



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



In the matter of:)
)
) ISCR Case No. 11-00539
)
Applicant for Security Clearance)

Appearances

For Government: Daniel F. Crowley, Esq., Department Counsel
For Applicant: *Pro se*

January 31, 2012

Decision

LOUGHRAN, Edward W., Administrative Judge:

Applicant mitigated financial considerations security concerns. Eligibility for access to classified information is granted.

Statement of the Case

On July 27, 2011, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, financial considerations. The action was taken under Executive Order (EO) 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) implemented by the Department of Defense on September 1, 2006.

Applicant answered the SOR on August 23, 2011, and elected to have the case decided on the written record in lieu of a hearing. Department Counsel exercised the Government's option to request a hearing before an administrative judge. The case was assigned to me on October 20, 2011. DOHA issued a notice of hearing on November

15, 2011, scheduling the hearing for December 8, 2011. The hearing was convened as scheduled. The Government offered Exhibits (GE) 1 through 4, which were admitted without objection. Applicant testified, called a witness, and submitted Exhibits (AE) 1 through 10, which were admitted without objection. DOHA received the hearing transcript (Tr.) on December 16, 2011.

Findings of Fact

Applicant is a 31-year-old employee of a defense contractor. He has worked for his current employer since August 2009. He is applying for a security clearance. He served on active duty in the U.S. military from 1999 until he was honorably discharged in 2005. He attended college for a period but did not obtain a degree. He is divorced with two minor children. He is engaged to be married.¹

Applicant's employment was sporadic after he left the military. He had periods of unemployment and underemployment. He was unable to pay all his bills and a number of debts became delinquent.²

The SOR alleges \$8,482 owed for the deficiency on a car loan after the car was repossessed, nine other delinquent debts with balances totaling about \$1,850, and that Applicant owed \$17,639 in arrearages for child support. Individual debts are discussed further below.

Applicant and his ex-wife divorced in 2005. Applicant paid his ex-wife his basic allowance for housing (BAH) while he was in the military. The judge determined that Applicant should have paid more than the BAH, and he ordered that, in addition to the monthly child support payments, Applicant owed an amount for arrearages. Applicant admitted that, after he left the military, he also fell behind on his monthly child support payments. Applicant's monthly child support obligation is \$625, or \$7,500 for the year. He established that he has been paying \$200.69 every week for the last two years, through automatic withholding from his pay checks. That weekly amount equals \$10,435. The amount paid above the monthly obligation goes toward his arrearages. Credit reports show the amount owed for arrearages is declining. The May 2010 credit report lists the balance of the arrearages as \$18,535. The December 2011 credit report lists the balance as \$16,489.³

Applicant's car was voluntarily repossessed in 2006. The holder of his car loan told him that he would not owe anything if he voluntarily turned the car in. The May 2010 credit report lists the debt under one creditor as charged off and transferred, with a zero balance. The report also lists the debt under a collection agency, with a balance of \$8,482. The most recent credit report shows the debt as being owned at some point by three different creditors. Applicant stated that he was advised by a financial counselor to

¹ Tr. at 25, 38-40; GE 1.

² Tr. at 26, 41; GE 1, 2.

³ Tr. at 26-28; GE 2-4; AE 4, 5.

only pay a collection company if it could establish itself as a legitimate holder of the debt, and certify the basis for any deficiency owed on the car loan after the car was sold or auctioned. Applicant requested that information from the collection company, after which the collection company ceased collection efforts. Applicant credibly stated that he will pay or settle the debt if a collection company is able to verify that it legitimately holds the debt.⁴

The SOR alleges nine other delinquent debts with balances totaling about \$1,850. Applicant established that he paid or settled the remaining nine debts.⁵

Applicant has received financial counseling. He paid other debts that were not alleged in the SOR. He credibly testified that he intends to resolve all his financial issues. He is not accumulating new delinquent debt. His current finances are sound. He is able to make payments toward his delinquent debts, and he has a positive cash flow that can be used for savings and emergencies.⁶

Applicant's fiancée testified that Applicant has been diligently working on improving his finances. She described Applicant as trustworthy.⁷

Policies

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 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, administrative judges apply the guidelines 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

⁴ Tr. at 34-38; Applicant's response to SOR; GE 1-4; AE 5, 8.

⁵ Tr. at 29-34, 38; GE 2-4; AE 1-3, 7, 9, 10.

⁶ Tr. at 38-42; GE 2-4.

⁷ Tr. at 20-24.

decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record.

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 the applicant or proven by Department Counsel.” The applicant has the ultimate burden of persuasion to obtain 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. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that adverse 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 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 conditions that could raise security concerns under AG ¶ 19. Two are potentially applicable in this case:

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

Applicant accumulated a number of delinquent debts and was unable or unwilling to pay his financial obligations. The evidence is sufficient to raise the above disqualifying conditions.

Conditions that could mitigate financial considerations security concerns are provided under AG ¶ 20. The following are potentially 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; and

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

Applicant's employment was sporadic after he left the military, including periods of unemployment and underemployment. Applicant's employment problems were outside his control.

Applicant started working on rectifying his financial issues after he was hired by his current employer in August 2009. He paid or settled 9 of the 11 debts alleged in the SOR. He paid several debts that were not alleged in the SOR. His child support is being paid through automatic withholding from his pay checks. He is paying almost \$3,000 annually toward his arrearages, which is satisfactory to the court. Applicant credibly stated that he will pay or settle the remaining debt if a collection company is able to verify that it legitimately holds the debt. He has received financial counseling. He is now in the position where he can pay his current and delinquent debts, and he has a positive cash flow that can be used for savings and emergencies.

A security clearance adjudication is not a debt collection procedure. It is a procedure designed to evaluate an applicant's judgment, reliability, and trustworthiness. See ISCR Case No. 09-02160 (App. Bd. Jun. 21, 2010). An applicant is not required, as a matter of law, to establish resolution of every debt alleged in the SOR. An applicant need only establish a plan to resolve the financial problems and take significant actions to implement the plan. There is no requirement that an applicant make payments on all delinquent debts simultaneously, nor is there a requirement that the debts alleged in the SOR be paid first. See ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008).

I find that Applicant acted responsibly under the circumstances and made a good-faith effort to pay his debts. There are clear indications that his financial problems are being resolved and are under control. They occurred under circumstances that are unlikely to recur and do not cast doubt on his current reliability, trustworthiness, and good judgment. AG ¶¶ 20(b), 20(c), and 20(d) are applicable. AG ¶ 20(a) is partially applicable.

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.

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. I have incorporated my comments under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

I considered Applicant's honorable military service. I found Applicant to be honest and candid about his finances. I believe he is sincere about resolving his remaining financial issues. As indicated above, an applicant is not required to establish that he has paid every debt listed in the SOR. All that is required is that an applicant establish a plan to resolve the financial problems and take significant actions to implement the plan. I find that Applicant has established a plan to resolve his financial problems and has taken significant action to implement that plan. His finances do not constitute a security concern.

Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. I conclude Applicant has mitigated financial considerations security concerns.

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

Subparagraphs 1.a-1.k: 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.

Edward W. Loughran
Administrative Judge