



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



In the matter of:)
)
) ISCR Case No. 10-06601
)
Applicant for Security Clearance)

Appearances

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

July 27, 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 December 7, 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 15, 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 14, 2011. Because of the threat of a government-wide shutdown, the case was rescheduled for

May 12, 2011. The hearing was held as rescheduled. 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 and offered exhibits (AE) A through D that were admitted into evidence without objection. The record was held open for Applicant to submit additional information. Applicant submitted AE E 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 25, 2011.

Findings of Fact

Applicant is 39 years old and is seeking a security clearance to work for a defense contractor. He is currently employed by a commercial business. He has a high school diploma and some college. He has been married for seven years and has two children, ages 11 and 5. He has never held a security clearance.¹

The SOR alleges five delinquent debts in the amount of about \$29,800. The debts were listed on credit reports obtained on April 15, 2010, September 23, 2010, and January 24, 2011. Applicant admitted owing all the debts alleged in the SOR.

In 2001, Applicant started his own contracting 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. His peak year was probably 2004 when he made about \$130,000. 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. Consequently, his profit margin quickly shrunk. This downward business trend continued through 2006 to 2007. In 2007 his income dropped to about \$10,000. When he was unable to cover his expenses he closed down the business. From July 2008 until he was laid off in March 2010, he worked as an automotive mechanic. He was unemployed from March 2010 through February 2011 and collected unemployment benefits of about \$1250 per month during this time. He has been employed at his current position since February 2011. All these factors contributed to his inability to pay his debts.²

Specifically, the debts included two credit cards he used in his business with balances of \$725 and \$807 (SOR ¶¶ 1.a and 1.b). Applicant contacted both creditors and tried to work out payment plans for both debts, but was unsuccessful in doing so. He also owes for two vehicle repossession deficiencies in the amounts of \$7,208 and \$11,930 (SOR ¶¶ 1.c and 1.e). One of the vehicles was used in his business while the other was the vehicle his wife used. He could not make the payments when his

¹ Tr. at 5, 32-35, GE 1.

² Tr. at 53-57; GE 2.

business collapsed. He tried to make payment arrangements with the holders of the debts, but was unsuccessful in those efforts. The final debt is a delinquent line of credit for his former business in the amount of \$9,160 (SOR ¶ 1.d). He contacted the creditor about a payment plan, but no terms were worked out. About one year ago, he was in a position to pay some of his debts when his daughter required extensive medical care. Although insurance pays for the bulk of the medical expenses, they must pay copayments to the doctors and hospital. These unexpected expenses delayed the plan to repay the debts.³

On May 17, 2011, Applicant and his wife filed for bankruptcy protection under Chapter 7. All the debts listed in the SOR were included as claims by unsecured creditors. Applicant completed the credit counseling course required by the bankruptcy court. He has never filed for bankruptcy before.⁴

Applicant supplied income information and a budget and for both he and his wife. It shows that after expenses, he has about \$1000 per month of discretionary income left over. He does not have any new credit card or other long term debt.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.

³ Tr. at 37-43; GE 2-6.

⁴ Tr. at 46-50; AE E.

⁵ AE A-C.

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 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 contracting business was detrimentally affected by the slump in the 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 unemployment. More recently, he has had to pay for his daughter's unexpected medical expenses. These were conditions that were outside his control. Additionally, Applicant acted reasonable 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 through the bankruptcy process. While bankruptcy is intended to provide a person with a fresh start financially, it does not immunize an applicant's history of financial problems from being considered for its security significance.⁶ After reviewing the reasons leading to the bankruptcy, I find 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.

⁶ See e.g., DISC Case No. 87-1800 (February 14, 1989) at p.3 n. 2 ("Although bankruptcy may be a legal and legitimate way for an applicant to handle his financial problems, the administrative judge must consider the possible security implications of the history of debts and problems that led to the bankruptcy").

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. Applicant found himself with a difficult situation when his business collapsed because of the economic downturn. He went from making \$130,000 per year to \$10,000 per year through no fault of his own. He also struggled through a period of unemployment and unexpected 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.e:	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