



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



In the matter of:)
)
) ISCR Case No. 10-00446
)
)
Applicant for Security Clearance)

Appearances

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

December 14, 2010

Decision

COACHER, Robert E., Administrative Judge:

Applicant has not mitigated the Financial Considerations security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On May 4, 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. DOHA acted 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 May 26, 2010, and requested a hearing before an administrative judge. The case was assigned to me on July 19, 2010. DOHA issued a notice of hearing on July 27, 2010, and the hearing was convened as scheduled on

August 16, 2010. The Government offered exhibits (GE) 1 through 7, which were admitted without objection. Department Counsel's exhibit index is marked as Hearing Exhibit (HE) I. Applicant testified and submitted exhibits (AE) A through C at the hearing, which were admitted without objection. The record was held open for Applicant to submit additional information. Applicant submitted AE D through V, which were admitted without objection. Department Counsel's post-hearing memorandum was marked HE II. DOHA received the hearing transcript (Tr.) on August 23, 2010.

Findings of Fact

Applicant is a 47-year-old employee of a defense contractor. He has worked for his current employer since August 2002. In his current position, he provides technical support to the military. He is a high school graduate and has one year of college credit. He is married and has three children, one of whom still lives at home. He served in the Army for 20 years and retired in September 2001, with an honorable discharge, as a sergeant first class (E-7). He has held an industrial security clearance since 2002.¹

The SOR alleges two delinquent debts and a prior bankruptcy discharge in 2002. The debts were listed on credit reports obtained on November 10, 2009, April 7, 2010, June 14, 2010, and August 13, 2010. Applicant admitted owing both debts alleged in the SOR and receiving a bankruptcy discharge in 2002.

Applicant attributes his 2002 bankruptcy (SOR ¶ 1.a) to events associated with his retirement from the Army. Shortly after retiring, Applicant moved his family to a new location. Initially, he had difficulty finding employment. He did find a job in the private sector, but the hourly pay, along with his military retirement income, was insufficient to pay his current bills. He also accumulated a large amount of credit card debt. He then sought bankruptcy protection. At the time, his total assets were \$17,000 and his liabilities were \$41,000. In September 2002, his Chapter 7 bankruptcy action was completed and his debts were discharged, including debts from 14 different credit card accounts.²

The two debts listed in the SOR resulted from a foreclosure action on Applicant's home (SOR ¶ 1.c) and a related default on a home equity loan (HEL) (SOR ¶ 1.b). In July 2004, Applicant bought a home for approximately \$287,000. He financed the home with an adjustable rate mortgage (ARM). He was aware, at the time he financed his home, the ARM would adjust in the future if interest rates rose. Initially, his monthly payments on his mortgage were about \$1,700. He had no problems making those payments. In June 2005, Applicant took out a HEL to finance upgrades to the house and to pay some debt. His monthly mortgage and HEL payments rose to \$2,200 and he was able to make those payments. In January or February 2007, his ARM adjusted upward and his monthly payments rose to \$3,200. This latest increase was beyond what Applicant knew he could pay. He tried, unsuccessfully, to seek a loan modification.

¹ Tr. at 8, 25-28; GE 1.

² Tr. at 27; GE 2, 3.

He and his wife consulted an attorney about various options he might have. Applicant and his wife decided that their best option was to allow foreclosure on their home mortgage and to default on the HEL. Applicant made a conscious decision to do so. He reasoned that in the long run, it was better to have a poor credit report for a few years than to pay this debt for a longer term. The house was foreclosed in July 2007 and sold at auction in March 2008. Prior to the home foreclosure, Applicant attempted to sell the house through a short sale with no success. At the time of foreclosure, Applicant owed between approximately \$325,000 and \$329,000 on the home. It sold for approximately \$200,000 at auction. Applicant received a Form 1099-C cancellation of debt notice from his creditor relieving him of liability for the deficiency mortgage amount. The lender on the HEL loan tried to collect on this account. The lender offered to settle for \$20,000, but Applicant did not have the money to settle. The last correspondence he received from the HEL lender was in early 2008. Applicant has not made any further payments on the HEL.³

Currently, Applicant's combined net monthly income is approximately \$6,300. His net monthly expenses are approximately \$5,000. Included in his current expenses are payments on nine different credit card accounts. He also makes car payments on a 2004 Mercedes Benz (\$740 per month) and a 2006 Mustang (\$466 per month). Applicant received credit counseling while in the Army and in connection with his 2002 bankruptcy, but none since then.⁴

Applicant is well thought of by his co-workers. One co-worker described Applicant as "organized, reliable and a great asset." Another co-worker stated, "his moral integrity and upstanding reputation remains undisputed." Applicant was the recipient of numerous decorations and certificates from the Army.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 that 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

³ Tr. at 29-35, 44-56; AE 3.

⁴ Tr. at 56-61; AE L.

⁵ AE A-C, M, O-V.

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 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 extrapolation about 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* Executive Order 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 as follows:

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 sought bankruptcy protection and received a discharge of debts thereby establishing a history of not meeting financial obligations. Additionally, he defaulted on his home mortgage, resulting in foreclosure, and a HEL. The evidence is sufficient to raise the above disqualifying conditions.

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

Although Applicant's bankruptcy happened in 2002, his subsequent financial problems, including a foreclosure and default on a HEL as recently as 2007-2008, cast doubt upon his current reliability, trustworthiness, and judgment. AG ¶ 20(a) is not applicable.

Applicant blames the foreclosure and HEL default on the \$1,000 a month increase in his monthly mortgage payments due to an upward ARM adjustment. This circumstance was not unforeseen because Applicant was aware when he executed his ARM that such a contingency could happen. Additionally, Applicant chose to take out the HEL and spend the proceeds on home improvements and debt payments. These do not qualify as conditions that were outside his control. AG ¶ 20(b) is not applicable.

Applicant received financial counseling prior to his 2002 bankruptcy, but none since then. Although he currently has no liability on the foreclosed mortgage debt, he made no efforts to resolve the HEL debt. Therefore, his debts are not being resolved

and his finances are not under control. It is notable that Applicant continues to maintain numerous credit cards despite his past financial problems. AG ¶¶ 20(c) and 20(d) are not applicable.

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. 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 20 years of honorable Army service and numerous awards and training certificates. I also considered the support he received from his co-workers. I also found Applicant to be honest and candid about his finances. I believe he is sincere about getting his finances in order. However, he seems to be repeating the same mistakes that led to his bankruptcy and then to his mortgage and HEL defaults by funding expensive cars and using nine credit cards. Additionally, I am troubled by Applicant's conscious decision to default on the HEL without making a good faith effort to repay the debt. This does not show good judgment which must be considered in a security context. His past financial track record, that includes a prior bankruptcy action, raises questions about his willingness to resolve his debts and live within his means.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated the 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: AGAINST APPLICANT

Subparagraphs 1.a – 1.c: Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Robert E. Coacher
Administrative Judge