



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



In the matter of:)	
)	
)	ISCR Case No. 10-04032
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Eric Borgstrom, Esquire, Department Counsel
For Applicant: *Pro Se*

November 19, 2010

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant mitigated the Government's security concerns under Guideline F, Financial Considerations. Applicant's eligibility for a security clearance is granted.

On July 22, 2010, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing security concerns under 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) effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant answered the SOR in writing on August 10, 2010, and requested a hearing before an administrative judge. The case was assigned to me on September 8, 2010. DOHA issued a Notice of Hearing on September 10, 2010. I convened the hearing as scheduled on October 21, 2010. The Government offered Exhibits (GE) 1 through 6. Applicant did not object and they were admitted. Applicant and two witnesses

testified. Applicant offered Exhibits (AE) A through F, which were admitted without objections. The record remained open until November 1, 2010, to allow Applicant an opportunity to provide additional documents, which he did. They were marked as AE G and H. Department Counsel had no objections and they were admitted.¹ DOHA received the hearing transcript (Tr.) on October 28, 2010.

Findings of Fact

Applicant admitted the allegation in SOR ¶ 1.a. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact:

Applicant is 28 years old. He is a high school graduate and has earned an associate's degree. He is working on his bachelor's degree and has completed approximately 80 college credits. He has been employed with a federal contractor since October 2004. He served on active duty from October 2000 to October 2004, in a prestigious unit of the Marine Corps. He was honorably discharged. He is not married and has no children.²

In February 2008, Applicant purchased a rental unit as investment property. He took out a home equity loan to make the down payment on the purchase. The rental property was part of a larger unit of rental properties. Applicant had a lease-back contract with the company from which he purchased the property. According to the terms of the lease, Applicant was required to make the monthly mortgage payments on the property and the company would lease the property for Applicant for a fee. Applicant received approximately \$2,000 a month from the property. He was able to pay the \$1,300 mortgage payment from the rent. He had a three-year contract with the leasing company.³

In February 2009, the leasing company terminated the lease-back program and advised Applicant and approximately 50 to 60 other rental unit owners that a new company was taking over the management of the property. The new company agreed to rent the units and take 15% of the lease payment amount as its fee. If the unit was empty, the owner was required to pay the new company \$470 a month for fees on the rental unit. Instead of earning money from his rental investment, Applicant began losing money each month under this revised policy.⁴

All of the rental unit owners filed a lawsuit against the new company for breach of contract. Their contract specifically stated the agreement could not be terminated unless

¹ Department Counsel's Memorandum was marked Hearing Exhibit I.

² Tr. 39-43.

³ Tr. 22-25.

⁴ Tr. 25-27, 46-48 AE B.

mutually agreed upon. The rental unit owners later learned that the same people who operated the original company were managing the new company, but under new rules.⁵

Applicant has been unable to pay the home equity loan he obtained to buy the unit, since March 2009. He has contacted the creditor advising them of the lawsuit and ensuring them he would pay the debt when the lawsuit was resolved. They would not accept a negotiated settlement amount, but demanded payment of the full amount of the debt. He credibly testified that he intends to pay the debt, but is waiting until the lawsuit is resolved.⁶

Applicant has no other delinquent debts or financial blemishes. He stated that the company continues to rent his unit, but is not dispersing the funds to him. They told him that under the new structured contract he does not earn enough on the unit and he owes them additional money each month. Applicant has not attempted to sell the property. His position is that he does not have a contract with the new company.⁷

Applicant provided post-hearing documents that show a recent settlement was reached in the lawsuit regarding certain allegations. Applicant specifically reserved his right to continue his complaint against the company for breach of contract and issues regarding unpaid rent owed to Applicant and other plaintiffs.⁸

Applicant is current on his home mortgage and all other financial commitments. He has sufficient money in both his checking and savings accounts after paying his bills every month.⁹

Applicant's former supervisor testified on his behalf. He was Applicant's supervisor from 2004 to January 2010. He holds Applicant in the highest regard for his professionalism, integrity, and morality. Applicant is always respectful, diligent, and gives his best effort. He is aware that Applicant does not drink alcohol or smoke tobacco. He is aware of Applicant's financial problem and believes he has acted responsibly. He does not normally make recommendations for people, but Applicant is one of two people for whom he will provide his personal endorsement for a security clearance.¹⁰

Another former supervisor testified on Applicant's behalf. He retired after serving 25 years with the Federal Bureau of Investigation. He worked with Applicant daily from

⁵ Tr. 27-32; AE F.

⁶ Tr. 33-39.

⁷ Tr. 27-32-36; AE G, H.

⁸ AE G, H.

⁹ Tr. 48-58.

¹⁰ Tr. 66-76.

2007 to 2009. He described Applicant as a person with exceptional character. He considers him a hard worker. He has no reason to question Applicant's loyalty and has no reservations about recommending he be granted a security clearance.¹¹

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, which are 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 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.

Under 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 obtain a favorable security clearance 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 of potential, rather than actual, risk of compromise of classified information.

¹¹ Tr. 61-65.

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.” See *also* EO 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:

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. I have considered all of the disqualifying conditions under AG ¶ 19 and especially considered:

(a) inability or unwillingness to satisfy debts.

Applicant has a delinquent debt that is unresolved. I find there is sufficient evidence to raise the disqualifying condition.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. I have considered the following mitigating conditions under 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;

(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 bought investment rental property and was current on the loan payments until the leasing company changed the terms of the lease, in violation of the contract. Applicant and many others are involved in a lawsuit against the company due to their actions. Applicant is otherwise financially solvent and pays all of his bills. At this time, the debt remains unpaid, but Applicant intends to pay it when the suit is ultimately resolved. I find that the unusual circumstances of this debt are unlikely to recur and the circumstances do not cast doubt on Applicant's current reliability, trustworthiness or good judgment. The conditions that resulted in the financial problem were beyond Applicant's control. He acted responsibly by hiring an attorney and filing a lawsuit against the company, and keeping the creditor apprised. Some parts of the case appear to be settled, but Applicant still has a breach of contract action against the company. He is attempting to resolve this debt through appropriate channels. I found Applicant's testimony was credible. I find that he has a legitimate dispute that has affected his ability to repay the debt at this time. He provided sufficient evidence to substantiate his claim. He continues to work with his attorney on his claim. I find the problem is under control. I find all of the above mitigating conditions apply.

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 the 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. Applicant has an admirable work record. He served honorably in the Marine Corps for four years. He pays his mortgage and other bills on time. He has an unblemished financial record except for the alleged debt. He paid this loan on time until the leasing company with whom he had a contract changed the lease terms. There is a legal settlement on some of the issues involving that lease, but Applicant is retaining his breach of contract lawsuit and is intending to pursue it. Although the debt remains unpaid or unresolved, Applicant has acted responsibly under the circumstances. I do not find the status of this debt is a security concern. I believe Applicant will resolve the debt when the lawsuit is settled. Overall, the record evidence leaves me with no questions or doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising under the guideline for Financial Considerations.

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

Conclusion

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

Carol G. Ricciardello
Administrative Judge