



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



In the matter of:)	
)	
)	ISCR Case No. 10-00219
)	
Applicant for Security Clearance)	

Appearances

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

May 20, 2011

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 October 14, 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 November 8, 2010, and requested a hearing before an administrative judge. The case was assigned to me on February 7, 2011. DOHA issued a notice of hearing on March 2, 2011, and the hearing was convened as scheduled on March 25, 2011. The Government offered exhibits (GE) 1 through 7,

which were admitted without objection. Applicant testified and submitted exhibits (AE) A through E, which were admitted without objection. The record was held open for Applicant to submit additional information. Applicant timely submitted documents that were marked AE F through H and admitted without objection. Department Counsel's memorandum forwarding Applicant's exhibits is marked Hearing Exhibit (HE) I. DOHA received the hearing transcript (Tr.) on April 4, 2011.

Findings of Fact

Applicant is a 44-year-old prospective employee of a defense contractor. The contractor is sponsoring him for a security clearance and will hire him if he obtains a clearance. He has an associate's degree. He is married with three children, ages 19, 18, and 12.¹

Applicant was laid off from his job in March 2009. He was unemployed for about four months before he was able to obtain a job at a lesser salary than he earned before the lay off. He was unable to pay all his bills on his reduced salary, and a number of debts became delinquent.²

The SOR alleges 13 delinquent debts totaling about \$8,400 and a state tax lien of \$8,616. Applicant admitted owing all the debts except the state tax lien, which he denied. Ten debts, totaling about \$6,758, are medical debts. The \$609 debt to a collection company on behalf of a telephone services company, as alleged in SOR ¶ 1.d, is the same debt as the \$610 debt to a different collection company on behalf of the same telephone services company, as alleged in SOR ¶ 1.g. The remaining debt is \$429 owed to a collection company on behalf of a bank, as alleged in SOR ¶ 1.j.

Records indicate that state A filed an \$8,616 state tax lien against Applicant in 2006. The records list an address for Applicant in state A. Applicant lives in state B, which borders state A. He credibly testified that he has not lived in state A since he was a child, and he has never worked in state A. His brother is a police officer. He corroborated Applicant's statement about not living or working in state A. Applicant made a number of telephone calls about the lien, but was unable to find out the basis of the lien. He filed a police report in April 2011, reporting that he is the victim of identity theft. I find that Applicant is not responsible for the \$8,616 state tax lien.³

Applicant fell behind on his mortgage payments after he lost his job. He and the bank entered a loan modification agreement, and he is current on the modified payments. A previous employer deducted money from Applicant's pay for medical insurance, but failed to pay the premiums. Applicant had a medical condition requiring treatment. He thought the treatment was covered by insurance, but it was not. He incurred about \$5,000 in medical bills for the treatment. His wife and children also

¹ Tr. at 19-22, 28, 30; GE 1.

² Tr. at 19-22, 32; GE 1, 3.

³ Tr. at 23; GE 3-7; AE C, G, H.

incurred some medical bills. He has no recourse against his previous employer, as it went out of business. He is working a second job in order to make ends meet, but his combined income is still less than he earned before the lay off. He has maintained contact with his creditors, and he paid several debts that were not alleged in the SOR. A September 2009 credit report showed seven delinquent medical debts that had been paid. He is getting by, but except for a \$50 payment in April 2011, he has been unable to address the delinquent debts alleged in the SOR. He has received some financial counseling. His prospective job pays a salary that will enable him to pay his delinquent debts. He credibly testified that he will pay all his delinquent debts after he starts work with the defense contractor.⁴

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

⁴ Tr. at 29-30, 33-47; GE 3-6; AE A, C, E, F.

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 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 financial obligations. The evidence is sufficient to raise the above disqualifying conditions.

AG ¶ 20 provides conditions that could mitigate security concerns. The following 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 was laid off from his job in March 2009 and was unemployed for about four months. When he finally found a job, it was lower-paying than his old job. A previous employer did not pay Applicant's health insurance premiums from the money it withheld from his pay check, and he incurred medical bills that should have been paid by insurance. Those events qualify as conditions that were outside his control. To be fully applicable, AG ¶ 20(b) also requires that the individual act responsibly under the circumstances. Applicant maintained contact with his creditors and paid the debts he could. He is now current on his mortgage payments under his modified agreement. He obtained financial counseling. He credibly testified that he will pay all his delinquent debts when he is hired by the defense contractor. I find that Applicant acted responsibly under the circumstances, and AG ¶ 20(b) is applicable. AG ¶ 20(c) is partially applicable.

Applicant is not responsible for the tax lien. AG ¶ 20(e) is applicable to the lien. It is also applicable to the duplicate debt alleged in SOR ¶ 1.g.

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.

Applicant's financial problems are related to his unemployment and medical bills incurred when he was not covered by insurance. Applicant currently owes about \$6,700 in medical debts and \$1,029 for two other debts. Based on the evidence presented, his testimony, and his credit report that indicates he has previously paid delinquent medical bills, I am convinced he will resolve those debts after he is hired by the defense contractor.

Overall, the record evidence leaves me without questions or doubts as to 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.n: 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