



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



In the matter of:)
)
) ISCR Case No. 10-03971
)
Applicant for Security Clearance)

Appearances

For Government: Marc G. Laverdiere, Esq., Department Counsel
For Applicant: Richard L. Morris, Esq.

March 29, 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 August 9, 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 August 27, 2010, and requested a hearing before an administrative judge. The case was assigned to me on October 8, 2010. DOHA issued a notice of hearing on October 13, 2010, and the hearing was convened as scheduled on October 29, 2010. The Government offered exhibits (GE) 1 through 6,

which were admitted into evidence without objection. Department Counsel's exhibit index is marked as Hearing Exhibit (HE) I. Applicant testified, called a witness, and offered exhibits (AE) A and B that were admitted into evidence. Applicant's exhibit list was marked as HE II. I received faxed documents from the Applicant on November 2, 2010, asking for an expedited decision in his case. These documents were marked as HE III. DOHA received the hearing transcript (Tr.) on November 8, 2010.

Findings of Fact

Applicant is a 39-year-old business process analyst employed by a government contractor. He has worked for his current employer since June 2009. He has a bachelor's degree in business management and a master's in marketing. He is married and has one son. He also cares for his elderly mother.¹

The SOR alleges three delinquent debts for about \$31,153. The debts were listed on credit reports obtained on July 28, 2010, and February 19, 2010.

The first debt listed in the SOR (¶ 1.a) is a state tax lien in the amount of \$20,761. Applicant initially disputed this debt because it was a business debt for which he had no ownership interest. Applicant was the registered business agent for the company in question. Sometime in the mid-2000's, state tax liability accrued to the business. The taxes were not paid by the business owners and the state filed a tax lien against the owners and the Applicant as the business agent. Applicant first became aware of the lien in 2005. He disputed his liability with the state and also attempted to contact the business owners to no avail. Ultimately Applicant paid a settlement amount (\$13,446) to the state and the lien was released in August 2010. This debt is resolved.²

The second debt listed in the SOR (¶ 1.b) is a judgment for a real estate agency in the amount of \$9,556. Applicant disputes this debt. Applicant's brother was a partner in a business that owed commercial property. The company sought to lease the property. Applicant introduced his brother to the real estate agency in question. He has not an owner or partner in his brother's company. A dispute arose concerning payment for services between the real estate agency and Applicant's brother's company. The real estate agency filed a lawsuit and Applicant was named as a co-defendant. A default judgment was entered against Applicant. Applicant claims he was unaware of the judgment until informed of it through the security clearance process in 2010. The most recent credit report in evidence does not list this judgment. His brother provided corroboration about Applicant's limited involvement in the business transaction with the real estate agency. Applicant hired an attorney to pursue any legal remedies available to him. This debt is unresolved, but disputed.³

¹ GE 1; Tr. at 39-40.

² Tr. at 41-42, 53-58, 75; GE 2.

³ Tr. at 43-46, 72-73, 76-79; AE A; GE 2, 5.

The last debt listed in the SOR (¶ 1.c) is a judgment in the amount of \$836. Applicant explains this debt was the result of a misunderstanding with a friend about the creation of a webpage. He was unaware of this debt until notified about it through the security clearance process. Applicant paid a settlement amount to resolve this debt in August 2010. This debt is resolved.⁴

Applicant's current financial situation is stable. His wife works as a nurse, they rent their home, and the only long-term financial obligation he has is his student loan debt which is current. Applicant's co-workers, family members, and his current vice-president provided character letters stating that Applicant is an honest, trustworthy person and shows good judgment.⁵

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

⁴ Tr. at 42-43: GE 2.

⁵ Tr. 47; AE B.

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 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 had three delinquent debts that he was unable or unwilling to satisfy. The evidence is sufficient to raise the above disqualifying conditions.

Several Financial Considerations mitigating conditions under AG ¶ 20 are potentially applicable:

- (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 provided evidence of actions to resolve the issue.

Applicant's payments to satisfy the debts listed at SOR ¶¶ 1.a and 1.c, demonstrate clear indications that the problem is being resolved. They also amount to good-faith efforts to repay overdue creditors. AG ¶¶ 20(c) and 20(d) are applicable to those debts.

Applicant supplied documented proof to dispute the debt listed at SOR ¶ 1.b. The statements from Applicant's brother and Applicant's act of hiring an attorney to dispute the default judgment substantiate his dispute. AG ¶ 20(e) applies.

Applicant met his burden to establish sufficient mitigation evidence under AG ¶¶ 20(c), 20(d), and 20(e) 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 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.

I considered Applicant's excellent work record, his character references, and the support from his vice-president. Applicant paid the debts that he owed and disputed that debt that he believes is not valid.

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.c: 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