



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



In the matter of:)
)
-----) ISCR Case No. 10-10799
)
)
Applicant for Security Clearance)

Appearances

For Government: Pamela C. Benson, Esquire, Department Counsel
For Applicant: Edward B. Pedlow, IV, Esquire

August 5, 2011

Decision

HOWE, Philip S., Administrative Judge:

On October 19, 2010, Applicant submitted his electronic Security Clearance Application (e-QIP). On February 10, 2011, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) 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 (AG) effective within the Department of Defense on September 1, 2006.

Applicant acknowledged receipt of the SOR on February 28, 2011. He answered the SOR in writing on March 3, 2011, and requested a hearing before an administrative judge. DOHA received the request on March 7, 2011. Department Counsel was prepared to proceed on March 28, 2011, and I received the case assignment on April 4, 2011. DOHA issued a Notice of Hearing on April 15, 2011, and I convened the hearing

as scheduled on May 4, 2011. The Government offered Exhibits 1 through 5, which were received without objection. Applicant testified and submitted Exhibits A through X, without objection. DOHA received the transcript of the hearing (Tr.) on May 18, 2011. I granted Applicant's request to keep the record open until May 18, 2011, to submit additional matters. On May 12, 2011, he submitted Exhibits Y to CC, without objection. The record closed on May 18, 2011. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

Findings of Fact

In his Answer to the SOR, Applicant admitted all the factual allegations in the SOR, except for the factual allegations in Paragraphs 1.g and 1.m of the SOR, with explanations. He also provided additional information to support his request for eligibility for a security clearance.

Applicant is 51 years old, divorced, and was trained by a defense contractor for employment requiring a security clearance. Applicant was married in 1988 and divorced in 2004. In December 2008 he was laid off from his employment as a sales representative for a private company. Applicant remains unemployed at the present. His unemployment compensation is \$1,460 monthly. Applicant's monthly expenses are about \$1,470. Applicant submitted his monthly budget as an exhibit. He and his former wife raised her two children during their marriage. One child is in college and the other in law school. Applicant co-signed for their student loans. (Tr. 28, 59-73, 105, 125, 126, 142; Exhibits L and M)

The SOR lists 14 delinquent debts totaling \$155,135. Two debts are duplicates of two other listed debts. Consolidating those debts into two debts only removes \$797 from the total owed. The total debt amount includes the entire mortgage balance owed of \$113,000 because his house is in foreclosure proceedings. Deducting that amount from the total debt owed leaves a balance of \$41,338. Applicant paid eight of the remaining twelve delinquent debts. The remaining debts without the mortgage balance total \$23,915. Applicant signed a power of attorney and established a joint checking account with his attorney to create a mechanism by which his debts can be paid if he were to start his desired employment, which pays \$217,000 annually. (Tr. 76, 80-101, 117, 118; Exhibits 1-5, N-BB)

Applicant's mother gave him \$10,000 in April 2011 with which to pay his delinquent debts. She does not expect repayment. His mother acknowledged Applicant's assistance to her over the past years. Applicant used the money to repay his delinquent debts and has about \$2,000 remaining to be used for the same purpose on the remaining debt. (Tr. 77, 79, 127; Exhibit P)

Applicant has not sought or engaged in any financial counseling or debt repayment training. He has contacted his creditors during the past year to arrange settlements or installment payment agreements. (Tr. 77, 121, 146)

Applicant has not paid the bank which holds his mortgage on the judgment it obtained against him for his delinquent monthly mortgage payments. SOR Paragraph 1.a states this debt is \$972. A settlement offer is being sent to Applicant by the bank. This debt is unresolved. (Tr. 80; Exhibits 2-5)

The debt to a cable television service in the amount of \$93 is paid (SOR Paragraph 1.b). This debt is the same as the \$116 debt listed in SOR Paragraph 1.m. Applicant paid the debt with his debit card drawing on his checking account. These two debts are resolved. (Tr. 81, 82; Exhibits 2-5, X, Y)

The \$365 debt to a satellite television service was paid on April 22, 2011, with the Applicant's debit card. Applicant paid \$367.05 on that date. This debt is listed in SOR Paragraph 1.c. This debt is resolved. (Tr. 83; Exhibits 2-5, R)

The bank credit card debt for \$7,421 listed in SOR Paragraph 1.d was paid on April 26, 2011, in a settlement for \$3,425.71. This debt is resolved. (Tr. 84; Exhibits 2 (on page 9)-5, S)

In SOR Paragraph 1.e is listed a debt for \$8,003 owed to a bank for credit card purchases. Applicant paid a settlement of \$3,150. This debt is resolved. (Tr. 86; Exhibits 2-5, T)

Applicant owes \$12,290 to a bank (SOR Paragraph 1.f). He contacted the creditor. A settlement agreement for \$5,500 is offered by the bank and pending. Payment must be made by May 27, 2011. This settlement is not yet paid and the debt is unresolved. (Tr. 87; Exhibits 2-5, U)

Applicant owes his former wife \$4,006 pursuant to the spousal support order contained in his 2004 divorce decree. His former wife understands that Applicant is unemployed and will wait for him to pay her the money owed. She has been paid \$14,000 pursuant to that agreement of the \$18,000 total owed. She also received \$37,000 when the divorce occurred and Applicant refinanced the house to pay her half of the equity in the house that accrued during the marriage. The SOR Paragraph 1.g lists this debt as child support but it is spousal support. Both of Applicant's step-sons are older than 18 years of age. This debt is in being resolved based on Applicant's past pattern of paying the support regularly since 2004. (Tr. 89-91, 134; Exhibits 2-5, M)

SOR Paragraph 1.h contains a debt owed to a cellular telephone company in the amount of \$526. Applicant paid this debt with his settlement payment of \$273.84 in April 2011. This debt is resolved. (Tr. 91-93; Exhibits 2, 5, V and Z)

A credit card debt of \$681 listed in SOR Paragraph 1.i is the same debt as is set forth in Paragraph 1.l for \$680. This debt was settled on May 3, 2011, for \$350. This debt is resolved. (Tr. 93-95; Exhibits 2, 5, W)

A department store debt of \$6,647 remains unresolved. Applicant is attempting to negotiate a settlement with the creditor. Applicant and the creditor have spoken by telephone. (Tr. 94-95; Exhibits 2-5, AA)

The home equity loan of \$113,000 set forth in SOR Paragraph 1.k remains unresolved. Applicant hired an attorney experienced in foreclosures to protect his home while the negotiations continue. In April 2010 Applicant paid his mortgage payments that were due and in arrears. In April 2010 the bank filed for foreclosure. Applicant listed his home for sale in 2009 with a real estate agent. He has not been able to sell it during the past two years. If sold, Applicant would have used the proceeds to repay the mortgage and home equity loans. (Tr. 95-101; Exhibits 2-5, N, O)

Applicant owed \$335 as listed in SOR Paragraph 1.n. The settlement amount paid was \$201.55 on April 29, 2011, to satisfy this debt owed to a debt collector. This debt is resolved. (Tr. 101, 102; Exhibits 2-5, X, BB)

Applicant filed all his state and federal income tax returns. He owes \$1,400 for 2010 federal income taxes and \$400 to the state for that year. Applicant owes about \$5,000 for the 2009 federal tax debt. He also owes \$3,354.02 on his 2010 property taxes and has an agreement with the county to pay those taxes. No tax liens have been filed against Applicant by any taxing authority. Applicant has installment payment agreements with the federal tax authority to pay \$120 monthly. This agreement started May 6, 2011. These debts are being resolved. The tax liabilities were not listed in the SOR. (Tr. 123-125; Exhibits 2-5, CC)

Applicant does not have any active credit cards at the present time. The debts owed on credit cards listed in the SOR are from previously used credit cards. He does owe \$425 to a national department store. Applicant will pay that debt as soon as he can. (Tr. 125, 126)

Applicant presented four character witnesses at the hearing. He also submitted ten character letters, which were not duplicates of witness testimony. All witnesses and letters disclosed the authors knew Applicant for at least several years if not several decades. Some witnesses knew Applicant when they served with him in the U.S. Marines and the state Army National Guard. All character statements mentioned Applicant's honesty, integrity, moral fortitude, competency, thoughtfulness, and care in interacting with other people. His pastor stated Applicant was a regular church-going member of the congregation. One witness who is also unemployed at the present time stated the geographic area in which he and Applicant live has a 9.9% unemployment rate. (Tr. 21-59; Exhibits A to K)

Applicant testified openly and honestly about his unemployment situation during the past three years and his attempts to gain new employment. He was credible in his explanations and presented his evidence in a logical and organized fashion. He admitted his lack of income after his \$65,000 sales position was lost in December 2008 hindered his ability to repay his debts. Applicant described his power of attorney

procedure to repay his debts if he found employment. He also listed that power of attorney procedure in his SF-86. (Tr. 62-77, 112, 131; Exhibit 1)

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 and mitigating conditions, which are useful 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 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. 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, an "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."

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 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.

Section 7 of Executive Order 10865 provides that 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 relating to the guideline 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 at AG ¶ 19 contains nine disqualifying conditions that could raise security concerns. Two conditions are applicable to the facts found in this case:

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

Applicant accumulated \$155,175 in delinquent debt from 2008 to the present time that remained unpaid as of the date of the SOR’s issuance. Applicant has 14 delinquent debts listed in the SOR.

The guideline in AG ¶ 20 contains six conditions that could mitigate security concerns arising from financial difficulties. Three conditions may be 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;

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts;

(e) 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; and

(f) the affluence resulted from a legal source of income.

Applicant's financial problems arose after he was laid off from his job in December 2008 because of his employer's declining sales. Since then, despite continuous job searches, Applicant at age 51 has not been able to find employment. His unemployment compensation payments of \$1,460 are almost the same as his monthly expenses. His unemployment is beyond his control, because of his age and the current economic climate in his home area where the unemployment rate at the time of the hearing was 9.9%. Applicant acted responsibly by not incurring additional delinquent debt, actively seeking employment, arranging the power of attorney with his lawyer to establish an objective mechanism through which to resolve his debts, and obtaining a gift from his mother with which to pay as many of his debts as he can until he can find employment. AG ¶ 20 (b) applies with significant effect.

Applicant is paying his debts in an orderly manner currently. He established a pattern of responsible resolution of his delinquent debts. Therefore, there are clear indications from the evidence he presented that the financial problems are under control and being resolved. AG ¶ 20 (c) has partial application.

Applicant was able to focus his efforts on negotiating settlements of some debts and repaying others. He paid eight delinquent debts using the gift his mother gave him. Five remain unpaid though they may be paid if his current negotiations are successful. Based on his current progress in repaying his delinquent debts, it is likely Applicant will have those five debts paid. The sale of his home would remove two mortgage debts from the SOR list. The current economic situation has made that effort fruitless for the past two years. AG ¶ 20 (d) applies because of Applicant's good-faith efforts to repay his delinquent debts.

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 an applicant's conduct and all the 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.

AG ¶ 2(c) requires each case must be judged on its own merits. 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. Applicant is an honest and hard-working person who is not a security threat to the United States. He served in the Marines and the Army National Guard. His financial difficulties are not his fault. Applicant did not act irresponsibly to spend money he could not repay. The situation has only become a problem since 2009 when Applicant's job was lost through no fault of his own. He worked to repay his debts and was able to do so with a gift from his mother. There is no likelihood of continuation or recurrence if Applicant gains employment. He has in place a power of attorney by which mechanism his lawyer will handle Applicant's financial affairs and resolve the five remaining delinquent debts. The amount of debt unpaid has no potential for pressure, coercion, exploitation, or duress because his financial situation is known in his home area as evidenced by the character witnesses and letters.

Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising from his financial considerations. I conclude the "whole-person" concept for Applicant.

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
Subparagraph 1.a to 1.n:	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.

PHILIP S. HOWE
Administrative Judge