



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



In the matter of:)
)
) ISCR Case No. 10-10601
)
Applicant for Security Clearance)

Appearances

For Government: Julie R. Mendez, Esquire, Department Counsel

For Applicant: *Pro se*

02/29/2012

Decision

O'BRIEN, Rita C., Administrative Judge:

Based on a review of the pleadings, exhibits, and testimony, I conclude that Applicant has mitigated the security concerns raised under the guideline for Financial Considerations. Accordingly, his request for a security clearance is granted.

Statement of the Case

After reviewing the results of Applicant's background investigation, adjudicators for the Defense Office of Hearings and Appeals (DOHA) were unable to make a preliminary affirmative finding that it is clearly consistent with the national interest to grant Applicant's request for a security clearance. On October 20, 2011, DOHA issued to Applicant a Statement of Reasons (SOR), which specified the basis for its decision:

security concerns addressed in the Directive under Guideline F (Financial Considerations) of the Adjudicative Guidelines (AG).¹

In his Answer to the SOR, dated November 15, 2011, Applicant admitted the six SOR allegations. He also requested a hearing before an administrative judge. Department Counsel was prepared to proceed on December 16, 2011, and I received the case on December 21, 2011. DOHA issued a Notice of Hearing on January 9, 2012. I convened the hearing as scheduled on January 25, 2012.

During the hearing, the Government offered three exhibits, which I admitted as Government Exhibit (GE) 1 through 3. Applicant testified, and offered four exhibits, which I admitted as Applicant's Exhibit (AE) A through D. I held the record open to allow Applicant to submit additional documentation, which he timely submitted. I admitted one document as AE E.² The transcript was received on February 1, 2012.

Findings of Fact

Applicant's admissions to the SOR allegations are incorporated as findings of fact. After a thorough review of the pleadings, Applicant's response to the SOR, and the record evidence, I make the following additional findings of fact.

Applicant is 63 years old and holds a two-year technical degree in field service computer technology. He served in the Navy from 1967 to 1969, and served in Vietnam. In the 1980s, he held a security clearance when he served as a federal police officer. He then worked for a national oil company. From 1999 to 2008, he worked for a large telecommunications company doing LAN desktop support. He divorced in 1993. He has five adult children ranging from 27 to 43 years of age. He raised his youngest son and daughter on his own for approximately 10 years, since about 1993. His youngest child has not lived with him since she moved out of state to attend college in 2003. (GE 1; AE A; Tr. 19-23)

In his most recent job for the telecommunications company, he worked from home, using his own laptop to assist customers in the United States and Canada with obtaining storage on servers. However, eventually, his outdated computer could not handle the requirements of his job, and in September 2008, he was terminated. In the first three quarters of 2008, he earned \$43,364. (AE B; Tr. 23-26)

¹ Adjudication of this case is controlled by Executive Order 10865, as amended; DoD Directive 5220.6 (Directive), as amended; and the Adjudicative Guidelines (AG), which supersede the guidelines listed in Enclosure 2 to the Directive. The AG apply to all adjudications or trustworthiness determinations in which an SOR was issued on or after September 1, 2006.

² AE E consists of the first two pages of Applicant's federal tax returns for 2009 and 2010.

Applicant was unemployed for approximately a year and a half. His credit report shows that his debts became delinquent at about that time. In 2009, Applicant's income consisted of unemployment compensation and distributions from an IRA, totaling \$44,366. In 2010, he obtained temporary employment for about four months, and a few other temporary positions, working a total of about six months. His income from these positions, along with unemployment compensation and IRA distributions, totaled \$25,723. In 2011, he continued to work for temporary staffing agencies doing short-term computer jobs. His February 2011 personal financial statement (PFS) shows income of \$1,360 per month in unemployment compensation, monthly expenses of \$765, and debt payments of \$450, leaving a monthly net remainder of \$145. At the hearing, he estimated he earned about \$10,000 in 2011. His current job offer is awaiting confirmation of his security clearance. (GE 2, 3; AE C, D, E; Tr. 27-30)

Applicant kept up with his debts as well as he could after losing his job. In 2009 and 2010, he used his savings to pay debts. His credit report shows only the SOR debts, with numerous other accounts showing as "closed or paid," and numerous accounts that have been closed at the Applicant's request. As his income decreased over time, several debts became delinquent. (GE 2, 3; AE C, D, E; Tr. 27-30, 41)

Applicant admits the SOR debts, which total approximately \$57,000. The following debts appear in his credit bureau report of October 2011. (GE 2, 3; Tr. 35-37, 40-41)

MORTGAGE: 1.a - \$41,000 - Applicant admits owing this mortgage debt. He made no mortgage payments in 2011. He applied for loan modification, and was offered one if he could keep up payments during a trial period. He paid a reduced amount of \$900 per month, or approximately half his normal payment. He paid about three months at this rate. However, when he was no longer employed, he could not continue the payments. He had a meeting scheduled on January 28, 2012, a few days after the hearing. He did not forward any documentation about the modification before the record closed. He testified that he does not expect to qualify for a modification without full-time employment. The lender has not threatened foreclosure. (Tr. 32-35)

CREDIT CARD accounts: 1.b (totaling \$9,201) and 1.c (\$3,936)

HOME REPAIR loan: 1.d (\$4,603)

TELEPHONE: 1.e (\$288)

Policies

Each security clearance decision must be a fair and commonsense determination based on examination of all available relevant and material information, and

consideration of the pertinent criteria and adjudication policy in the AG.³ Decisions must also reflect consideration of the “whole-person” factors listed in ¶ 2(a) of the guidelines.

The presence or absence of a disqualifying or mitigating condition does not determine a conclusion for or against an applicant. However, specific applicable guidelines are followed when a case can be measured against them as they represent policy guidance governing the grant or denial of access to classified information. In this case, the pleadings and the information presented by the parties require consideration of the adjudicative factors addressed under Guideline F (Financial Considerations).

A security clearance decision is intended only to resolve the questions of whether it is clearly consistent with the national interest⁴ for an applicant to either receive or continue to have access to classified information. The Government bears the initial burden of producing admissible information on which it based the preliminary decision to deny or revoke a security clearance for an applicant. Additionally, the Government must be able to prove controverted facts alleged in the SOR. If the Government meets its burden, it then falls to the Applicant to refute, extenuate or mitigate the Government’s case. Because no one has a “right” to a security clearance, an applicant bears a heavy burden of persuasion.⁵ A person who has access to classified information enters into a fiduciary relationship with the government based on trust and confidence. Therefore, the government has a compelling interest in ensuring each applicant possesses the requisite judgment, reliability, and trustworthiness of one who will protect the national interests as his or her own. The “clearly consistent with the national interest” standard compels resolution of any reasonable doubt about an applicant’s suitability for access in favor of the government.⁶

Analysis

Guideline F (Financial Considerations)

AG ¶18 expresses the security concern pertaining to financial considerations:

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

³ Directive. 6.3.

⁴ See *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

⁵ See *Egan*, 484 U.S. at 528, 531.

⁶ See *Egan*; Adjudicative Guidelines, ¶ 2(b).

over-extended is at risk of having to engage in illegal acts to generate funds.

The relevant disqualifying conditions are AG ¶19 (a) (*inability or unwillingness to satisfy debts*) and AG ¶19 (c) (*a history of not meeting financial obligations*). The delinquent debts Applicant has accrued are sufficient to raise these disqualifying conditions.

Under AG ¶ 20, the following potentially mitigating factors are relevant:

(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; and.

(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.

Applicant's past-due mortgage accounts for the bulk of his SOR debt, along with four other delinquencies. They are recent because they remain unpaid. He did not become indebted due to deliberately ignoring his responsibilities, or other deliberate actions such as negligence, gambling, alcohol abuse, or frivolous spending. Given that Applicant did not accrue delinquencies while he was working, and has paid his debts from savings as much as he could while he was unemployed, I conclude that delinquencies are unlikely to recur, once he regains full-time employment. His trustworthiness and good judgment are not at issue. AG ¶20 (a) applies only in part.

AG ¶ 20(b) mitigates financial problems that stem from unexpected events beyond an applicant's control. Here, Applicant was gainfully employed by the same employer for nine years. Eventually, his outdated computer could not keep up with the demands of his job, and he was terminated in 2008. Since then, he has not been employed in a permanent position in more than three years. He has tried to find employment, but the financial downturn and soft job market have made it difficult for him to find anything other than short-term temporary jobs. Because of his low income over the past three years, he has fallen behind in his mortgage, and without steady employment, he is unable to qualify for a modification. He acted reasonably under the circumstances by using savings to pay some creditors over the past three years, so that the SOR alleges, other than his mortgage, only four delinquent debts, despite his steadily decreasing income. AG ¶ 20(b) applies.

Whole-Person Analysis

Under the whole-person concept, an administrative judge must evaluate the applicant's security eligibility by considering the totality of an applicant's conduct and all the circumstances. An 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.

AG ¶ 2(c) requires that the ultimate determination of whether to grant a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. Under the cited guideline, I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case.

Applicant was financially solvent while he held a permanent job. His current delinquencies arose only after he was terminated from his employment in 2008. He has persistently tried to find permanent employment. Since 2008, he has supported himself on unemployment compensation, short-term temporary jobs, and IRA distributions. In 2009 and 2010, he used savings to pay as many of his debts as possible. However, some became delinquent. He testified candidly about his delinquencies, and his credibility is not in question. He has made efforts to obtain a modification of his mortgage loan by working with the lender, but cannot obtain a modification without steady employment.

The Appeal Board has held that an applicant is not required to be debt-free, or to have developed a plan to pay all debts simultaneously or immediately.⁷ Here, Applicant acted responsibly by using savings to pay his debts as much as possible. Given his limited resources, the difficult job market, and his decreasing income over the past three years, there are not many other steps Applicant could have taken to deal with his debt. Especially in light of Applicant's financial responsibility when he was fully employed, I conclude that he will work to resolve his remaining debts once he regains permanent employment.

A fair and commonsense assessment of the available information shows Applicant has satisfied the doubts raised about his suitability for a security clearance.

⁷ See ISCR Case No. 08-06567.a1 at 3-4 (App. Bd. Oct 29, 2009)

For these reasons, I conclude he has mitigated the security concerns arising from the cited adjudicative guideline.

Formal Findings

Formal findings on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are as follows:

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|---------------------------|---------------|
| 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 interests of national security to allow Applicant access to classified information. Applicant's request for a security clearance is granted.

RITA C. O'BRIEN
Administrative Judge