



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



In the matter of:)
)
) ISCR Case No. 10-07196
)
Applicant for Security Clearance)

Appearances

For Government: Daniel F. Crowley, Esq., Department Counsel
For Applicant: *Pro se*

December 30, 2011

Decision

LOUGHRAN, Edward W., Administrative Judge:

Applicant mitigated financial considerations security concerns. Eligibility for access to classified information is granted.

Statement of the Case

On March 9, 2011, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, financial considerations. The action was taken 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 July 28, 2011, and requested a hearing before an administrative judge. The case was assigned to me on October 20, 2011. DOHA issued a notice of hearing on November 15, 2011, scheduling the hearing for December 8, 2011. The hearing was convened as scheduled. The Government offered Exhibits

(GE) 1 through 5, which were admitted without objection. Applicant testified, called a witness, and submitted Exhibits (AE) A through C, which were admitted without objection. The record was held open for Applicant to submit additional information. Applicant timely submitted documents that were marked AE D and E and admitted without objection. Department Counsel's memorandum forwarding AE D and E is marked Hearing Exhibit (HE) I. DOHA received the hearing transcript (Tr.) on December 16, 2011.

Findings of Fact

Applicant is a 51-year-old prospective employee of a defense contractor. He is applying for a security clearance. He has a bachelor's degree. He is married with four adult children.¹

Applicant was an independent contractor in the home construction industry. His business was successful, and he earned a good living. His income tax returns showed that he and his wife had an adjusted gross income of \$134,060 in 2006. The economy and housing market started declining, which affected new construction. Their adjusted gross income was \$110,150 in 2007. His wife lost her job in 2007 or 2008. Their adjusted gross income was minus \$4,598 in 2008, \$8,278 in 2009, and \$22,078 in 2010. Applicant used other loans and credit cards to maintain the business and help make his mortgage payments. He was unable to maintain the payments, and a number of debts became delinquent. He lost a tractor, a backhoe, and a car to repossession, and his house to foreclosure. The house sold for more than was owed on the first mortgage. The second mortgage is still owed.²

The SOR alleges seven delinquent debts with balances totaling about \$62,700, and that Applicant was past-due on his mortgage, a timeshare, and student loans. The debts appear on various credit reports. Applicant admitted all the allegations except a \$117 debt to a telephone services company. He stated that his student loans had been in deferment, but they came out of deferment and were in default.³

Applicant and his wife contracted with a bankruptcy attorney in March 2011 to file a bankruptcy petition on their behalf. It took until December 5, 2011, for Applicant to pay the \$2,349 in attorney's and other fees before the attorney would file the petition. The Chapter 7 petition was filed on December 14, 2011. There were no claims listed under Schedule D – Creditors Holding Secured Claims. Under Schedule E – Creditors Holding Unsecured Priority Claims, the petition listed \$3,681 owed to the Internal Revenue Service (IRS) for unpaid taxes from tax year 2007. Under Schedule F – Creditors Holding Unsecured Nonpriority Claims, the petition listed 17 debts totaling \$156,460. The petition lists all the debts alleged in the SOR. Included were claims of \$45,000 for

¹ Tr. at 24-28; GE 1.

² Tr. at 21-25, 30-36, 41; GE 1, 2; AE A.

³ Tr. at 35-36, 47; Applicant's response to SOR; GE 1-5.

his second mortgage, \$12,476 for his timeshare, \$7,279 for his student loans, and the \$117 debt to a telephone services company.⁴

Applicant closed his construction business in 2009. He has a job waiting with a defense contractor to work overseas. He will be on a one-year contract. The job pays \$198,000 for the year. The job is contingent upon Applicant receiving a security clearance. He has been working odd jobs while waiting for his clearance and to be hired by the defense contractor.⁵

Applicant attended a 16-week financial course through his church. He stated it “helped his understanding for the future, but it could not help [him] recover from [his] losses.” He and his wife are living with one of their children while he awaits his security clearance determination. He only uses cash. He stated that he will be in great shape financially if he receives the overseas job. He is aware that the sudden spike in salary could affect his Chapter 7 bankruptcy. He stated that he wanted to file a Chapter 13 bankruptcy, but his lawyer advised against it, because the job with the defense contractor was uncertain. He credibly testified that he will resolve the debts himself if the bankruptcy is dismissed or he has to file Chapter 13 bankruptcy. He stated that he owes the IRS because the IRS disallowed his mileage in 2007. He stated that his accountant is disputing the amount owed to the IRS. He stated that after the IRS determines how much he owes, he will pay that amount.⁶

Applicant submitted a number of letters and a witness testified on his behalf. He is praised for his moral character, reliability, intelligence, honesty, maturity, trustworthiness, professionalism, dependability, and integrity.⁷

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 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

⁴ Tr. at 23-24, 37; AE B.

⁵ Tr. at 22-29, 37-38.

⁶ Tr. at 28-30, 37-44; GE 2.

⁷ Tr. at 18-20; AE C.

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 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 safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of 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* 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 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 delinquent debts and was unable or unwilling to pay his financial obligations. The evidence is sufficient to raise the above disqualifying conditions.

Conditions that could mitigate financial considerations security concerns are provided under AG ¶ 20. The following 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 earning a good living as an independent contractor in the home construction industry. His wife was also working. The economy and housing market started declining, which affected new construction. His wife lost her job in 2007 or 2008, and Applicant had to close his business in 2009. Applicant and his wife contracted with a bankruptcy attorney in March 2011 to file a bankruptcy petition on his behalf. It took until December 5, 2011, for Applicant to pay the fees before the attorney would file the petition. The Chapter 7 petition was filed on December 14, 2011. Applicant stated that he wanted to file a Chapter 13 bankruptcy, but his attorney advised against it because the uncertainty of his employment status. Applicant has a \$198,000-a-year job waiting for him if he receives his security clearance. He is aware that the sudden spike in salary could affect his Chapter 7 bankruptcy. He credibly testified that he will resolve the debts himself if the bankruptcy is dismissed or he has to file Chapter 13 bankruptcy. He has received financial counseling.

I find that Applicant's financial difficulties were the result of conditions that were beyond his control, and that he acted responsibly under the circumstances. AG ¶ 20(b) is applicable. Applicant's debts have not been discharged. AG ¶ 20(a) is not applicable. His resolution of his debts through Chapter 7 bankruptcy does not qualify as a good-

faith effort to repay overdue creditors or otherwise resolve debts.⁸ AG ¶ 20(d) is not applicable. However, the bankruptcy provides a clear indication that the problem is in the process of being resolved and is under control. AG ¶ 20(c) is applicable.

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.

I considered Applicant's favorable character evidence. I found Applicant to be honest and candid about his finances. His financial problems resulted from conditions that were beyond his ability to control. Applicant is using the legal remedy of bankruptcy to resolve debts incurred after his wife lost her job and he lost his business due to the

⁸ The Appeal Board has previously explained what constitutes a "good-faith" effort to repay overdue creditors or otherwise resolve debts:

In order to qualify for application of [good-faith mitigating condition], an applicant must present evidence showing either a good-faith effort to repay overdue creditors or some other good-faith action aimed at resolving the applicant's debts. The Directive does not define the term 'good-faith.' However, the Board has indicated that the concept of good-faith 'requires a showing that a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation.' Accordingly, an applicant must do more than merely show that he or she relied on a legally available option (such as bankruptcy) in order to claim the benefit of [good-faith mitigating condition].

(internal citation and footnote omitted) ISCR Case No. 02-30304 at 3 (App. Bd. Apr. 20, 2004) (quoting ISCR Case No. 99-9020 at 5-6 (App. Bd. Jun. 4, 2001)).

decline of the economy and the housing market. He is living frugally while waiting for a lucrative overseas job. I am convinced that he is on the right track financially.

Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. I conclude Applicant has mitigated 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.j: 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.

Edward W. Loughran
Administrative Judge