



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



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| In the matter of: |) | |
| |) | |
| |) | ISCR Case No. 10-02113 |
| |) | |
| |) | |
| Applicant for Security Clearance |) | |

Appearances

For Government: Caroline H. Jeffreys, Esquire, Department Counsel
For Applicant: *Pro se*

August 31, 2011

Decision

WHITE, David M., Administrative Judge:

Applicant incurred some delinquent debts, including his mortgage, after his wife lost her job, then chose to separate from him pending divorce. He assumed their joint obligations on his salary alone, resulting in a temporary inability to remain current on all debts. His sole remaining delinquency is his mortgage loan, and he is executing a manageable agreement to bring that current. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

Applicant submitted a security clearance application (SF 86) on October 30, 2009. On September 17, 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 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 for Determining Eligibility for Access to Classified Information* effective within the Department of Defense on September 1, 2006.

Applicant answered the SOR in writing (AR) on February 2, 2011, and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on March 2, 2011, and the case was assigned to me on April 7, 2011. DOHA issued a Notice of Hearing on April 18, 2011, and I convened the hearing as scheduled on May 12, 2011. The Government offered exhibits (GE) 1 through 8, which were admitted without objection. Applicant offered exhibits (AE) A through I, which were admitted without objection, and testified on his own behalf. I granted Applicant's request to leave the record open until June 6, 2011, for submission of additional evidence. DOHA received the transcript of the hearing (Tr.) on May 24, 2011. On June 2, 2011, Applicant submitted an additional document that was marked AE J, and admitted without objection, and the record was closed as scheduled. On July 2 and 7, 2011, Applicant submitted additional, newly-received documentation pertinent to his case. Department Counsel had no objection to consideration of this additional evidence. The record was reopened, the documents were admitted as AE K, and the record was again closed.

Findings of Fact

Applicant is a 40-year-old employee of a defense contractor, where he has worked as a uniformed security officer since October 2001. He was honorably discharged from the Marine Corps in July 1997 after 4 years and 4 months of active enlisted service. He enlisted in the Marine Corps Reserve from February 1998 to March 2006, including a nine-month mobilization to active duty for deployment to Iraq in 2004 and 2005. He has held a security clearance since 1993. He is married but pending divorce, with a 12-year-old son and a 19-year-old stepdaughter.¹ In his response to the SOR, Applicant denied all but one of the factual allegations in SOR ¶¶ 1.a through 1.f, and admitted one allegation in part with some explanation.² Applicant's admissions, including his statements in response to DOHA interrogatories,³ are incorporated in the following findings.

In 2006, Appellant's wife lost her full-time job. Between then and mid-2009 she held a couple part-time jobs before resuming full-time employment. During that time they fell about seven months (\$14,578) behind on their mortgage payments. This is the debt alleged in SOR ¶ 1.d, which had risen to the alleged past-due amount of \$29,886 by July 2010. In August 2009, the couple separated. Appellant's wife kept all her income to support herself living separately, and Appellant had to meet all the existing household bills and recurring living and mortgage expenses on his income alone. He began the process of negotiating an agreement to refinance his mortgage with the lender. Since then, he has started and stopped several repayment arrangements due to some misunderstandings concerning what was required. Other than several payments made under those agreements, Applicant has not made regular mortgage payments since that time. In February 2010, he was moved from third shift to second shift, which reduced his

¹GE 1; GE 2; AE C; Tr. 8-10, 37, 96.

²AR.

³GE 3.

pay from about \$34 per hour to about \$28. Depending on overtime availability, this reduced his income by about \$1,000 per month. The lender is not pursuing foreclosure of this mortgage. By March 2011, the total balance due had risen to \$43,000. At the time of the hearing, Applicant was waiting to hear from the lender concerning a proposed loan modification. On June 29, 2011, the lender offered Applicant a Special Forbearance Agreement, which he accepted on July 1, 2011. Under this agreement he would make one payment of \$569 on July 1, and three monthly payments of \$1,665 on the first days of August, September, and October. Following his compliance with this agreement, the lender will forward him the loan modification papers that should include a lower interest rate, addition of the past-due amount to the loan principle, and an extension of the life of the loan to result in affordable monthly payments. Applicant already committed the funds to make the first three payments, and has sufficient funds to obligate for the October payment once that comes into the 60-day window in which the bank will commit funds.⁴

Applicant has used the funds he did not pay toward his mortgage to pay off all of his other debts, including some that also became delinquent. The two medical debts of \$89 and \$210, alleged in SOR ¶¶ 1.a and 1.b, were incurred by his wife, and he paid them in full in May and July 2010. The creditor sent Applicant a letter confirming these payments in April 2011, and another letter confirming that the debts in question were identified by different account numbers in the receipt letter and on the credit report. These debts are resolved, and do not appear on his recent credit reports.⁵

The \$132 cell phone debt listed in SOR ¶ 1.c was also incurred by his wife. He paid this debt in July 2010, as confirmed on his March 2011 credit report.⁶ The \$662 delinquent debt to the Veteran's Administration, alleged in SOR ¶ 1.e, arose because Applicant had to withdraw from some college classes due to a conflict with his work schedule. He began repaying the debt in October 2009, and made additional payments to complete full repayment in November 2009 and March 2010.⁷ The \$1,515 debt alleged in SOR ¶ 1.f was incurred by his wife while he was deployed in Iraq. He repaid the debt in full on August 4, 2005, after his return from that deployment.⁸

Applicant's financial plan has been to repay all outstanding debts to ensure that he will have sufficient income to resume regular mortgage payments under the pending modification agreement. The budgetary information he submitted in seeking the modification agreement and when responding to DOHA interrogatories indicates that he will be able to continue carrying out this plan. He also has about \$36,000 saved in a

⁴AR; GE 3; GE 5 through 8; AE C; AE E; AE K; Tr. 61-62, 68-69, 80-83, 92-102.

⁵AR; GE 3; GE 5 through 8; AE D; AE J; Tr. 37-47.

⁶AR; GE 3; GE 5; GE 6; Tr. 20, 32-33.

⁷AR; GE 3; AE F; Tr. 50.

⁸AR; GE3; GE 5 at 3; GE 7 at 205, 207; AE G; Tr. 51-52, 64.

retirement plan from which he can obtain a loan should he temporarily need additional funds. He had some previous financial delinquencies dating back to the period from 2001 to 2003, when his wife was handling their family finances that he also resolved. I found Applicant to have a comprehensive understanding of his financial situation, and to be sincere in his resolve to avoid future delinquencies. He was adamant that he felt honor-bound to repay his creditors and would not seek to avoid doing so through bankruptcy.⁹

Applicant's manager and a coworker wrote letters praising his responsibility, good work performance, reliability, and general good character.¹⁰ His demeanor during the hearing was pleasant, open, sincere, and straightforward.

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 (DCs) and mitigating conditions (MCs), 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, these guidelines are applied in conjunction with the factors listed in AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶¶ 2(a) and 2(c), the entire process is a conscientious scrutiny of applicable guidelines in the context 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 the 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, "[t]he 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." Section 7 of Executive Order 10865 provides: "[a]ny determination under this order adverse to an

⁹GE 3; GE 4; AE E; Tr. 61-80, 97-105.

¹⁰AE A; AE B.

applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.”

A person applying for access to classified information seeks to enter 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 concerns relating to the guideline for financial considerations are 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 evidence raised initial security concerns under two Guideline F DCs, as set forth in AG ¶ 19(a) “inability or unwillingness to satisfy debts”; and ¶ 19(c) “a history of not meeting financial obligations.” There is no evidence of frivolous or irresponsible spending, deceptive or illegal financial practices, or financial issues caused by any misconduct on Applicant’s part. His SOR-alleged financial problems began around 2006 when his wife lost her full-time job and their family had to subsist primarily on his income. Shortly after she found another full-time job in 2009, she began a separation pending divorce. She earned enough to establish separate living arrangements, but left him to address all joint obligations. The debts alleged in the SOR, as well as some others that Appellant had already resolved, became delinquent as a result of these circumstances. The five SOR-listed debts that Appellant fully repaid between August 2005 and July 2010 (two months before DOHA issued the SOR) totaled only \$2,600. More than \$1,500 of that total was repaid in 2005. The only real concern at the time of the hearing was the state of Applicant’s mortgage loan. His mortgage lender has since offered him a forbearance agreement in anticipation of an approved loan modification, which will bring that debt back into good standing with payments he will be able to afford. The evidence establishes Applicant’s temporary inability to satisfy some of his debts and his brief history of not meeting financial obligations, thereby shifting the burden to him to prove mitigation.

The guideline includes five conditions in AG ¶ 20 that could mitigate security concerns arising from Applicant's financial problems:

(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; and

(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.

Applicant incurred a relatively modest amount of delinquent debt when he had to assume financial responsibility for all family debt on his income alone. When he and his wife separated, he assumed responsibility for their joint obligations. He has now paid them, and has reached an agreement with the lender to resolve his sole remaining delinquent debt through a mortgage modification plan. He lives frugally, and is determined to fulfill his present and future financial obligations. His separation and pending divorce prevent his wife from causing him further financial problems. The evidence establishes significant mitigation under AG ¶ 20(a).

Mitigation under AG ¶ 20(b) was also established. Applicant's financial problems were caused by his wife's unexpected loss of employment and subsequent decision to separate and seek a divorce. He applied his available financial resources to cover as many obligations as possible, but fell behind on his mortgage as a result. He has remained in contact with his mortgage lender throughout the time his loan payments have been delinquent, making several attempts to implement a plan to bring the loan into a current status. He is currently implementing an approved plan with the lender, and has sufficient resources to do so after resolving all his other delinquent debt.

Applicant has not undergone personal financial counseling, but he offered documentation to establish clear indications that the problem is being resolved and is under control. He had fully repaid five of the six SOR-listed debts in good faith several

months before DOHA issued the SOR, and is successfully implementing an agreement with his mortgage lender to bring that loan back into good standing within a few months. Thus, substantial mitigation was also established under AG ¶¶ 20(c) and (d).

Applicant did not dispute that he formerly owed any of the debts alleged in the SOR, so AG ¶ 20(e) has no relevance in this case.

As the Appeal Board has ruled concerning the successful mitigation of security concerns arising from financial considerations, “[a]n applicant is not required to show that [he] has completely paid off [his] indebtedness, only that [he] has established a reasonable plan to resolve [his] debts and has ‘taken significant actions to implement that plan.’”¹¹ This applicant demonstrated a very reasonable plan to continue resolving his debts within his means, and has been implementing that plan very successfully over the past several years.

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 pertinent facts and circumstances surrounding this case. Applicant is a hard-working and dedicated employee. He had fully repaid five of the six SOR-alleged delinquent debts several months before the SOR was issued, and has since reached a reasonable and manageable agreement to bring his mortgage debt into good standing. He has sufficient income and savings to continue resolution of his one remaining delinquent debt without the risk of incurring additional debt.

¹¹ISCR Case No. 06-12930 at 2 (App. Bd. Mar. 17, 2008) (quoting ISCR Case No. 04-09684 at 2-3 (App. Bd. Jul. 6, 2006)).

Applicant is a mature and experienced individual, who is fully accountable for his situation and intends to continue resolving his obligations. The potential for pressure, coercion, exploitation, or duress is minimal, and he has demonstrated a sufficient pattern of financial responsibility to show that the financial concerns are unlikely to continue or recur.

Overall, the record evidence creates substantial confidence as to Applicant's present eligibility and suitability for a security clearance. He fully met his burden to mitigate the security concerns arising from his financial considerations.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F: FOR APPLICANT

Subparagraphs 1.a through 1.f: For Applicant

Conclusion

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

DAVID M. WHITE
Administrative Judge