



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



In the matter of:)
)
) ISCR Case No. 10-00977
)
)
Applicant for Security Clearance)

Appearances

For Government: Jeffrey Nagel, Esq., Department Counsel
For Applicant: Joseph Testan, Esq.

November 10, 2010

Decision

GOLDSTEIN, Jennifer I., Administrative Judge:

Applicant is a 42-year-old employee of a defense contractor. He is alleged to be indebted to 3 creditors in the approximate amount of \$71,616. In addition, he has a 1996 Chapter 7 bankruptcy and a 2010 foreclosure. Applicant has mitigated the Financial Considerations security concerns because the debts were caused by unforeseen circumstances beyond his control and he has acted responsibly by attempting to resolve his outstanding debts. Eligibility for access to classified information is granted.

Statement of the Case

On June 3, 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) effective for cases after September 1, 2006.

Applicant answered the SOR on June 21, 2010, and requested a hearing before an administrative judge. The case was assigned to me on July 22, 2010. DOHA issued a notice of hearing on August 16, 2010, scheduling the hearing for September 8, 2010. The hearing was convened as scheduled. The Government offered Exhibits (GE) 1 through 12, which were admitted without objection. The Applicant offered Exhibits (AE) B through Z, which were all admitted without objection. Applicant called one witness, and testified on his own behalf. Applicant also presented California Code of Civil Procedure § 580, marked AE A, for administrative notice. The record was left open for Applicant to submit additional exhibits and on October 8, 2010, Applicant presented a nine page document, marked AE AA. Department Counsel had no objections to AE AA and it was admitted. DOHA received the transcript of the hearing (Tr.) on September 15, 2010.

Findings of Fact

Applicant admitted the SOR allegations 1.c., 1.d., and 1.e., He denies allegations 1.a. and 1.b. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is a 42-year-old employee of a defense contractor. He served in the Air Force from 1988 to 1990, and received an honorable discharge after a reduction in force. He worked for a government contractor from 1990 through 1999, when he was laid off. From 1999 to 2005 he worked in the flooring industry. He has worked for his current employer since late 2005. He has been married for 22 years. He has three children, ages 21, 18, and 13. (GE 1; AE I; Tr. 42-45, 74-76, 87-93.)

As stated in the SOR, Applicant is alleged to be indebted to three creditors in the approximate amount of \$71,616. In addition, he has been subject to a home foreclosure in February 2010. These financial delinquencies occurred after a 1996 discharge of approximately \$22,261 in unsecured debt through a Chapter 7 bankruptcy. (GE 3.)

Applicant attributes his 1996 bankruptcy to the loss of income that resulted when his wife switched jobs in 1995. While she had been promised more money at the new job, the actual take home pay turned out to be significantly less than what she had been making. She found a new job, but the company failed. She struggled to find another position, but Applicant was already significantly behind on their bills. They chose to address their debts through bankruptcy. Applicant's wife testified that from 1996 through 2005, they were financially solvent. (GE 4; GE 5; GE 7; Tr. 61.)

Applicant attributes his recent financial problems to a series of events that took place beginning in 2005. In approximately August 2005, Applicant and his wife purchased a new home for approximately \$427,000. They put approximately 23% of the purchase price down, and financed \$325,000 through a first mortgage (allegation 1.d) with a thirty-year fixed interest rate of 5.875%. The also took out a second mortgage, a home equity line of credit (HELOC) for over \$60,000 to make improvements to the home (allegation 1.c.). At the time they purchased the home, Applicant's wife was fully

employed; and together, they were making between \$85,000 and \$95,000 a year. However, in September 2005, Applicant's wife lost her job, due to a decline in her industry. She was unable to find a job in her industry and after searching for a new job, accepted a position as an hourly aide working at a school, at a greatly reduced income. In October 2005, Applicant lost his job too. He was off work for approximately one month, until he was re-hired by the same government contractor he had worked for from 1990-1999. However, his income with the government contractor was at the reduced salary of \$50,000 per year. (GE 2; GE 7; GE 8; GE 9; AE D; AE L; AE V; AE Y; Tr. 45-52, 74-78.)

To make ends meet from 2005 to 2009, Applicant and his wife exhausted their savings and began using credit cards for basic needs, including maintaining their mortgage payments. They attempted to sell the house and listed it with a realtor, prior to becoming delinquent on their mortgages. However, it did not sell. In 2009, they were having difficulties in making their mortgage payments and contacted their mortgage holder to attempt to get a loan modification. In April of 2009, during the processing of the loan modification paperwork, Applicant was injured on-the-job. In June 2009, Applicant was placed on disability status due to his injury. He was out of work until November 2009. During this time, his mortgage lender stopped processing the modification because there was no steady income and began foreclosure proceedings on their home. The home was foreclosed upon in October 2009 (allegation 1.d.). Applicant returned to work in November 2009. The house was resold for approximately \$200,000 in February 2010. Applicant has made numerous inquiries with this creditor to address any remaining balance and was told the account was paid in full, however, the creditor never provided Applicant any written documentation to that effect. Applicant's September 2010 credit report reflects a zero balance for the first mortgage. (GE 2; GE 12; AE E; AE M; AE Y; Tr. 47-51, 64-65, 72, 82.)

Applicant and his wife were aware of their financial problems and sought assistance from a debt management company (DMC) to assist them with their consumer debts. In approximately September 2009, Applicant contracted with a DMC to handle six separate accounts. All of the accounts were current at the time they enlisted the help of the DMC. However, due to the negotiation strategies of the DMC, some of the debts fell past due during the negotiations. The DMC has now negotiated with all of the creditors and Applicant is current on his payments on all account managed by the DMC. Further, he is taken on no new debts since hiring the DMC. (AE N; Tr. 52-55, 86.) His delinquent debts listed in the SOR are as follows:

Applicant is indebted on a credit card in the approximate amount of \$2,439, as alleged in allegation 1.a. This debt is listed with the DMC. Records show that from September 2009 through July 2010, payments have been consistently made to this creditor, through the DMC. Applicant's September 2010 credit report reflects that this account is current. (GE 10; GE 12; AE B; AE N; Tr. 65.)

Applicant is indebted on a credit card in the approximate amount of \$8,247, as alleged in allegation 1.b. This debt is listed with the DMC. Records show that from September 2009 through July 2010, payments of approximately \$200 per month have

been consistently made to this creditor, through the DMC. Applicant's September 2010 credit report reflects that this account is current. (GE 10; GE 12; AE N; AE M; AE P; AE Q; AE R; AE S; Tr. 56.)

Applicant is indebted on the HELOC loan in the approximate amount of \$60,930. The creditor filed a Complaint for breach of a promissory note in a state superior court on June 24, 2010. On approximately July 29, 2010, Applicant reached an agreement with this creditor to pay \$225 per month for one year and then increase payments to \$300 per month until this debt is satisfied. The Complaint was dismissed. Applicant presented proof that a \$225 payment was made on August 9, 2010 under this agreement. (Tr. 51-58, 78-79; AE C; AE F.)

Since the foreclosure, Applicant has worked with the DMC to institute sound financial practices. He now has approximately \$3,000 in savings for emergencies. He and his wife no longer have any active credit card accounts. Applicant's income has increased and their family budget shows a remainder of \$1,009, after monthly expenses have been met, including payments to the creditors listed herein. (AE Z; Tr. 61-62, 71, 81.)

Applicant is well respected by his supervisors and colleagues. His performance appraisal for 2006 through 2009 demonstrated that Applicant was outstanding, exceeded, or met all performance requirements in all areas of evaluation. He has received several certificates from his employer in recognition of his outstanding contributions to his team. He presented letters from supervisors, colleagues, and co-workers that noted Applicant has "a high degree of integrity, responsibility and trustworthiness." (AE G; AE H; AE J; AE K.)

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 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 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 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, 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 concern 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.

From 2005 through 2009, Applicant and his wife were not financially solvent. They admit that they had an inability to satisfy their debts during this period. In addition, they have had financial difficulties in the past, culminating with a 1996 Chapter 7 bankruptcy. The evidence is sufficient to raise the above disqualifying conditions.

Two Financial Considerations Mitigating Conditions under AG ¶ 20 are potentially applicable:

(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; and

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

Applicant's financial problems are directly attributable to the unforeseen loss of his and his wife's employment in 2005. He has acted responsibly with respect to his creditors despite his financial difficulties. When he found he could no longer afford to pay his mortgage, he attempted to sell the home. When it did not sell, he worked with his primary mortgage holder to attempt to secure a loan modification. However, the lender refused to continue the processing of the new agreement after he was injured and was placed on disability in 2009. Applicant also managed to maintain his consumer debt accounts, until he sought the help of the DMC.

Applicant is making a good-faith effort to repay his over due creditors. His most recent credit report shows that his consumer debts listed in 1.a. and 1.b. are no longer delinquent and are in good standing. He has reached an agreement on his HELOC loan (allegation 1.c.) and has made a payment under that agreement. While he lost his home in foreclosure, it appears that this creditor is now satisfied (allegation 1.d.). While he has suffered financial problems in the past, due to the unforeseen circumstances that caused his 1996 bankruptcy, Applicant's recent steps to create sufficient savings and his decision to stop using credit cards show that he can be trusted to monitor his finances closely and resolve his debts in the future.

The Appeals Board has noted:

. . . an applicant is not required to be debt-free nor to develop a plan for paying off all debts immediately or simultaneously. All that is required is that an applicant act responsibly given his circumstances and develop a reasonable plan for repayment, accompanied by "concomitant conduct," that is, actions which evidence a serious intent to effectuate the plan.¹

¹ ISCR Case No. 08-06567 at 3 (App. Bd. Dec. October 29, 2009.)

Applicant has demonstrated he has a reasonable plan for resolving each of his delinquent remaining accounts. He has acted responsibly, given his resources, by enlisting the help of the DMC for his consumer credit debts. He is following the plan set out for him, including establishing a savings plan. He is now making payments on his HELOC loan. AG ¶¶ 20(b) and 20(d) apply.

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 those guidelines, but some warrant additional comment.

Applicant is well respected by his supervisor and colleagues. He has honorably served in the U.S. Air Force. Those who know him best report that he has a high degree of integrity. His standards are reflected in the certificates he received during his employment with the government contractor. His integrity, as attested to by his supervisor and colleagues, show that his commitment to continue to pay his delinquent accounts is credible.

Overall, 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 has mitigated the Financial Considerations security concern.

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 1.b.:	For Applicant
Subparagraph 1.c.:	For Applicant
Subparagraph 1.d.:	For Applicant
Subparagraph 1.e.:	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.

Jennifer I. Goldstein
Administrative Judge