



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ISCR Case No. 10-01008
)
)
Applicant for Security Clearance)

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

November 30, 2010

Decision

DAM, Shari, Administrative Judge:

Based upon a review of the record evidence as a whole, eligibility for access to classified information is granted.

On June 29, 2009, Applicant submitted a Questionnaire for Investigations Processing Investigation Request (e-QIP). On June 2, 2010, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F (Financial Considerations) and Guideline E (Personal Conduct). 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 that were effective within the Department of Defense on September 1, 2006.

Applicant answered the SOR in writing on June 28, 2010, and requested a hearing before an administrative judge. On August 9, 2010, DOHA assigned the case to

me. On September 7, 2010, DOHA issued a Notice of Hearing, setting the case for September 23, 2010. The case was heard as scheduled. Department Counsel offered Government Exhibits (GE) 1 through 7 into evidence without objection. Applicant testified and called one witness. He offered Applicant Exhibit (AE) A into evidence without objection. The record remained open until October 18, 2010, in order to provide him time to submit additional documents. DOHA received the hearing transcript (Tr.) on September 28, 2010. He timely submitted AE B through D. Department Counsel had no objection and the evidence was admitted.

Findings of Fact

In his Answer to the SOR, Applicant denied both allegations.

Applicant is 33 years old and married. He and his wife have four children. He was born and raised on military bases. His father is a retired high-ranking enlisted U.S. Marine. In February 1998, Applicant enlisted in the U.S. Marine Corps. He was the honor graduate for his class. He served as a military policeman and was on a special reaction team. He earned numerous medals and commendations for his service. He held a Secret security clearance while a Marine. He was on active duty until February 2002 when he was honorably discharged in the paygrade of E-4. He left military service in order to earn more money and remain at home with his family. (Tr. 22.)

Applicant worked for a state's highway patrol unit for nine months before beginning a well-paying position as a granite and stone installer with a private company in November 2002. He worked for that company until the middle of 2008, when he lost his position because of the economic slow down in the construction market. He was unemployed for six months before starting a job with another installation company in January 2009. He worked with that company until May 2009, when the company went bankrupt. (GE 4 at 143.) In June 2009, he began his current employment as a dispatcher with a federal contractor. He would like to enter the federal police force in the future. (Tr. 37.)

While working for the first installation company, Applicant was earning about \$100,000 annually and his wife was earning about \$69,000 at her civilian job. Based on that income, they decided to buy a piece of property and build a house in early 2008, before he lost his job. (Tr. 24; GE 5 at 132.) During the construction of the house, they purchased building materials from a home improvement store on a line-of-credit. After losing his job in late 2008, he earned a smaller salary with the second installation company during the first six months of 2009. He and his wife were unable to maintain the \$945 monthly payment on the \$49,500 line-of-credit debt from the home improvement store. The creditor increased the payment to \$1,900 per month and then to \$5,000, seemingly because he missed making payments. (GE 5 at 132.) He and his wife tried to refinance their house in order to pay the debt, but were unable to do so. During this period of reduced income, they used their savings to keep their ongoing debts current, but were unable to make large payments on the home improvement debt.

They tried to establish a workable repayment plan with the creditor, but were unable to do so. (Tr. 47.)

In June 2009, Applicant completed an e-QIP. In response to “*Section 26: Financial Record: h. Have you had any account or credit card suspended, charged off, or cancelled for failing to pay as agreed? m. Have you been over 180 days delinquent on any debt(s),*” and *n. Are you currently over 90 days delinquent on any debts(s),*” he answered “no,” and failed to list the delinquent home improvement account. Applicant acknowledged that he did not include the debt, but denied that he intentionally falsified the e-QIP. (Tr. 43.) He testified that the omission was “purely accidental.” (Tr. 42.) He explained that he initially filled out an employment packet that contained information about his finances, which he intended to reference while completing the e-QIP. When he was directed to submit the e-QIP, he learned that his employer lost that packet and he promptly telephoned his wife for financial information. He spoke to her while he was completing the application on-line at work because his employer wanted it finished immediately. (Tr. 42-43.) Based on his military experience, he knew the government would perform a background investigation and discover any discrepancies. He made an “honest mistake” when he completed the 50-page form and apologized for his error. (Tr. 43-44 46.) Under Section 28, he disclosed a non-criminal court action in which he and his wife were sued in Small Claims court. (GE 1.)

Applicant’s wife testified. She is a staff sergeant in the U.S. Marine Corps and on active duty until May 2011. She works with the Military Police Department and is a physical security specialist. She holds a security clearance. She manages the family’s finances. In April 2010, she again contacted the home improvement company’s collection agency to establish a repayment plan and learned that a new company was handling the account. The company representative told her that they qualified for a Hardship Arrangement and allowed them to establish a \$200 per month repayment plan for one year and then the situation would be reevaluated. They have made those payments on that plan since April 2010. (GE 4 at 44; AE A.) They intend to pay this debt. (*Id.*) They recently paid off a car loan and are current on all other financial obligations. (Tr. 54.) Credit bureau reports (CBR), dated July 2009 and March 2010, confirm her assertion that all of their ongoing obligations and debts are current. (GE 2, 3.)

Applicant’s wife verified that she received a telephone call from her husband while he was completing the e-QIP. She was at work at the time. She related their financial information to him. She does not believe that he intentionally left the information about the large debt off the e-QIP, but rather did so accidentally. (Tr. 55.) Both of them are aware of the government’s investigative process involving security clearances and its ability to discover undisclosed information. (Tr. 56.)

In April 2010, Applicant submitted the family budget. Their net monthly income is \$9,750. It includes rental income of \$2,050, and child support payments of \$254 that his wife receives for one of their children. Their monthly expenses total \$6,494, and include payments on all debts. (Tr. 28.) They have \$900 remaining at the end of the month,

which is sufficient to make the \$200 payments on the SOR-listed debt and manage any other items. (Tr. 33; GE 4.)

Applicant submitted three letters of recommendation. A chief warrant officer 2, who has known Applicant since 1999 and was on active duty with him, submitted a character reference letter. In it, he stated that Applicant “is an extremely trustworthy person” and someone he would employ if a civilian position became available within his criminal investigation division. (AE B.) A retired master sergeant who served with Applicant wrote a letter. He does “not believe that [Applicant] would intentionally misrepresent (sic) himself in anyway. Nor do I believe that [Applicant] lacks the integrity or ethical standards required to be placed in a position of trust.” (AE C.) A captain in the Marines, who has known Applicant for 12 years and served with him, noted that Applicant was selected to serve on a six-month deployment, representing the Marine Corps Military Police. She considers Applicant to be a “man of the highest character and integrity.” (AE D.)

Applicant testified candidly and credibly about his financial situation. He expressed deep loyalty to the United States and a commitment to pay the delinquent debt.

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 (AG) list potentially disqualifying 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.

According to 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 to obtaining a favorable clearance decision.” 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.”

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.

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.

AG ¶ 19 notes two disqualifying conditions that could potentially raise security concerns in this case:

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

Applicant has one large delinquent debt from 2009 that he was unable to begin resolving until April 2010. The evidence is sufficient to raise these disqualifying conditions.

After the Government produced substantial evidence of those two disqualifying conditions, the burden shifted to Applicant to produce evidence and prove a mitigating condition. AG ¶ 20 set forth conditions that could mitigate financial security concerns:

(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.

AG ¶ 20(a) has some application. Applicant's large delinquent debt is owed to one creditor for building materials he purchased for the construction of his house. The debt began accumulating in 2009 as a result of six months of unemployment followed by six months of under-employment related to an economic downturn in the construction field. Since June 2009, he has been gainfully employed with a federal contractor and has begun a repayment plan of the delinquent debt seven months ago, diminishing the likelihood that similar problems will recur and do not cast doubt on his current reliability, trustworthiness, or good judgment. Similarly, those circumstances were beyond his control and warrant a limited application of AG ¶ 20(b).

Applicant presented evidence to trigger a partial application of AG ¶ 20(c). Although he has not participated in financial counseling, he and his wife established a solid budget and repayment plan for the delinquent debt. All of his other debts and financial obligations are current, further indicating that his financial situation is under control. His ongoing payments on the debt since April 2010 demonstrate a good-faith effort to resolve and repay the overdue debt, warranting the application of AG ¶ 20(d). There is no evidence to support the application of AG ¶ 20(e) or AG ¶ 20(f).

Guideline E, Personal Conduct

AG ¶ 15 expresses the security concern pertaining to Personal Conduct:

Conduct involving questionable judgment, lack of candor, dishonesty, 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.

The SOR alleged in ¶ 2.a that Applicant falsified his June 2009 e-QIP because he failed to disclose a delinquent account under three questions listed in Section 26. The Government contended that his omissions may raise a security concern and be disqualifying under AG ¶ 16:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities.

Applicant denied that he intentionally omitted information about the delinquent account. When a falsification allegation is controverted or denied, the government has the burden of proving it. Proof of an omission, standing alone, does not establish or prove an applicant's state of mind when the omission occurred. An administrative judge must consider the record evidence as a whole to determine whether there is direct or circumstantial evidence concerning an applicant's state of mind at the time the omission occurred. See ISCR Case No. 03-09483 at 4 (App. Bd. Nov. 17, 2004) (explaining holding in ISCR Case No. 02-23133 at 5 (App. Bd. Jun. 9, 2004)).

Applicant asserted that he made a mistake when he hurriedly completed the e-QIP at work and did not have his written material with him and had to telephone his wife for information. After listening to his testimony, observing his demeanor, considering his military history and familiarity with background investigations, and his disclosure of potentially negative information under Section 28, I find that his explanation for the omission is credible and that he did not intentionally falsify the e-QIP, but instead made a negligent mistake. Hence, the evidence does not establish deliberate falsification. I find the disqualifying condition does not apply and this Guideline is found in his favor.

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). They include the following:

(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 include 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 is a 33-year-old mature man, who honorably and impressively served this country for four years, during which time he held a security clearance. After leaving military service, he and his wife decided to build a home, which they could afford based on their income at the time. Subsequently, he lost his job for six months and was unable to duplicate his previous high salary for another six months, resulting in his inability to make large monthly payments on a debt he incurred while constructing his home. For the past seven months, he has made payments on the \$49,500 delinquent debt in accordance with a repayment plan he established with the creditor. Both he and his wife (a credible witness) are committed to paying that debt. There is no evidence in the record that would lead one to believe that Applicant will not honor his commitment. At this time, the delinquent debt no longer poses a security concern. Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising under Financial Considerations and Personal Conduct.

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.

SHARI DAM
Administrative Judge