



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 10-00893
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Paul M. DeLaney, Esquire, Department Counsel
For Applicant: *Pro se*

December 6, 2010

Decision

HOWE, Philip S., Administrative Judge:

On August 19, 2009, Applicant submitted his Security Clearance Application (SF 86). On March 26, 2010, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F (Financial Considerations). 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 April 7, 2010. He answered the SOR in writing on April 8, 2010, and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on April 21, 2010, and I received the case assignment on April 28, 2010. DOHA issued a Notice of Hearing on April 29, 2010, and I convened the hearing as scheduled on May 27, 2010. The Government offered Exhibits 1 through 4, which were received without objection. Applicant testified

and submitted Exhibit A, without objection. DOHA received the transcript of the hearing (Tr.) on June 8, 2010. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

Findings of Fact

In his Answer to the SOR, Applicant admitted all the factual allegations in the SOR, with explanations. He also provided additional information to support his request for eligibility for a security clearance.

Applicant is 34 years old and married. He married his current wife seven years ago. His first marriage ended in divorce. He has two sons. Applicant has four years of military service in the U.S. Air Force, from 1995 to 1999. He started working for a defense contractor in August 2009. He was laid off work in January 2010 because he lacked a security clearance. He was unemployed at the time of the hearing and receiving unemployment compensation. Applicant had a top secret security clearance in the Air Force. (Tr. 13-19, 31, 35, 63; Exhibit 1)

His civilian employment history shows about six months of unemployment between December 1999 and January 2010. After leaving active duty in 1999, Applicant worked for one employer for seven months in 2000. Then he obtained employment that lasted seven years, from 2000 to 2007. In April 2007 he obtained employment with a third company. He was laid off from that job at some unspecified time, with a month of unemployment, and then was employed at a fourth company before obtaining his position in August 2009 with his current employer. (Tr. 13-19, 31, 35, 63; Exhibit 1)

Applicant has 16 delinquent debts listed in the SOR. They total \$294,685. If the mortgage debts listed in SOR Paragraphs 1.n and 1.o are duplicates, subtracting the \$141,000 in Paragraph 1.n results in a debt total of \$153,685. (Tr. 34-44, 64, 65; Exhibits 1-4)

Applicant filed a Chapter 13 bankruptcy in 2002 after his divorce. His former wife incurred credit card debt. Applicant assumed his wife was paying the bills regularly, but she was not doing so. The Chapter 13 filing was suggested by a financial advisor because Applicant wanted to purchase a house with his girlfriend, who became his second wife. His payments were \$150 monthly to the trustee. This bankruptcy was discharged in March 2005. (Tr. 20-23; Exhibits 1-4)

Applicant married his second wife in April 2003. They purchased a home after completing Applicant's first bankruptcy in 2005. The purchase price of the house was \$120,000. They made a down payment of \$1,800 on that house. The original loan amount was \$128,000. He lost his job in January 2007 and became delinquent on his mortgage because of the loss of income. He was unemployed until April 2007. Applicant stated his mortgage payments on the adjustable rate mortgage kept increasing after he made the first late payment in 2007. The payments went from \$800 to \$1,600 monthly. A judgment for \$127,861.00 was obtained by the mortgage lender against Applicant on

his home loan. The mortgage was sold to another company and the SOR (Paragraph 1.n) alleges the debt is \$141,150 with a past due amount of \$25,350. Applicant contends the debts in SOR Paragraphs 1.n and 1.o are the same debt. He sold a motorcycle and other possessions to try to salvage the mortgage. He used his Section 401K retirement savings of \$10,000 to try to save his house. Applicant asserts he paid the mortgage lender about \$24,000 but to no avail. The lender repossessed the house and Applicant moved out of the house in November 2007. Applicant does not remember if the mortgage payment adjustments were made monthly or quarterly. He tried to arrange a short sale of the home, but the lender would not approve it. Applicant has no documentation to show any of his debt payments in the past four years or his attempts to save his former home. (Tr. 22-34, 43, 48, 56, 57, 60, 78; Exhibits 1-4)

Applicant filed a second Chapter 13 bankruptcy in January 2010. The total liabilities listed in that petition are \$228,233.89. These debts include the SOR debts and other unpaid financial obligations, including numerous medical and credit card debts, in addition to his auto repossession in 2007 of a used car purchased in 2004. There is a \$6,200 judgment debt owed to a person for whom Applicant did woodworking in 2006. They had a dispute over payment terms and he was sued. Applicant admitted he has not paid the eight debts listed in the SOR that are under \$500 each. Applicant will pay \$175 monthly to the bankruptcy trustee for five years. The total amount of money he will pay to satisfy his debts under this Chapter 13 bankruptcy is \$10,500. (Tr. 34-44, 63-65; Exhibits 1-4)

Applicant has less than \$100 in his checking account and nothing in his savings account. He has no credit cards, using money orders to pay his monthly debts. Applicant has one car that he and his wife drive. (Tr. 35, 63, 64)

Applicant submitted one character reference letter. The author has known Applicant since August 2009. He stated his opinion that Applicant is "of sound character and integrity and recommend he be granted a security clearance." (Tr. 11; Exhibit A)

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are useful 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. 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, an “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, 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. Decisions include, by necessity, consideration of the possible risk 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.

Section 7 of Executive Order 10865 provides that 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 relating to the guideline 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 at AG ¶ 19 contains nine disqualifying conditions that could raise security concerns. Two conditions are applicable to the facts found in this case:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant accumulated at least \$153,685 in delinquent debt from 2004 to the present time that remains unpaid. Applicant has 16 delinquent debts listed in the SOR. The Chapter 13 bankruptcy petition Applicant filed in January 2010 shows \$228,233.89 of debt included in that action.

The guideline in AG ¶ 20 contains six conditions that could mitigate security concerns arising from financial difficulties. One condition may be 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;
- (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; and,
- (f) the affluence resulted from a legal source of income.

Applicant filed two Chapter 13 wage earner plans in the past eight years to resolve his delinquent debts. The current Chapter 13 allows him over the next five years to pay \$10,500 to resolve his \$228,233.89 in liabilities. The bankruptcy debts include the 16 debts listed in the SOR. Applicant spent \$24,000 in 2007 trying to save his home after he made late mortgage payments in 2007. He was unemployed from January 2007 to April 2007. But he has not been unemployed more than six months for the past

decade. Therefore, Applicant had the income to pay his debts. Yet he accumulated a large number and amount of delinquent debts as shown on his bankruptcy petition.

Moreover, instead of paying other debts and seeking professional legal assistance to resolve his mortgage problem, Applicant concentrated all his money and efforts on attempting to rehabilitate his mortgage debt. His testimony was that the mortgage lender was not willing to credit his \$24,000 to the arrearages. At some point in 2007 it should have been obvious to Applicant that his efforts were fruitless and he should have cut his losses by selling the house. Also, Applicant has not paid the eight debts listed in the SOR that are under \$500 each, which steps would demonstrate a good-faith efforts to resolve his delinquent debts, but for his mortgage judgment. Nor did Applicant have any documents to show his payments and efforts to rehabilitate his mortgage. AG ¶ 20 (d) might apply if Applicant made more common-sense good-faith efforts to repay his delinquent debts instead of filing another Chapter 13 bankruptcy.

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 an 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.

AG ¶ 2(c) requires each case must be judged on its own merits. 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. Applicant engaged in a pattern of spending that resulted in a large number and amount of delinquent debts. He did this while employed during the past decade. He demonstrated a pattern of irresponsible financial behavior. His conduct is frequent and recent because he continues to owe the money. Applicant has not shown any rehabilitation or permanent behavioral changes. The likelihood exists that Applicant will continue to spend beyond his based on his past performance. Finally, the potential for coercion, pressure, exploitation, or duress exists because of the magnitude of the debts and the pattern exhibited of spending and irresponsible financial judgment by the Applicant.

