



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



In the matter of:)	
)	
-----)	ISCR Case No. 10-08511
)	
Applicant for Security Clearance)	

Appearances

For Government: Marc G. Laverdiere, Esquire, Department Counsel

For Applicant: *Pro se*

October 31, 2011

DECISION

ROSS, Wilford H., Administrative Judge:

Applicant submitted his Electronic Questionnaire for Investigations Processing (e-QIP), on July 16, 2010. (Item 5.) On April 12, 2011, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to the Applicant detailing the 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 for SORs issued after September 1, 2006.

Applicant submitted an Answer to the SOR on April 27, 2011, and requested a decision without a hearing. (Item 4.) Department Counsel submitted a File of Relevant Material (FORM) to Applicant on May 16, 2011. Applicant received the FORM on May 24, 2011, and was given 30 days to submit any additional information. He elected to submit additional information on June 10, 2011. Department Counsel had no objection to the additional information, and it is received in evidence as Applicant Exhibit A. The

case was assigned to me on July 5, 2011. Based upon a review of the pleadings and exhibits, eligibility for access to classified information is granted.

Findings of Fact

Applicant is 42, single, and has a bachelor's degree. He is employed by a defense contractor and seeks to obtain a security clearance in connection with his employment.

Guideline F, Financial Considerations

The Government alleges that Applicant is ineligible for clearance because he is financially overextended and, therefore, at risk of having to engage in illegal acts to generate funds. Applicant admits SOR allegations 1.b., 1.d., 1.g., 1.h., and 1.k. He denied allegations 1.a., 1.c., 1.e., 1.f., 1.i., and 1.j. The admissions are deemed findings of fact. He also submitted additional information to support his request for a security clearance.

Applicant's financial problems came to a head in 2007. At that time, according to Applicant:

I came to the realization that the financial debt that I had accrued during my 4 years at college and the years before I was able to secure steady fulltime employment had become overwhelming and out of my control. I was keeping up with minimum payments, but was not decreasing my overall debt. At this point I contacted an attorney for legal/financial consultation. One option was Chapter 7 bankruptcy, but I did not want to go in that direction. I felt that I had a responsibility to honor these commitments even if it was going to be painful and take a long period of time. (Item 7 at 4.)

Applicant submitted documentary information showing that an attorney began to represent him with regards to his financial situation in January 2008. (Item 7 at 7-10.)

The SOR alleges, Applicant admits, and credit reports in the record show that Applicant owed approximately \$47,275 in past-due debt. (Government Exhibits 2, 4, 5, 8, 9 and 10.) The amount rises to \$92,055 including allegations 1.a., 1.c., 1.e., 1.f., 1.i., and 1.j., which Applicant denies or disputes. The current status of the debts in the SOR is:

1.a. Applicant denied owing this \$13,495 credit card debt. However, through his attorney, he has privately negotiated a payment arrangement with the creditor's attorney, and has paid this debt down to approximately \$9,506 by making \$200 a month payments from August 2009 through at least June 2011, when the record closed. (Item 7 at 11-12, 16; Applicant Exhibit A at 15-20.)

1.b. Applicant admitted owing this \$78 credit card debt. While Applicant stated that he would resolve this account, he had not done so as of the time the record closed. (Item 4.)

1.c. Applicant denied owing this \$4,884 credit card debt. However, through his attorney, he has privately negotiated a payment arrangement with the creditor's attorney, and has paid this debt down to approximately \$3,854 by making \$110 a month payments from January 2010 through at least June 2011, when the record closed. (Item 4; Applicant Exhibit A at 9-14.)

1.d. Applicant admitted owing this \$22,230 credit card debt. He states that his attorney is working with the creditor to settle the account. (Item 4.)

1.e. Applicant denied owing this \$3,156 credit card debt. However, through his attorney, he has privately negotiated a payment arrangement with the creditor's attorney, and has paid this debt down to approximately \$1,184 by making \$75 a month payments from May 2009 through at least June 2011, when the record closed. (Item 4; Item 7 at 14-15, 18; Applicant Exhibit A at 3-8.)

1.f. Applicant denied owing this \$8,447 credit card debt. He has consistently stated he has no knowledge of this debt, and that he is working with his attorney to have it validated or removed from his credit report. (Item 4, Item 7 at 5.)

1.g. Applicant admitted owing this \$4,844 credit card debt. He states that his attorney is working with the creditor to settle the account. (Item 4.)

1.h. Applicant admitted owing this \$7,116 credit card debt. He states that his attorney is working with the creditor to settle the account. (Item 4.)

1.i. Applicant denied owing this \$6,501 credit card debt. However, through his attorney, he has privately negotiated a payment arrangement with the creditor's attorney, and has paid this debt down to approximately \$5,926 by making \$115 a month payments from January 2011 through at least June 2011, when the record closed. (Item 4; Item 7 at 13, 17; Applicant Exhibit A at 21-26.)

1.j. Applicant denied owing this \$8,447 credit card debt. He has consistently stated he has no knowledge of this debt, and that he is working with his attorney to have it validated or removed from his credit report. (Item 4, Item 7 at 5.)

1.k. Applicant admitted owing this \$13,007 credit card debt. He states that his attorney is working with the creditor to settle the account. (Item 4.)

Applicant also submitted documentary information showing that he had settled other past-due accounts that were of interest to the Government, but are not alleged in the SOR. (Item 7 at 19-21.) Applicant's current finances are stable. A Financial Statement dated February 25, 2011, shows that he can make the agreed payments described above and pay his current debts with his current income. (Item 7 at 24.)

Policies

Security clearance decisions are not made in a vacuum. 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 to be used as appropriate 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 over-arching 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. In addition, the administrative judge may also rely on his or her own common sense, as well as knowledge of the law, human nature, and the ways of the world, in making a reasoned 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, 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 as to obtaining 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. Security clearance decisions include, by necessity, consideration of the possible risk that 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.

Finally, as emphasized in Section 7 of Executive Order 10865, "Any determination under this order . . . shall be a determination 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(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, by his own admission, and supported by the documentary evidence, had substantial past-due debts for several years. The evidence is sufficient to raise these potentially disqualifying conditions.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Applicant admits that his financial problems were primarily of his own making. Like many people, he acquired credit easily while in college and made only the minimum payments on his accounts until the balances grew to an unmanageable level. Unlike many people, he then obtained legal representation in January 2008, almost four years ago, to help him resolve his financial issues.

Through his attorney, Applicant has been paying his past-due debts in a consistent fashion for a considerable period of time that predates by years when the Government first became concerned about his debts. Under the particular circumstances of this case, I find that Applicant has “initiated a good-faith effort to repay overdue creditors or otherwise resolve debts,” as required by AG ¶ 20(d).

Applicant has not received formal financial counselling. However, as found above, his current financial situation is stable. I find 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,” as required by AG ¶ 20(c).

As stated above, Applicant denies any knowledge of two debts. He states that his counsel is working to validate the accounts or remove them from his credit report. Given the fact that he freely admits his other debts, and is represented by counsel, his statements regarding these debts are credible. Under the facts of this case AG ¶ 20(e) is applicable, “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.”

Applicant still has a considerable amount of debt and a long way to go to be debt free. However, it is important to look behind the debt and see how an Applicant is responding to that debt. Here, for almost four years, Applicant has been working with an attorney to pay down his debt in a responsible fashion. As the Appeal Board ruled concerning the successful mitigation of security concerns arising from financial considerations, “[a]n applicant is not required to show that [he or] she has completely paid off [his or] her indebtedness, only that [he or] she has established a reasonable plan to resolve [his or] her debts and has ‘taken significant actions to implement that plan.’” ISCR Case No. 06-12930 at 2 (App. Bd. Mar. 17, 2008) (quoting ISCR Case No. 04-09684 at 2-3 (App. Bd. Jul. 6, 2006)). Applicant has done that here.

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 the relevant circumstances. 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. 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.

I considered the potentially disqualifying and mitigating conditions in light of all the relevant facts and circumstances surrounding this case. Applicant had some serious financial problems, but his current financial condition is stable. Under AG ¶ 2(a)(2), I have considered the facts of the Applicant’s debt history. He obviously has learned his lesson about excessive spending and is working hard to resolve his debt situation. Based on the record, I find that there have been permanent behavioral changes under AG ¶ 2(a)(6). Accordingly, I find that there is little to no potential for pressure, coercion, exploitation, or duress (AG ¶ 2(a)(8)); and that there is no likelihood of recurrence (AG ¶ 2(a)(9)).

Overall, the record evidence leaves me with no serious questions or doubts as to Applicant’s eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has mitigated the security concerns arising from his financial

