



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ISCR Case No. 10-10552
)
)
Applicant for Security Clearance)

Appearances

For Government: Melvin A. Howry, Esq., Department Counsel
For Applicant: *Pro se*

February 26, 2013

Decision

GOLDSTEIN, Jennifer I., Administrative Judge:

The Statement of Reasons (SOR) identified Applicant as owing 10 delinquent debts totaling \$52,382. One of the debts alleged was a duplicate of another debt listed on the SOR. All of the debts are listed in Applicant’s Chapter 13 bankruptcy filing. Applicant demonstrated a good-faith effort to repay his debt by documenting he made ten monthly payments on his confirmed repayment plan to his bankruptcy trustee. He is following the advice of financial counseling and cutting his expenditures significantly. Based on a review of the testimony, pleadings and exhibits, eligibility for access to classified information is granted.

Statement of the Case

Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) on February 1, 2006. On November 2, 2012, the Department of Defense issued an SOR to Applicant, 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 effective in the Department of Defense on September 1, 2006.

Applicant answered the SOR (Answer) on November 15, 2012, and requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). The case was assigned to me on January 11, 2013. DOHA issued a notice of hearing on January 14, 2013, scheduling the hearing for February 14, 2013. The hearing was convened as scheduled. The Government offered Exhibits (GE) 1 through 10, which were admitted without objection. Applicant offered Exhibits (AE) A through C, which were admitted without objection. Applicant testified on his own behalf. The record was left open until February 19, 2013, for the receipt of additional documentation. On February 18, 2013, Applicant presented four additional exhibits, marked AE D through AE G. Department Counsel had no objections and they were admitted into evidence as identified. DOHA received the transcript of the hearing (Tr.) on February 21, 2013.

Findings of Fact

Applicant is a 45-year-old government contractor. He has worked for his current employer since 1990. From 1984 to 1992 Applicant served the Marine Corps on active duty and in the Reserve. While serving in the Marine Corps, he received three certificates for Meritorious Mast. He was honorably discharged on November 28, 1992, as a Corporal (E-4). He held a security clearance for 19 years, before it was revoked due to his financial problems. His is single, and has one adult son. (GE 1; GE 3; AE D; Tr. 32-34.)

The Government alleged that Applicant is ineligible for clearance because he has made financial decisions that indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which raise questions about Applicant's reliability, trustworthiness and ability to protect classified information. The SOR identified 10 delinquent debts totaling \$52,382. It also raised concerns about Applicant's Chapter 13 bankruptcy (alleged in SOR ¶ 1.a). Applicant admitted to each of the debts and the bankruptcy in his Answer. (GE 2; GE 4; GE 5; GE 6; GE 7; GE 8; GE 10; AE A.) His debts are as follows:

Applicant is indebted on a trailer in the amount of \$8,555 (as alleged in SOR ¶ 1.b). He purchased the trailer for approximately \$30,000 in 2005 to go camping with his family. He made payments on the purchase loan for approximately 18 months before he became delinquent on it. The trailer was repossessed in 2007. A judgment against Applicant was ordered in 2008 and his pay was garnished to satisfy this debt at the rate of \$562 per paycheck. (GE 2; GE 4; GE 5; GE 6; GE 7; GE 8; GE 10; ; Tr. 57-61.)

Applicant is indebted on a delinquent real estate mortgage, with a past-due amount of \$19,875 (as alleged in SOR ¶ 1.c). This debt is for the primary mortgage on Applicant's home. It became past due when Applicant's pay was garnished for the

trailer, above. He was no longer able to afford his monthly payments of \$745 on this debt and defaulted on the loan. (GE 2; GE 4; GE 5; GE 6; GE 7; GE 8; GE 10; Tr. 34-39.)

Applicant was indebted to a credit union in the amount of \$18,977 for a past-due real estate mortgage (as alleged in SOR ¶1.d). This debt was for a home equity line of credit totaling \$46,910. Applicant presented a 1099-C, Cancellation of Debt issued to him by this creditor showing that this creditor cancelled a debt of \$46,911.71 on August 28, 2008. (GE 2; GE 4; GE 5; GE 6; GE 7; GE 8; GE 10; AE F; Tr. 34-36.)

Applicant is indebted for an account placed with a collection company in the amount of \$362 (as alleged in SOR ¶1.e). This debt has been past due since January 2011. (GE 2; GE 4; GE 5; GE 6; GE 7; GE 8; GE 10.)

Applicant owes a medical debt in the amount of \$313 (as alleged in SOR ¶1.f). This debt has been delinquent since November 2010. (GE 2; GE 4; GE 5; GE 6; GE 7; GE 8; GE 10.)

Applicant is indebted for an account placed with a collection company in the amount of \$50 (as alleged in SOR ¶1.g). This debt has been past due since September 2010. (GE 2; GE 4; GE 5; GE 6; GE 7; GE 8; GE 10.)

Applicant is indebted for an account placed with a collection company in the amount of \$2,271 (as alleged in SOR ¶1.h). This debt has been in collections since January 2011. (GE 2; GE 4; GE 5; GE 6; GE 7; GE 8; GE 10.)

Applicant is indebted on two collection accounts held by the same creditor in the amounts of \$244 and \$235, respectively (as alleged in SOR ¶1.i). One account has been in collections since November 2008 and the other since February 2010. (GE 2; GE 4; GE 5; GE 6; GE 7; GE 8; GE 10.)

Applicant is indebted for an account placed with a collection company in the amount of \$1,500 (as alleged in SOR ¶1.j). This debt has been delinquent since February 2006. It identifies the same creditor and bears the same account number as the debt alleged in SOR ¶1.h. This debt is a duplicate of that allegation. (GE 2; GE 4; GE 5; GE 6; GE 7; GE 8; GE 10.)

All of the above debts are listed in Applicant's Chapter 13 bankruptcy petition and included in his repayment plan. Applicant filed for Chapter 13 bankruptcy protection on March 2, 2012. He made his first payment of \$1,273 to his trustee on May 22, 2012. He provided documentation that shows from May 2012 to September 2012, he made monthly payments on \$1,273, as agreed. In October 2012, his plan was modified, and his monthly payments increased to \$1,573 per month. The modification was approved by the court. He provided a statement that shows he successfully made each payment since that time. Applicant testified that he plans to continue to meet his monthly

obligations until the debts are satisfied according to the bankruptcy plan. (GE 5; AE A; AE E; Tr. 56-66, 79.)

Applicant received financial counseling through both his bankruptcy attorney's office and the bankruptcy court's required program. He offered a Certificate of Counseling that certified he completed credit counseling on February 27, 2012. He explained that he has implemented many of the lessons he learned through counseling. (AE F.) He testified:

Well, what I learned basically was the way -- and with my son getting older - - I spent way too much on food. I could have prepared food much better. I had to reduce how my phone, the cable, you know internet, combine them into smaller bills. I had to restrict no [sic] heating and air conditioning to different thermostat levels to keep those payments lower than what they were. Gas sometimes impacts me when it goes up. I was driving my truck, and that's another \$60 to \$80 a month. So, that's always an influence. So, from that, I tried to always have a back-up carpool person that I work with to try to help offset the cost of the fuel cost as I drive 55 miles one way to work. (Tr. 67-68.)

Applicant attributed his financial problems to a reduced income in years that he chose to work domestically, as opposed to deploying overseas. Years he deployed, including 2004 and 2005, he made approximately \$100,000 and \$119,000. He became accustomed to living a more extravagant life style. He testified that he was supporting the mother of his son and her daughter, who lived at a separate residence from Applicant and his son, during this time frame. Due to family issues and his attempts to reconcile with the mother of his son, he chose to work domestically in 2006. As a result, his income was reduced to \$68,746 that year, but he continued to support his son's mother to his financial detriment. Applicant accepts full responsibility for his poor financial choices. He no longer provides support for his son's mother. His son is now an adult. (GE 5; AE C; Tr. 32-66.)

Applicant is highly regarded by his peers as a person of great integrity. One coworker wrote of Applicant, "[he] is hardworking with a high regard for the safety and security of our country." Applicant serves his community as a Scoutmaster for his local Boy Scout Troop. His performance evaluations indicate he displays high ethics and exceeds expectations in the performance of his goals. (AE B; AE G.)

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 (DCs) and mitigating conditions (MCs), 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, these guidelines are applied in conjunction with the factors listed in AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶¶ 2(a) and 2(c), the entire process is a conscientious scrutiny of applicable guidelines in the context 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 the 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, "[t]he 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." Section 7 of Executive Order 10865 provides: "[a]ny determination under this order adverse to an applicant 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."

A person applying for access to classified information seeks to enter 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.

Analysis

Guideline F, Financial Considerations

The security concerns under the guideline for financial considerations are set out in AG ¶ 18, which reads in pertinent part:

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.

Department Counsel asserted, and the record evidence established, security concerns under two Guideline F DCs, as set forth in AG ¶ 19:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant was unable or unwilling to resolve a large amount of delinquent debt that began accumulating in 2006 and remained unresolved until he filed a Chapter 13 bankruptcy in March 2012. The evidence supports the application of AG ¶¶ 19(a) and (c), thereby shifting the burden to Applicant to rebut, extenuate, or mitigate those concerns.

The guideline includes four conditions in AG ¶ 20 that could mitigate security concerns arising from Applicant's financial difficulties:

- (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's financial difficulties began in 2006 as the result of his decision to spend beyond his means and support his son's mother on his reduced income. He admits that he made poor financial decisions during that time period and takes full responsibility for his choices. Thus, Applicant's financial problems were not caused by factors beyond his control. Applicant no longer supports his son's mother. His son is now an adult. He recently began addressing all of his delinquent debts through bankruptcy. It is unlikely that Applicant will be supporting two separate households again in the future. However, Applicant's choices from 2006 to early 2012 cast doubt on his judgment during that time period. I cannot find AG ¶¶ 20(a) or (b) apply.

Applicant has received financial counseling both through his bankruptcy attorney's office and the court-ordered credit counseling program. He has followed the lessons he learned through the counseling and reduced his monthly expenses. He has cut his costs through responsible actions like bringing his lunch, cooking at home, bundling services, and car pooling to work. He has successfully made ten payments to his trustee under his court-approved Chapter 13 plan.

An applicant is not required, as a matter of law, to establish that he has paid off each and every debt listed in the SOR.¹ All that is required is that an applicant demonstrate that he has “. . . established a plan to resolve his financial problems and taken significant actions to implement that plan.”² The Judge can reasonably consider the entirety of an applicant's financial situation and his actions in evaluating the extent to which that applicant's plan for the reduction of his outstanding indebtedness is credible and realistic.³ There is no requirement that a plan provide for payments on all outstanding debts simultaneously. Rather, a reasonable plan (and concomitant conduct) may provide for the payment of such debts one at a time.⁴

In this case, Applicant has an established plan to resolve his debts through Chapter 13 bankruptcy. His bankruptcy plan has been accepted by the court. While it will take him several years to repay all of his debts, he has shown over the past ten months that he will follow through with this commitment. He is making a good-faith effort to resolve his debts through bankruptcy. AG ¶¶ 20(c) and 20(d) are mitigating.

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.

¹See, e.g., ISCR Case No. 02-25499 at 2 (App. Bd. Jun. 5, 2006).

²See, e.g., ISCR Case No. 04-09684 at 2 (App. Bd. Jul. 6, 2006).

³See Directive ¶ E2.2(a) (“Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination.”).

⁴See, e.g., ISCR Case No. 06-25584 at 4 (App. Bd. Apr. 4, 2008).

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 pertinent facts and circumstances surrounding this case. Applicant is well respected by those who know him. He served honorably in the Marine Corps from 1984 to 1992, and was recognized for his meritorious service. He has worked for his current employer for approximately 23 years. He held a security clearance for 19 years without negative incidents. While he incurred a significant amount of debt due to poor decisions, he has chosen to address his debt through a Chapter 13 bankruptcy. He has successfully honored his confirmed repayment plan to the trustee for the past ten months. His high levels of reliability and integrity, as attested to by those that know him best, indicate that he will follow through with his commitment to make his monthly payments on his bankruptcy plan.

Overall, the record evidence leaves me without substantial doubt as to Applicant's present eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising from his financial considerations.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F: FOR APPLICANT

Subparagraph 1.a through 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.

JENNIFER I. GOLDSTEIN
Administrative Judge