



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



In the matter of:)	
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)	ISCR Case No. 11-00009
)	
Applicant for Security Clearance)	

Appearances

For Government:
Melvin A. Howry, Esq., Department Counsel

For Applicant:
Pro se

November 18, 2011

DECISION

ROSS, Wilford H., Administrative Judge:

Applicant submitted his Electronic Questionnaire for Investigations Processing on July 13, 2010. (Government Exhibit 1.) On April 26, 2011, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) 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 answered the SOR in writing on May 10, 2011, and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on June 2, 2011. This case was assigned to me on June 20, 2011. DOHA issued a notice of hearing on June 23, 2011. I convened the hearing as scheduled on July 28,

2011. The Government offered Government Exhibits 1 through 6, which were received without objection. Applicant testified on his own behalf, called one additional witness, and submitted Applicant Exhibits A and B, which were also received without objection. Applicant asked that the record remain open for the receipt of additional documents. Applicant submitted Applicant Exhibits C and D on August 12, 2011, and they were admitted without objection. DOHA received the transcript (Tr) of the hearing on August 15, 2011. The record closed on August 15, 2011. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

Findings of Fact

Applicant is 28, and lives with his girlfriend. 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 admitted the factual allegations in the SOR. The admissions are findings of fact. He also submitted additional information to support his request for a security clearance.

Applicant began work with his current employer on July 19, 2010. (Government Exhibit 1 at Section 13A.) His current employment is a full-time job that provides Applicant with medical insurance. Before this job all of his employment, whether part or full-time, did not provide him with medical insurance benefits, and did not pay him enough to allow him to pay his debts, which amounted to \$21,421.

Applicant is a severe asthmatic. When he was without medical insurance and had breathing problems connected to his asthma, he was forced to go to the local hospital emergency room to obtain a rescue inhaler, or other treatment. The vast majority of the debts in the SOR are connected to his asthma treatment. (1.a., 1.d., 1.f., 1.g., 1.h., 1.i., 1.j., 1.k., and 1.l.) (Tr at 30-31.)

Two other medical debts are connected to an automobile accident involving Applicant in November 2008. (1.b. and 1.m.) He was severely injured in the accident, and could not work from November 2008 through June 2009. During that time he was on General Relief. According to Applicant, the medical payments for the accident should have been paid by his attorney from the accident recovery. He had no knowledge as to whether that had actually been done. His counsel had not been responsive to Applicant's requests for information. (Tr at 32-37, 56-57.)

The debts set forth in 1.c. and 1.n. are medical debts related to a severe allergic reaction Applicant had while working in a restaurant. Once again, the job did not include health benefits. (Tr at 38-39, 60-61.)

Applicant submitted Applicant Exhibit B to show that he is now paying his medical bills as they come due. He stated that:

. . . since I've had this job [July 2010] and have insurance and have the means to pay my doctor bills and get a primary doctor and see a pulmonologist to control my asthma, I have stopped the pattern of bills going to collections and have shown that I am responsible enough to take care of my bills now that I have the means to, and it's just the past bills, you know, being unemployed and even being employed part-time in construction some of the time, it was very hard to pay anything off. So a lot of those bills were beyond my control. If I could have controlled them like I have been able to in the past year, I don't think we would be having this conversation, to be honest. (Tr at 40.)

The remaining debt of \$281 is for cable service. (1.e.) Applicant admitted that this is his debt, and that he was negligent in not paying it. (Tr at 52.)

Applicant spoke to a credit resolution company. He was advised that due to the nature of his debts it was not advisable for him to work through them. (Tr at 64-65; Applicant Exhibit A.)

Subsequent to the hearing Applicant filed for protection under Chapter 7 of the Bankruptcy Code. The meeting of creditors was to be on September 28, 2011. Objections for Discharge are due by November 28, 2011. It appears that all of the debts in the SOR are included in the Schedule F. (Applicant Exhibit C.)

Mitigation

Applicant spoke at great length about his family background. He states, "I grew up very poor." Applicant has had to fight for everything he has had in his life, and he is dedicated to resolving his debts. He stated that he is a man of his word and gave examples as to how that is true in his work environment, as well as in his personal life. (Tr at 78-83, 88-91.)

The most recent credit reports in the file show that Applicant has no new past due debts. (Government Exhibit 3 at 25-31, and Exhibit 5.) His personal financial statement shows that he is able to pay his current expenses without trouble. (Government Exhibit 3 at 23.)

Applicant's girlfriend testified on his behalf:

I just wanted to say that the past two years that we have been together, he has shown tremendous growth, personally and professionally with the job [in the defense industry]. As far as finances go, he has been on top of them since he's got the job; he has a stable job now. I work in finance, so I'm very hard on him when it comes to the bills. He does pay rent in the form of all utilities are his own, which amount to about \$700 a month. So,

he is good on those. He pays them. He makes sure every first time he gets paid Thursdays, he calls me and asks how much do I owe? So, we sit down every two weeks every month. I have a budget that I do for myself. He has one for him. This is what you owe for the month. Make sure you have this amount. All these have to be paid. So we go through that on a monthly basis. He's very financially stable now. He knows that I expect that. I do that for myself. Me holding a DoD Secret Clearance myself, I understand the national security and the importance of that, and I would deem him ethically and financially stable to hold one. (Tr at 84-85.)

Applicant submitted a letter of recommendation from his Lead on the job. That person describes Applicant as a "hardworking, trustworthy, responsible individual." (Applicant Exhibit D at 1.)

The Director of Security also submitted a letter. She states:

I personally have been working with [Applicant] throughout the DoD application process and have come to know him quite well and can say that I know him to be an honest man who is also responsible, dedicated, respectful man with excellent work ethics and who's allegiance is to the United States of America and I would recommend him for a security clearance. (Applicant Exhibit D at 2.)

The Vice President of Operations for Applicant's employer also submitted a letter on his behalf. He states that Applicant "displays confidence, dependability, and has a high level of eagerness to learn with a fantastic work ethic." He concludes by stating that he believes Applicant is a man of his word who is trusted by the writer, and other employees, to be an asset in their specific field. (Applicant Exhibit D at 3.)

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. 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 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. 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, “Any 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, 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. 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 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.” 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 a considerable number of debts that he could not resolve. 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. Under AG ¶ 20(a), the disqualifying condition may be mitigated where “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.” In addition, AG ¶ 20(b) states that the disqualifying conditions may be mitigated where “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.”

This is a somewhat unusual situation. Applicant has a serious medical condition, asthma. In addition, he suffered a bad car accident in 2008, and also an adverse allergic reaction on another job. He required medical care, but did not have a job that paid enough, or provided health benefits. As shown, the vast majority of his debts were medical debts. He has acted responsibly under the circumstances by stabilizing his finances since he became gainfully employed, and making sure that he can pay for his current health care.

Applicant is young, and not financially sophisticated. He was unclear as to his options on resolving his debts. Subsequent to the hearing, he made the decision to file a Chapter 7 bankruptcy. This is a legal remedy that will allow Applicant to have a fresh start with his finances. Based on his testimony, that of his girlfriend (who is a financial analyst with a defense contractor), and the laudatory letters submitted by his company superiors, I find that he has “initiated a good-faith effort to repay overdue creditors or otherwise resolve debts,” as required by AG ¶ 20(d).

Applicant has not received 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).

The Applicant has acted in a way that shows good judgment, making the best he could out of a difficult situation. His medical condition is obviously a situation out of the Applicant’s control, and he did act responsibly under his particular circumstances. All of these mitigating conditions apply to the facts of this case. (See ISCR Case No. 09-08533 (App. Bd. Oct. 6, 2010).)

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 medical conditions that required frequent hospital care, which was difficult as he was under-employed and lacked medical insurance. Since he was employed a year ago his financial condition has stabilized. His debts will be resolved by the legal avenue of bankruptcy. Under AG ¶ 2(a)(2), I have considered the facts of the Applicant's debt history. As stated at length above, much of this was brought about because of his health. 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 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 situation. On balance, I conclude that Applicant has successfully overcome the Government's case opposing his request for a security clearance. Accordingly, the evidence supports granting his request for a security clearance.

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

Subparagraphs 1.a. through 1.n.: For Applicant

Conclusion

In light of all of the circumstances presented by the record, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

WILFORD H. ROSS
Administrative Judge