



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



In the matter of:)
)
) ISCR Case No. 10-06055
)
)
Applicant for Security Clearance)

Appearances

For Government: Carolyn Jeffreys, Esquire, Department Counsel
For Applicant: Alan Edmunds, Esquire

July 29, 2011

Decision

HOWE, Philip S., Administrative Judge:

On February 1, 2010, Applicant submitted his Security Clearance Application (SF 86). On October 27, 2010, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) 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 (AG) effective within the Department of Defense on September 1, 2006.

Applicant acknowledged receipt of the SOR on October 2, 2010. He answered the SOR in writing on November 16, 2010, and requested a hearing before an administrative judge. DOHA received the request on November 19, 2010. Department Counsel was prepared to proceed on December 8, 2010, and I received the case assignment on December 14, 2010. DOHA issued a Notice of Hearing on February 2, 2011, and I convened the hearing as scheduled on March 8, 2011. The Government offered Exhibits 1 through 6, which were received without objection. Applicant testified

and submitted Exhibits A through II, without objection. DOHA received the transcript of the hearing (Tr.) on March 16, 2011. I granted Applicant's request to keep the record open until March 22, 2011, to submit additional matters. On March 18, 2011, he submitted Exhibits JJ to OO, without objection. They were admitted into the record and considered as evidence. The record closed on March 22, 2011, but was reopened at Applicant's request on July 20, 2011. He submitted a three-page letter from his state's tax authority offering Applicant a compromise of his state tax debt. The government had no objection and I admitted the document into the record as Exhibit PP. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

Findings of Fact

In his Answer to the SOR, Applicant admitted all the allegations. He also provided additional information to support his request for eligibility for a security clearance.

Applicant is 43-years old, married and has nine children. He works for a defense contractor in the aircraft maintenance and repair business. Applicant has a high school degree with no advanced degrees. He admitted he could not complete an income tax form for a corporation or limited liability company. (Tr. 24, 63, 100, 104; Exhibits 1, 2, 3, DD)

Applicant owes 15 state and federal tax liens totaling \$142,537, as specified in SOR Paragraphs 1.a to 1.m. and Paragraphs 1.v to 1.x. He also owes eight medical debts totaling \$5,682, as stated in SOR Paragraphs 1.n. to 1.u. The total debt owed by Applicant is \$148,219. (Exhibits 2-6, Z)

Applicant's tax debts arose from the operation of his landscaping and snow removal business from 1993 to 2010. He also worked with his father on a construction business that included building the foundations for cell telephone towers from 1995 to 2001. Applicant then worked for a cargo carrier, and later as the fleet manager for a large landscaping company. In 2008 Applicant worked for a local university. During that time Applicant's ninth child was born and his wife had a burst appendix that required surgery. At that time, needing a greater income, Applicant rejoined the cargo carrier company to work overseas for them. For that work he needs a security clearance. His income would substantially increase to \$144,000 annually from his current income. Applicant's highest income was in 2007 when it was \$47,000. (Tr. 102, 114, 122-127; Exhibits DD, LL)

Applicant's financial difficulties arose over the years since 1995 because of the expenses of raising nine children, one of whom is legally blind and is developmentally disabled. She is now 11 years old. His two oldest children are married and working. Applicant's financial problems were aggravated when his wife went to care for his father who had heart bypass surgery in 1999. His wife was gone for six months. Applicant also paid about \$25,000 to help his father with medical payments because of his father's

inadequate medical insurance. She had taken care of the financial records for their business. Applicant then had to perform those duties. His company was owed money by another company for which he did subcontracting work. Applicant was not paid by the other company. What income his company had, Applicant used to pay his employees and failed to send the tax money to the state and federal governments. The documents submitted by Applicant show the tax liabilities are for the years 1997 to 1999. Applicant has not incurred any additional tax liabilities after those years, according to the documents submitted. Most of the tax liabilities are for interest attached to the original tax debt. Applicant hired an accounting service in 1999 and paid it \$30,000 over the next two years. The accountant then informed Applicant it used his money without attaining any success with the Internal Revenue Service (IRS). In 2002 Applicant hired another accountant to resolve the tax issues. In 2009 that accountant informed Applicant it was bankrupt and had not resolved his federal and state tax issues. Applicant currently pays the IRS \$332 monthly while seeking an offer in compromise on the tax issues. His tax refunds are confiscated by the tax authorities to pay his debt. The state tax authority garnishes his wages to pay his state tax debt. Applicant contends he has paid that government over \$50,000 on a \$38,000 tax debt. Upon the recommendation of his employer's chairman, Applicant retained the services of a tax service to submit an offer in compromise to the IRS and the state tax authorities. These offers were submitted in March 2011. The IRS compromise is pending. On July 11, 2011, Applicant accepted the compromise proposal offered by the state to pay \$25,000 over the next three years on \$118,000 of tax debt. These debts are currently unresolved except for Applicant's payments as stated. (Tr. 57, 76, 79-84, 93-95, 98-101, 105, 107-114, 119, 127; Exhibits 2-6, A, Z, AA, CC, DD, EE, JJ – PP)

Appellant paid the eight medical debts. Proof of payment was submitted as five exhibits. The money for the payment of these debts was given to Applicant by his brother. Applicant repays his brother by working off the loans in his brother's business. These eight debts are resolved. (Tr. 57-60, 74, 76, 85, 93, 94, 103, 114, 115; Exhibits A, FF to II, MM)

Applicant's net monthly income is \$1,500. He and his wife rent a house from his brother for \$400 monthly. Their total monthly expenses are \$1,482. Applicant's brother paid some of the monthly expenses to assist Applicant's family. These contributions occurred during the past three years and continue to the present time. Applicant works off the money lent to him by his brother. (Tr. 63, 72-78, 103, 114, 115; Exhibit X)

Applicant's current monthly debts are paid. He and his wife have six credit cards. The total balance on all cards is \$600. Applicant receives \$520 monthly in food stamps with which to feed his seven children who live with him and his wife. (Tr. 63, 69, 70; Exhibits B, X, Y)

Applicant completed seven computer courses in financial management and investing in December 2010. The certificates of completion are included in the record as exhibits. (Exhibits C to I)

Applicant submitted 12 letters of recommendation from supervisors and co-workers. Four witnesses, including the former vice-president of the landscaping company for which Applicant worked, and the president of his present employer, testified favorably about Applicant's work ethic, honesty, integrity, professionalism, and dedication to his employer's mission. These witnesses have known Applicant for many years. (Tr. 19-47; Exhibits J-K, M-V)

Applicant was credible, frank and open about his work and family history. He testified forthrightly about his tax problems and past situations with his landscaping and snow removal company. (Tr. 91-127; Exhibit DD)

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 and mitigating conditions, which are useful 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 as to obtaining a favorable 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 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.

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 at AG ¶ 19 contains nine disqualifying conditions that could raise security concerns. Three conditions are applicable to the facts found in this case:

- (a) inability or unwillingness to satisfy debts;
- (c) a history of not meeting financial obligations; and
- (d) deceptive or illegal financial practices such as income tax evasion and other intentional financial breaches of trust.

Applicant accumulated \$148,219 in delinquent debt, including state and federal tax debts and medical debts, from 1999 to the present time that remain unpaid. Applicant has 23 delinquent debts listed in the SOR. Applicant deliberately failed to pay the state and federal business income tax payments, converting the money instead to payroll for his employees. He did not appropriate it all to himself as he attempted to keep his father's construction company operating. The three disqualifying conditions apply.

The guideline in AG ¶ 20 contains six conditions that could mitigate security concerns arising from financial difficulties. Three conditions may be applicable:

(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;

(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; and,

(f) the affluence resulted from a legal source of income.

Applicant's tax problems arose because of a business downturn and his wife's absence from the bookkeeping function of the company. Applicant was required for a six month period in 1999 to care for five of his children and manage his company. He has only a high school education and almost no knowledge on how to complete business income tax forms. He attempted to hire accountants to calculate and submit the necessary income tax forms and resolve his tax debts. Their failures to act are not attributable to Applicant. He acted responsibly under the circumstances. AG ¶ 20 (b) applies.

Applicant improved his knowledge of finances by taking several courses in December 2010. He has not incurred additional delinquent debt. Applicant pays his current debts on time. AG ¶ 20 (c) applies.

Applicant paid his medical debts with the financial assistance of his brother. He is repaying his brother through his labor in the brother's business. The tax problems were sought to be resolved for the past 12 years, but two accounting firms were unsuccessful in assisting Applicant. He instituted efforts to resolve the tax debts instead of ignoring them. He has paid some or all of the tax debts through routine garnishments by the taxing authorities. The latest company engaged by Applicant to resolve the tax debts submitted an offer in compromise to both the state and federal tax agencies to resolve the liabilities. Applicant is an employee of a company and closed his business. He has

not incurred additional tax debt since approximately 2005. Therefore, there are clear indications from the evidence he presented that the financial problems are under control and being resolved. AG ¶ 20 (d) applies because of Applicant's responsible attempts to resolve his tax debts that have been ongoing for 12 years. Also, he paid his medical debts. His ability to pay his debts was affected by the \$25,000 he paid for his father's medical expenses and the \$30,000 he paid to accountants over time to resolve the tax liabilities.

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 an applicant's conduct and all the 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.

AG ¶ 2(c) requires each case must be judged on its own merits. 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 was an adult with several children when a series of circumstances plunged him into tax problems with the state and federal government. His father/business partner needed heart surgery and Applicant's wife went to care for him as he recuperated. Applicant was left to operate the business during a downturn which included a large debtor not paying him. Applicant no longer operates his own business and works as an employee now. His nine children's expenses, his wife's health problems during one pregnancy, and Applicant's lack of malicious intent in not paying the business taxes count in his favor. His demeanor during testimony showed he was not duplicitous or mendacious. He is a credible witness. Applicant is an honest and hard-working man who got into a business predicament that has followed him for the past 12 years. He attempted reasonable actions during those years to resolve the tax debts that were not successful due to the professional failures of those accountants whom he engaged. The number of character witnesses shows the high regard with which Applicant is held by his supervisors and peers. They also demonstrate there is no potential for pressure, coercion, exploitation, or duress because so many people in that business community know of Applicant's

history that no one could pressure him with threats of disclosure. Applicant has not repeated his business behavior during the past 12 years. He demonstrated he is a competent worker and an honest man.

Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising from his financial considerations. I conclude the "whole-person" concept for Applicant.

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 to 1. x: 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.

PHILIP S. HOWE
Administrative Judge