



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



In the matter of:)
)
) ISCR Case No. 10-01751
)
)
Applicant for Security Clearance)

Appearances

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

May 19, 2011

Decision

MASON, Paul J., Administrative Judge:

Applicant has a history of not meeting financial obligations that date to June 2006. However, before he received the SOR in August 2010, he took documented steps to resolve the foreclosure and establish repayment plans with the other three creditors. Eligibility for access to classified information is granted.

Statement of the Case

Applicant completed and certified his Electronic Questionnaire for Investigations Processing (e-QIP)(GE 1) on November 11, 2009. He was interviewed by an investigator from the Office of Personnel Management (OPM) on January 5, 2010. (GE 3) In his interrogatory answers submitted to the Government on July 24, 2010, Applicant agreed with the investigator’s summary of his January 2010 interview, and that it could be used

in a security clearance hearing to determine his security suitability. (*Id.*) On August 18, 2010, DOHA issued a Statement of Reasons (SOR) detailing security concerns under financial considerations (Guideline F). 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) implemented by the Department of Defense on September 1, 2006.

On September 11, 2010, Applicant submitted his answer to the SOR and requested a hearing. DOHA issued a Notice of Hearing on November 29, 2010, for a hearing on December 9, 2010. The hearing was held as scheduled. At the hearing, five exhibits (GE 1 through 5) were admitted in evidence (without objection) in support of the Government's case. Applicant testified. In the time allotted after the hearing to submit exhibits in support of his testimonial claims, Applicant submitted six exhibits on January 6, 2011 without objection. Those exhibits have been received in evidence as AE A through AE F. DOHA received the transcript (Tr.) on December 28, 2010. The record closed on this case on January 6, 2011.

Findings of Fact

The SOR lists four allegations under the financial considerations guideline. Applicant admitted all allegations which represent three delinquent credit card accounts and one delinquent mortgage. The four delinquent accounts total \$18,614. The accounts became delinquent between June 2006 and March 2009.

Applicant is 44 years old. He has been married for 18 years. He has three children, ages 27, 25, and 20. He periodically supports his four grandchildren by purchasing shoes or other items they may need for school. Recently, he spent \$120 for his grandchild's school uniform. (Tr. 28-30)

Applicant has worked for the last 11 years as a shipping clerk for a defense contractor. He also owns a small lawn business. His wife has been employed for the last 17 years at a company that provides respiratory devices to patients. She also has seasonal employment at a tax service. Applicant and his wife earn about \$5,000 in net pay each month at their full-time jobs.

Approximately six months before November 9, 2009, Applicant discovered he was behind on his bills and mortgage. The reasons for the financial problems were: poor financial management by Applicant; a lack of lawn jobs in Applicant's part-time lawn mower business because of a poor economy (Tr. 53); \$375 in attorney fees that Applicant has had to pay since November 2009 to keep his home out of foreclosure (Tr. 44); and procrastination. (Tr. 73)

In January 2010, Applicant's wife contacted each of the credit card creditors and negotiated repayment plans. Concerning the SOR 1.a creditor, Applicant made a \$429 payment in July 2010, and five subsequent payments of \$154 a month to the creditor. (AE A) Applicant has paid the creditor \$124 a month for five months. (AE B) The foreclosure (SOR 1.c) was dismissed on September 13, 2010. (AE C) Applicant has paid the department store creditor (1.d) \$130 a month for the last five months. (AE D) Applicant and his wife will continue to make the payments until the accounts are completely satisfied. (Tr. 73)

Character Evidence

Applicant's supervisor has worked with Applicant for seven years and indicated in a statement that:

At all times I have found [Applicant] to be very responsible and reliable and needs minimal supervision from myself. He is also hardworking, conscientious, honest and courteous. Any task that are given to [Applicant] he ensures that they are completed correctly per the documentation that is provided to him. (AE E)

Applicant's neighbor provided a statement extolling Applicant's contributions to the community. The neighbor has found Applicant to be a mentor for the community's youth, as well as a good family man. (AE F)

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the AG. Each guideline lists potentially disqualifying conditions and mitigating conditions, which are required to be used to the extent they apply in evaluating an applicant's eligibility for access to classified information.

The administrative judge's ultimate goal is to reach a fair and impartial decision that is based on common sense. The decision should also include a careful, thorough evaluation of a number of variables known as the whole-person concept that brings together all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision. 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 the potential, rather than actual, risk of compromise of classified information.

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 for obtaining a favorable security decision.

Analysis

Financial Considerations

The security concern for financial considerations is set forth 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.

There are two disqualifying conditions under AG ¶ 19 that may apply:

AG ¶ 19(a) (*inability or unwillingness to satisfy debts*); and

AG ¶ 19(c) (*a history of not meeting financial obligations*).

Both AG ¶¶ 19(a) and 19(c) apply based on Applicant's inability to pay \$18,610 in delinquent debt. Applicant's history of not meeting his financial obligations began in June 2006.

Four conditions under AG ¶ 20 could potentially mitigate Applicant's delinquent indebtedness:

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*);

AG ¶ 20(b) (*the conditions that resulted in the financial problem were largely beyond the person's control, and the person acted responsibly under the circumstances*);

AG ¶ 20(c) (*the person has received counseling for the problem and/or there are clear indications that the problem is being resolved or is under control*); and

AG ¶ 20(d) (*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*).

AG ¶ 20(a) does not apply because one of the accounts became delinquent less than two years ago. AG ¶ 20(b) is partially applicable because of a poor economy that reduced the number of lawn jobs.

Even though there is no evidence of financial counseling, the repayment plans to three creditors and the dismissal of the largest debt (SOR 1.c) indicates that Applicant's financial problems are being successfully resolved. During the coming months when Applicant is monitoring his payment plans, he will enroll in financial counseling and increase communication with his wife about their shared financial responsibilities to prevent a recurrence of financial trouble in the future. Applicant receives mitigation under AG ¶ 20(c). Applicant's good-faith repayments for five months to three creditors entitles him to mitigation under AG ¶ 20(d). Applicant's favorable job performance evidence, and his evidence in mitigation under AG ¶¶ 20(b), 20(c), and 20(d) prevails over the adverse evidence presented under AG ¶¶ 19(a) and 19(c).

Whole-Person Concept

In evaluating Applicant's security clearance worthiness, I have examined the evidence under the disqualifying and mitigating conditions of the financial guideline. I have also weighed the circumstances within the context of nine variables known as the whole-person concept. In evaluating the relevance of an individual's conduct, the administrative judge should consider the following factors:

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 the participation was 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.

Applicant is 44 years old. He has been working for his employer for 11 years, and has earned a favorable reputation as a productive employee. He has had a positive impact on the youth in his community. He also provides periodic support to his four grandchildren whenever the support is required.

Though the credit reports show the financial problems dated to June 2006, Applicant discovered he was falling behind in his obligations about six months before November

2009. The threat of foreclosure required Applicant to hire an attorney for several months until the foreclosure action was dismissed in September 2010. In July 2010, before he received the SOR, Applicant's wife contacted the remaining SOR creditors and successfully negotiated payment plans. Applicant provided documented evidence of regular payments under those plans, and the intention to make regular payments in the future until the delinquent accounts are satisfied. The financial guideline is resolved in Applicant's favor.

Formal Findings

Paragraph 1 (Guideline F): FOR APPLICANT

Subparagraph 1.a through 1.d: For Applicant

Conclusion

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant access to classified information. Eligibility for access to classified information is granted.

Paul J. Mason
Administrative Judge