



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



In the matter of:)
)
) ISCR Case No. 10-06374
)
Applicant for Security Clearance)

Appearances

For Government: Candace L. Garcia, Esq., Department Counsel
For Applicant: *Pro se*

July 28, 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 November 4, 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 December 13, 2010, and requested a hearing before an administrative judge. The case was assigned to me on March 2, 2011. DOHA issued a notice of hearing on March 11, 2011, setting the hearing for April 15, 2011. Because of the threat of a government-wide shutdown, the case was rescheduled for

May 13, 2011. The hearing was held as rescheduled. The Government offered exhibits (GE) 1 through 4, which were admitted into evidence without objection. Department Counsel's exhibit index is marked as Hearing Exhibit (HE) I. Applicant testified and offered exhibit (AE) A that was admitted into evidence without objection. The record was held open for Applicant to submit additional information. Applicant submitted exhibit AE B which was admitted into evidence without objection. Department Counsel's forwarding memorandum is marked as HE II. DOHA received the hearing transcript (Tr.) on May 26, 2011.

Findings of Fact

Applicant is 34 years old and is seeking a security clearance to work for a defense contractor. He is currently employed by a defense contractor working on unclassified projects. He has a high school diploma and received vocational training as an electrician. He has been married for 13 years and has three children, ages 12, 9, and 5 months. He has never held a security clearance.¹

The SOR alleges 11 delinquent debts in the amount of about \$65,472. The debts were listed on credit reports obtained on October 28, 2008, and September 17, 2010. Applicant admitted owing all the debts alleged in the SOR.

In 2003, Applicant started his own electrician business. He subcontracted his work out to other contractors in the home building business. There was an abundance of work when he first started his business. However, soon the economy started a downward spiral that affected his business. This manifested itself in a couple of ways. First, the building industry as a whole slowed down, which resulted in fewer job opportunities for him. Second, of the jobs he did get, he received less money than he originally bargained for because that is all the builders could pay him because of their own financial problems. Sometimes they would stop paying even though he already performed the work. This downward business trend continued through 2007. He found himself using his personal credit cards and credit accounts to buy supplies and equipment for which he was not paid. He was underemployed through parts of 2007 and 2008 while he was still self-employed. He was not eligible for unemployment payments because he was self-employed. He has been employed at his current position since August 2008 on a temporary basis. All these factors contributed to his inability to pay his debts.²

All the debts listed in the SOR arose from credit cards Applicant used to support his electrician business with the exception of car loan (SOR ¶ 1.h) for a truck he used in his business that was later repossessed. He attempted to work out a payment arrangement with the collection company that acquired the deficiency account from his

¹ Tr. at 5, 22-23, GE 1.

² Tr. at 27-28; GE 2.

truck repossession, but was unsuccessful in doing so. Recently, the birth of his third child and attendant medical bills made it difficult to pay any of the listed debt.³

Applicant and his wife consulted with an attorney about the possibility of filing for bankruptcy protection. They made this contact in October 2010, before the issuance of the SOR. It took them several months to accumulate the necessary funds to pay the attorney's fee to start the action. They hired an attorney on June 22, 2011, who supplied a copy of the secured and unsecured creditors' claims that will be discharged in the Chapter 7 bankruptcy. All the debts listed in the SOR were included. Applicant completed the credit counseling course required by the bankruptcy court. He has never filed for bankruptcy before. He is current on his federal income taxes.⁴

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

³ Tr. at 26-34; GE 2-4.

⁴ Tr. at 25, 35-36, 39; AE B.

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 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 accumulated a number of debts and was unable or unwilling to satisfy his obligation. The evidence is sufficient to raise the above disqualifying conditions.

Several Financial Considerations mitigating conditions under AG ¶ 20 are potentially 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; and

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant was put into his financial difficulty when his electrician business was detrimentally affected by the slumping home building industry. As a result, he is no longer in that business, therefore it is unlikely that he will experience this type of financial difficulty again. Additionally, his actions do not cast doubt on his current, reliability, trustworthiness, or good judgment. AG ¶ 20(a) is applicable.

As stated above, Applicant's financial difficulties were caused by an overall economic decline in the housing market that significantly impacted his business, which he ultimately lost. He then experienced periods of underemployment. More recently, he has had to pay for the medical expenses related to the birth of his third child. These were conditions that were outside his control. Additionally, Applicant acted reasonably by contacting his creditors and trying to work out payment plans. When they refused, he made the decision to file for Chapter 7 bankruptcy. AG ¶ 20(b) is applicable.

Applicant received financial counseling. However, bankruptcy, while it is a legal method to resolve one's debts, does not resolve the debts for the security purpose of this action, nor is it a good-faith effort to repay overdue creditors. AG ¶ 20(c) is partially applicable and ¶ 20(d) is not applicable.

Applicant met his burden to establish sufficient mitigation evidence under AG ¶¶ 20(a) and (b) 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 also found Applicant to be honest and candid about his finances. He found himself with a difficult situation when his business collapsed because of the economic downturn. He used his own resources to pay for materials and equipment for which he did not receive compensation. He also struggled through a period of underemployment and medical debts. However, he made the best of the situation and is seeking a fresh start through Chapter 7 bankruptcy.

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.k: 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