



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 10-04893

Appearances

For Government: David Hayes, Esquire, Department Counsel
For Applicant: [redacted], Personal Representative

03/22/2012

Decision

ANTHONY, Joan Caton, Administrative Judge:

After a thorough review of the pleadings, testimony, and exhibits in this case, I conclude that Applicant mitigated security concerns under Guideline F, Financial Considerations. His eligibility for a security clearance is granted.

Statement of the Case

Applicant submitted a security clearance application (SF 86) on December 9, 2009. On October 5, 2011, 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 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.

On November 10, 2011, Applicant answered the SOR in writing and elected to have a hearing before an administrative judge. The case was assigned to me on November 29, 2011. I convened a hearing on January 11, 2012, to consider whether it

is clearly consistent with the national interest to grant or continue a security clearance for Applicant. The Government called no witnesses and introduced six exhibits, which were marked Ex. 1 through 6 and entered in the record without objection. Applicant testified and called two witnesses. He introduced eight exhibits, which were identified and marked as Applicant's Ex. A through H and entered in the record without objection. At the conclusion of the hearing, I left the record open until January 23, 2012, so that Applicant could, if he wished, provide additional information on the payment of his delinquent debts. Applicant timely filed a 12-page exhibit. Department Counsel did not object to Applicant's submission and summarized its conclusions in a document which I have identified as Hearing Exhibit (HE) 1. I marked Applicant's post-hearing submission as Ex. I and entered it in the record. DOHA received the hearing transcript (Tr.) on January 18, 2012.

Findings of Fact

The SOR contains nine allegations of financial conduct that raise security concerns under AG ¶ 18, Financial Considerations (SOR ¶¶ 1.a. through 1.i.). In his Answer to the SOR, Applicant admitted all nine allegations, totaling \$27,833. Applicant's admissions are accepted as findings of fact. (Answer to SOR.)

Applicant, who is 32 years old, was born, raised, and educated through the ninth grade in Vietnam.¹ He immigrated to the United States in 1999, and soon thereafter, began work as an hourly employee with his present employer, a government contractor. The president and chief executive officer of the company, which has employed Applicant for the past 12 years, appeared as his personal representative and as a witness. He described Applicant as a "stellar employee." (Ex. 1; Ex. 2; Tr. 67.)

Applicant's job responsibilities include carrying out actions that convert information on paper documents from physical data to digital data. He was first granted a security clearance in 2006. (Ex. 1; Tr. 65-67.)

Applicant was married in Vietnam in 2009. He and his wife share living quarters and living expenses with his mother, sister, and brother. Applicant's wife, mother, and brother also work for the government contractor which employs Applicant. (Ex. 1; Ex. 2; Tr. 109-110.)

Applicant has a limited command of English. During his background investigation in January 2010, Applicant brought along his sister and asked if she might serve as his translator during the interview. During the interview, Applicant reported that he spent most of his social time with other family members and had only two friends outside of his family circle. (Ex. 2; Tr. 90, 95, 98.)

In 2003, Applicant began to acquire and use credit cards. For a while, he made only the minimum payments on the monthly charges he received from the credit card

¹ At his hearing, Applicant stated that he had a high school education in Vietnam. (Ex. 2; Tr. 91-92.)

companies. Over time, Applicant's credit card debts grew. When he did not pay the debts, they were referred for collection. (Tr. 94-97.)

During his interview, Applicant told the investigator he did not recognize the debts. At his hearing, Applicant stated that he did not understand the investigator's questions. (Ex. 2; Tr. 97-98.)

Later in May 2011, when Applicant received DOHA's interrogatories about his financial delinquencies, he realized he had a serious problem. He sought help from his company's facility security officer and human resources manager in addressing his debts. The company, including the president, mobilized to assist Applicant in finding a reliable debt management organization to help him identify his creditors and set up a payment plan to satisfy his debts. The president and chief executive officer of the company also stated:

[The Company] is going to be involved in this situation until it's resolved. So, we not going to just say, [Applicant], we're going to set up the plan and now you're done.

We have an interest. [Applicant has] been a stellar employee for all these years. You'll hear that in other testimony. And we have an interest in making sure that his mistakes, and everyone hopefully understands that people do make mistakes, have been one[-]time mistakes. We have a plan, [the debts] will be resolved, and the company is behind him to make sure that he follows through. (Ex. D; Tr. 48-50.)

In May 2011, Applicant entered into a contract with a debt management firm to pay his delinquent debts. He initially agreed to pay \$732 monthly to the debt management firm for disbursement to his creditors. However, Applicant's payment records show that he actually disburses \$872 each month for payment to his creditors. (Ex. A; Ex. B; Ex. D.)

Applicant's hourly wage is \$18.35 for 40 hours of work a week. If he works more than 40 hours a week, his hourly wage is 1.5 times \$18.35. In November 2011, Applicant received a cash bonus of \$500 for exceptional work on a federal project. In November 2011, Applicant received another cash bonus of \$1,500 for excellent performance on another federal project. His 2011 gross income was approximately \$51,362. (Ex. F; Tr. 69-70, 78-80.)

Applicant provided a monthly budget² which showed a gross monthly income of \$4,567. His combined monthly federal, state, and local taxes were \$427. Total expenses for health care were \$82. (Ex. E.)

² For clarity, the amounts identified in Applicant's budget are rounded to the nearest whole dollar.

Additionally, Applicant listed his share of home expenses, including rent, utilities, telephone, cable, and Internet services, as \$470. He reported the following monthly living expenses: \$150, groceries; \$50, personal supplies; clothing, \$100; dining out, \$50; barber, \$15. Applicant listed transportation expenses of \$105. He saves \$200 each month in his retirement account, and he pays \$872 each month to his debt management firm. Applicant's net remainder each month is \$2,046. (Ex. E.)

Applicant reported that he has a balance of \$13,000 in his retirement plan account. He also has a balance of \$7,000 in his checking account. (Tr. 103-104.)

Applicant's supervisor since 1999 testified that Applicant's performance has always been "very, very good." She also stated that Applicant was dependable and so trustworthy that she sent him on out-of-state assignments that required transportation of classified information. She also reported that their federal agency customers praised Applicant's professionalism. (Tr. 78-80.)

Applicant's most recent performance evaluation rated his performance in job knowledge, quality of work, and quantity of work as "commendable" or seven on a ten-point rating scale. His dependability and customer service performance were rated as "proficient" or six, and his communication skills were rated as "competent" or five. (Ex. G.)

In a post-hearing submission, Applicant provided documentation establishing that the allegations at SOR ¶¶ 1.a., 1.d., and 1.i. referred to only one debt, and that debt had been satisfied. Applicant's documentation also established that the allegations at SOR ¶¶ 1.b., 1.c., 1.f., and 1.g reflected debts that were being paid under the payment plan with the debt management firm. Additionally, Applicant's documentation established that the debts alleged at SOR ¶¶ 1.e. and 1.h. had been paid. (Ex. I; HE 1.)

Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security, and it has emphasized that "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information." *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant an applicant's eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.

When evaluating an applicant's suitability for a security clearance, an administrative judge must consider and apply the revised adjudicative guidelines (AG). 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, the administrative judge applies these 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 applicant or proven by Department Counsel. . . ." The applicant has the ultimate burden of persuasion in seeking to obtain a favorable security 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 protect or 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 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 relating to the guideline 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. Under AG ¶ 19(a), an "inability or unwillingness to satisfy debts" is potentially disqualifying. Similarly, under AG ¶ 19(c), "a history of not meeting financial obligations" may raise security concerns. Applicant accumulated substantial delinquent debt and was unable or unwilling to pay his creditors. This evidence is sufficient to raise these disqualifying conditions.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Several Guideline F mitigating conditions could apply to the security concerns raised by Applicant's financial delinquencies. Unresolved financial delinquency might be mitigated if it "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(a)) Additionally, unresolved financial delinquency might be mitigated if "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." (AG ¶ 20(b)) Still other mitigating circumstances that might be applicable include evidence that "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" (AG ¶ 20(c)) or "the individual has initiated a good-faith effort to repay overdue creditors or otherwise resolve debts." (AG ¶ 20(d)) Finally, if "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 options to resolve the issue," then AG ¶ 20(e) might apply.

Applicant admitted a history of financial difficulties that began in at least 2003, when he acquired credit cards and accumulated debts he did not pay. Applicant has been steadily employed since 1999.

Applicant's debts arose in 2003, when he was in his early 20s and a newly-arrived immigrant. Since then, he has matured, married, and demonstrated diligence, reliability, and responsibility in his work. The record suggests that Applicant's limitations with the English language may have impeded his awareness of his financial delinquencies in the past. When he learned of his indebtedness from DOHA interrogatories in May 2011, he sought help from his company's facility security officer and human resources manager. They, and the company president, helped Applicant identify a responsible debt management firm. Applicant contracted with the firm and,

and since May 2011, he has committed over \$800 each month to satisfying his delinquent debts. In a post-hearing submission, he provided documentation that all of the debts alleged on the SOR had been paid or were in repayment status.

While it is true that not all of Applicant's delinquent debts have been fully satisfied, DOHA's Appeal Board has explained that an individual's good-faith partial payment of debts need not be a bar to access to classified information:

However, the Board has previously noted that an applicant is not required to be debt-free nor to develop a plan for paying off all debts immediately or simultaneously. All that is required is that an applicant act responsibly given his circumstances and develop a reasonable plan for repayment, accompanied by "concomitant conduct," that is, actions which evidence a serious intent to effectuate the plan. See ISCR Case No. 07-06482 at 3 (App. Bd. May 21, 2008.)

ISCR Case No. 08-06567 at 3 (App. Bd. Oct. 29, 2009.)

Applicant has acted responsibly and set up a reasonable plan for repaying his delinquent debts. By his actions, he has demonstrated that he is serious about following that plan and resolving his delinquent debts. While AG ¶¶ 20(b) and 20(e) do not apply to the facts of Applicant's case, I conclude that AG ¶¶ 20(a), 20(c), and 20(d) are applicable in mitigation.

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. Applicant is a mature person of 32

years. He is a valued employee who has worked for the same employer for 12 years, ever since immigrating to the United States from Vietnam. His financial problems began in 2003, when he acquired credit cards and accumulated more debt than he knew how to satisfy. Applicant has an employer and a management team that actively worked to assist him in developing a plan to identify and satisfy his financial delinquencies. Applicant has followed that plan, and he is systematically and responsibly paying his financial delinquencies.

The president of his company appeared as Applicant's personal representative and expressed his willingness to stand behind Applicant until he paid off his delinquent debts. Applicant is indeed fortunate to have such positive support and understanding from his employer.

Overall, the record evidence persuades me that Applicant is mature, trustworthy, and capable of being entrusted with access to classified information. I conclude Applicant mitigated the security concerns arising from his financial delinquencies.

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.i.: 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.

Joan Caton Anthony
Administrative Judge