



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



In the matter of:)
)
) ISCR Case No. 10-01516
)
Applicant for Security Clearance)

Appearances

For Government: Candace L. Garcia, Esq., Department Counsel
For Applicant: *Pro se*

August 4, 2011

Decision

COACHER, Robert E., Administrative Judge:

Applicant mitigated the Financial Considerations security concerns. Eligibility for access to classified information is granted.

Statement of the Case

On November 24, 2010, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) 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 January 3, 2011, and requested a hearing before an administrative judge. The case was assigned to me on March 2, 2011. DOHA issued a notice of hearing on March 11, 2011, setting the hearing for April 15, 2011. Because of the threat of a government-wide shutdown, the case was rescheduled for

May 13, 2011. The hearing was held as rescheduled. The Government offered exhibits (GE) 1 through 5, which were admitted into evidence without objection. Department Counsel's exhibit index is marked as Hearing Exhibit (HE) I. Applicant testified, along with one witness, and offered exhibit (AE) A that was admitted into evidence without objection. The record was held open for Applicant to submit additional information. Applicant submitted AE B and C which were admitted into evidence without objection. Department Counsel's forwarding memorandum is marked as HE II. DOHA received the hearing transcript (Tr.) on May 26, 2011.

Findings of Fact

Applicant is 60 years old and has worked for a defense contractor since 1979 as a custodian. He has a high school diploma. He has been married for 19 years. He has held a secret security clearance since 1979.¹

The SOR alleges five delinquent debts in the amount of about \$24,580. The debts were listed on credit reports obtained on September 9, 2009; November 18, 2010; and January 28, 2011. Applicant admitted owing all the debts alleged in the SOR.

Applicant started working for a defense contractor in 1979 as a custodian. Although the parent company has changed several times over the years, his position and duties have remained the same. In June 2006, he bought a home for approximately \$325,000. His payments were about \$2,400 per month. His wife was working at that time and between their two incomes they could make the monthly mortgage payment as well as the rest of their expenses. In September 2009, his wife lost her job and was unable to obtain other employment. Without her income, they could not pay their monthly mortgage payments. They also used several credit cards to meet their other financial obligations.²

Specifically, the debts included four credit cards with balances of \$3,604, \$3,403, \$4,283, and \$2,160 (SOR ¶¶ 1.a, 1.b, 1.d, and 1.e). The other remaining debt is the delinquent mortgage account in the amount of \$11,130.³

On December 16, 2010, Applicant and his wife filed for bankruptcy protection under Chapter 7. When their creditors were not receptive to working out payment arrangements, they decided to seek bankruptcy protection even before the SOR was issued in this case. All the debts listed in the SOR were included as claims by unsecured creditors. Additionally, the secured mortgage claim was also included in the petition. Applicant completed the credit counseling course required by the bankruptcy

¹ Tr. at 5-6, 24; GE 1.

² Tr. at 22; GE 2.

³ Tr. at 25; GE 2-5.

court. He had never filed for bankruptcy before. He was granted a discharge from all claims on March 28, 2011.⁴

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 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

⁴ AE A-C.

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 accumulated a number of debts and was unable or unwilling to satisfy his obligation. 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.

Applicant was put into his financial difficulty when his wife lost her full-time job, causing them to default on their mortgage payments. It is unlikely that he will experience this type of financial difficulty again. Additionally, his actions do not cast doubt on his current, reliability, trustworthiness, or good judgment. AG ¶ 20(a) is applicable.

Applicant's financial difficulties were caused by the loss of his wife's income which was necessary to make his mortgage payments and other obligations. This was a condition outside his control. Additionally, Applicant acted reasonably by contacting his creditors and trying to work out payment plans. When they refused, he made the decision to file for Chapter 7 bankruptcy. AG ¶ 20(b) is applicable.

Applicant received financial counseling through the bankruptcy process. While bankruptcy is intended to provide a person with a fresh start financially, it does not immunize an applicant's history of financial problems from being considered for its security significance.⁵ After reviewing the reasons leading to the bankruptcy, I find AG ¶ 20(c) is partially applicable and ¶ 20(d) is not applicable.

Applicant met his burden to establish sufficient mitigation evidence under AG ¶¶ 20(a) and (b) on the debts listed in the SOR.

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

⁵ See e.g., DISC Case No. 87-1800 (February 14, 1989) at p.3 n. 2 ("Although bankruptcy may be a legal and legitimate way for an applicant to handle his financial problems, the administrative judge must consider the possible security implications of the history of debts and problems that led to the bankruptcy").

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.

Applicant has been a loyal employee who has worked for a defense contractor and held a security clearance for over 30 years. I also found Applicant to be honest and candid about his finances. Applicant found himself with a difficult situation when his wife lost her job. That diminution of income made it impossible to make his mortgage payments. However, he made the best of the situation and is seeking a fresh start through Chapter 7 bankruptcy.

Overall, the record evidence leaves me without questions or doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant 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:	FOR APPLICANT
Subparagraphs 1.a – 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.

Robert E. Coacher
Administrative Judge