



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



In the matter of:)
)
) ISCR Case No. 10-00843
)
)
Applicant for Security Clearance)

Appearances

For Government: Gina Marine, Esquire, Department Counsel
For Applicant: *Pro se*

November 22, 2010

Decision

CREAN, Thomas M., Administrative Judge:

Based on a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

On April 30, 2009, Applicant submitted a Questionnaire for Investigations Processing (e-QIP) as a requirement for a position with a defense contractor. After an investigation conducted by the Office of Personnel Management (OPM), the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR), dated May 10, 2010, to Applicant detailing security concerns for financial considerations under Guideline F, and personal conduct under 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) effective within the Department of Defense on September 1, 2006. Applicant acknowledged receipt of the SOR on May 18, 2010.

Applicant answered the SOR on May 21, 2010, and denied all allegations. Department Counsel was prepared to proceed on July 22, 2010, and the case was assigned to me on August 8, 2010. DOHA issued a Notice of Hearing on September 2, 2010, scheduling a hearing for September 23, 2010. I convened the hearing as scheduled. The Government offered five exhibits, marked and admitted without objection as Government Exhibits (Gov. Ex.) 1 through 5. Applicant testified on his behalf, and offered six exhibits marked and admitted without objection as Applicant Exhibits (App. Ex.) A through F. The record was held open for Applicant to submit additional documentation. Applicant timely submitted seven additional documents, marked and admitted as Applicant Exhibits G through L. Department Counsel had no objection to the admission of the additional documents. (Gov. Ex. 6, Memorandum, dated October 12, 2010). DOHA received the transcript of the hearing (Tr.) on October 9, 2010.

Findings of Fact

Applicant denied the allegation under Guideline F and the allegation under Guideline E. After a thorough review of the pleadings, transcript, and exhibits, I make the following essential findings of fact.

Applicant is 47 years old and has been employed by a defense contractor as a senior engineering associate for about 18 months. He is divorced with no children. He has an Associate's degree. (Gov. Ex. 1, e-QIP, dated April 30, 2009)

In July 1998, Applicant was seriously injured while working for a civilian company. Applicant's wife at the time was an attorney and accountant and managed all the aspects of his disability claim for the injury. At the time of injury, his base salary was approximately \$65,000. His injury was serious enough that it prevented him from returning to work. Applicant underwent a number of unsuccessful operations to correct his back injury. Applicant initially received workman's compensation and had long term disability payments from his company that kept him at his base salary. After a year, his long-term disability ended in late 1999. Since he still could not work, he applied for and received social security disability payments of \$1,500 monthly starting in late 2000. Social security back dated their payments to the termination of the long-term disability insurance. His company finally terminated him in October 2004 since he could not return to work. Between October 2000 and June 2006, Applicant's sole source of income was the social security disability payments. (Tr. 24-31; App. Ex. G, e-mail, dated October 4, 2010)

Applicant continued to be under doctor's care, receive medication, and undergo rehabilitation treatment and physical therapy. In May 2006, Applicant believed he was well enough to return to work. He applied to social security for a "Right to Work" determination. Applicant never received a reply to his request for "Right to Work." However, his former wife, who served as his attorney, may have received a response and never informed him. He found employment with a company as a salesman in June 2006 with compensation of \$35,000 annually. He was eventually promoted and became

a department leader. He also continued to draw social security disability benefits until October 2008. Applicant believed that the social security rule was that he could continue to receive disability payments for a period of time while working to ensure he was capable of returning to work before disability payments were terminated. He is unsure when and if the disability payments should have terminated. He may owe social security some debt but the issue has not been decided. It should be noted that Social Security beneficiaries may receive benefits during a trial work period within which they may test their ability to work and still be considered disabled. Overpayments may be waived by social security if the claimant is without fault and recovery would defeat the purpose of the Social Security Act. (20 CFR 404.1592)

Applicant was notified by social security that he owed them \$56,000 for overpayment of disability. Social security did not tell him why he owed the debt. Applicant is unsure when he was notified but social security did notify him in January 2009 referencing an earlier letter concerning the debt owed for overpayment of disability. Social security also filed a notice with the credit reporting agencies that Applicant owed them a debt of \$56,600. (See Gov. Ex. 2, Response to Interrogatories, dated March 10, 2010, at 112, Social Security Letter, dated January 18, 2009) Applicant did not contact social security concerning the disability overpayment but his wife did on his behalf. (Tr. 31-39)

Applicant started working for his present defense contractor employer in April 2009. He and his attorney continually contacted the Social Security Administration to resolve and seek a hearing on the overpayment debt. (App. Ex. K, L, M, Letters, dated in June, July, and September 2009) Applicant and his attorney also met with Social Security administrators who were unable to explain the overpayment or verify the amount owed. The last meeting was in mid-September 2010. Applicant is still waiting for a hearing and a determination on the disability overpayment. The issue has not been resolved. (Tr. 39-43)

Applicant completed his e-QIP by himself in April 2009. At that time, he was aware that social security had claimed he was overpaid for his disability, he had disputed the overpayment, and the matter had not been resolved. Prior to completing the form, he was not in contact with his attorney concerning any questions or answers on the form. He realized there was a requirement to be truthful on the application. He responded "No" to the parts of question 26 concerning any delinquent debts. Applicant also had not checked any credit reports and he was unaware that social security had listed the debt with the credit reporting agencies as delinquent. He did not then and does not now believe he owes a debt to social security because the dispute is not resolved. He responded to the question truthfully because he does not believe the debt is delinquent. (Tr. 43-52) If it is determined that he owes a debt to social security, Applicant is prepared to pay the debt. He has been saving funds for that purpose and is capable of paying a part of the amount owed. He would have to agree to a payment plan if the amount owed is near the \$56,000 claimed. (Tr. 52-60)

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the revised adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which must be considered 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.

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 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 the possible risk the applicant may deliberately or inadvertently fail to 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

Financial Considerations

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. (AG ¶ 18) Similarly, an individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in his or her obligations to protect classified information. Behaving responsibly or irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life.

A person's relationship with his creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to repay debts under agreed terms. Absent evidence of strong extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a situation of risk inconsistent with the holding of a security clearance. An applicant is not required to be debt free, but is required to manage his finances in such a way as to meet his financial obligations.

Applicant's credit report indicated that he is in debt to the Social Security Administration for overpayment of \$56,000 for a disability. Applicant disputes this debt but does acknowledge that there may be some debt owed to social security. The potential of a debt to social security is sufficient to raise a security concern and consideration of Financial Considerations Disqualifying Conditions (FC DC) AG ¶ 19(a) (inability or unwillingness to satisfy debts). This is a circumstance of an inability and not an unwillingness to satisfy debt.

Applicant has raised conditions that may mitigate the security concern. I considered Financial Considerations Mitigating Condition (FC MC) 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) and FC MC AG ¶ 20(b) (the conditions that resulted in the financial problems 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); FC MC ¶ 20(d) (the individual has initiated a good-faith effort to repay the overdue creditors or otherwise resolve debts); and FC MC ¶ 20(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). These mitigating conditions apply. The circumstances causing the debt are unusual in that they arose from an overpayment of disability that Applicant was entitled to receive. He acted reasonably when notified of the debt by disputing the debt, hiring an attorney, and setting aside funds to pay any possible debt. The overpayment was beyond his control and he acted reasonably and responsibly under the circumstances. Applicant's actions regarding a potential debt to social security provides significant and credible information to establish a good-faith effort to resolve debt issues. Assuming he actually owes the debt, AG ¶ 20(e) applies since the debt is being disputed under the social security statute. His actions show he acted reasonably and responsibly under the

circumstances. His finances do no longer reflect adversely on his trustworthiness, honesty, and good judgment.

Personal Conduct

A security concern is raised because conduct involving questionable judgment, untrustworthiness, unreliability, 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. (AG ¶ 15) Personal conduct is always a security concern because it asks the central question whether the person's past conduct justify confidence the person can be entrusted to properly safeguard classified information. The security clearance system depends on the individual providing correct and accurate information. If a person conceals or provides false information, the security clearance process cannot function properly to ensure that granting access to classified information is in the best interest of the United States Government. Applicant answered "NO" to financial questions concerning delinquent debt. He did have a dispute with social security concerning the overpayments and this may create a debt. The potential of a debt and his negative response may raise a security concern under Personal Conduct Disqualifying Condition (PC DC) AG ¶ 16(a) (the deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire, personal history, or similar form used to conduct investigations, to determine security eligibility or trustworthiness).

Applicant denied intentional falsification. While there is a security concern for an omission, concealment, or falsification of a material fact in any written document or oral statement to the government when applying for a security clearance, every omission, concealment, or inaccurate statement is not a falsification. A falsification must be deliberate and material. It is deliberate if it is done knowingly and willfully with intent to deceive. When Applicant completed his security clearance application in 2009, he knew that social security claimed he owed them a debt for overpayment of disability. He hired an attorney and knew he had requested a hearing to dispute this debt. He believed he had a reasonable basis for his dispute. He knew the matter had not been resolved. At the time he completed the form, he did not believe that the debt was delinquent since it had not been resolved. He answered "NO" to questions concerning delinquent debt because he reasonably and honestly believed he did not have any established delinquent debts. His answers to the questions were not deliberately false because of his honest and reasonable belief concerning the dispute. Assuming that he does not owe a debt to social security, his incorrect answers were not a deliberate intent to deceive. I find for Applicant as to personal conduct.

Whole-Person Analysis

Under the whole-person concept, the administrative judge must evaluate an applicant's security eligibility by considering the totality of the applicant's conduct and all

relevant circumstances. An 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 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. Applicant presented sufficient information to show he took reasonable and responsible action to resolve his financial issues when advised that he owed a debt to the Social Security Administration. This debt leading to a potential security concern for financial issues was caused by conditions beyond his control. However, Applicant's management of his finances and debt resolution indicates he will be concerned, responsible, and careful regarding classified information. Also, Applicant did not provide false and misleading information on his security clearance application with the intent to deceive because he reasonably and honestly believed he did not have a delinquent debt. Applicant mitigated security concerns based on his finances and personal conduct. Overall, on balance the record evidence leaves me without questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated security concerns arising from financial considerations and personal conduct and he should be granted access to classified information.

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

THOMAS M. CREAN
Administrative Judge