution company more than he probably should have. In addition, he ascribed to them abilities to improve his credit, which they did not have. Three weeks after filling out the questionnaire, Applicant fully and freely discussed his debts with a government investigator. In addition, he has consistently stated and testified that because he was resolving his debts, he believed that he did not have to inform the Government of them. Given his age, education, maturity and financial experience, his belief, while mistaken, was a rational one for him. Therefore, I find that he did not have the requisite intent to deceive the government.

The following mitigating conditions under AG ¶ 17 apply to the circumstances of this case and justify a finding on behalf of the Applicant:

(a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts: and

(c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment.

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 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. My analysis under Guidelines F and E, set forth above, apply to the whole-person discussion as well, but some additional discussion is also warranted.

Applicant has resolved his financial situation the best he can. There is more than sufficient evidence to show that he will not again fall into the financial problems that plagued him for several years.

In addition, his failure to set forth his financial record on his questionnaire was due to misunderstanding, not intent to deceive. While intelligent, he was financially unsophisticated and made assumptions that, while wrong, were not absurd. To be sure, it would have been better if he had been forthcoming with the government, but in this case his conduct does not rise to the level of falsification.

Based on the state of the record, I find that there have been permanent behavioral changes under AG ¶ 2(a)(6). Accordingly, at the present time, I find that there is no potential for pressure, coercion, exploitation, or duress (AG ¶ 2(a)(8)); and that there is very little likelihood of recurrence (AG ¶ 2(a)(9)).

Overall, the record evidence leaves me without questions or doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has mitigated the security concerns arising from his personal conduct, and financial situation. On balance, I conclude that Applicant has successfully overcome the Government's case opposing his request for a DoD security clearance.

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.:	For Applicant
Subparagraph 2.a.:	For Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraph a.:	For Applicant

Conclusion

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

WILFORD H. ROSS
Administrative Judge