



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



In the matter of:)
)
) ISCR Case No. 11-01502
)
Applicant for Security Clearance)

Appearances

For Government: Candace L. Garcia, Esq., Department Counsel
For Applicant: *Pro se*

04/13/2012

Decision

COACHER, Robert E., Administrative Judge:

Applicant mitigated the Financial Considerations security concerns. Eligibility for access to classified information is granted.

Statement of the Case

On September 14, 2011, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, Financial Considerations. DOHA acted 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 September 29, 2011, and requested a hearing before an administrative judge. The case was assigned to me on January 10, 2012. DOHA issued a notice of hearing on February 9, 2012, setting the hearing for March 7, 2012. The hearing was held as scheduled. The Government offered exhibits (GE) 1

through 5, which were admitted into evidence without objection. Department Counsel's exhibit index is marked as Hearing Exhibit (HE) I. Applicant testified, called one witness, and offered exhibits (AE) A through Q that were admitted into evidence without objection. The record was held open for Applicant to submit additional information. Applicant submitted AE R through V which were admitted into evidence without objection. Department Counsel's forwarding memorandum is marked as HE II. DOHA received the hearing transcript (Tr.) on March 15, 2012.

Findings of Fact

Applicant is 44 years old and has worked for a defense contractor since March 2007 as a course instructor. He has an associate's degree and is working toward a bachelor's degree. He has been married for 24 years and has two children. He retired from the U.S. Air Force in 2007 after 21 years of service. He has held a secret security clearance since at least 2005. His wife was also in the Air Force and was honorably discharged in 1995. She is currently a registered nurse (RN).¹

The SOR alleges a 1996 bankruptcy discharge and eight delinquent debts in the amount of about \$40,642. The debts were listed on credit reports obtained on September 4, 2010, and June 1, 2011. Applicant denied owing the debts alleged in the ¶¶ 1.b, 1.c, 1.e, and 1.f of the SOR. He admitted the remaining allegations listed in the SOR.

Applicant stated that his first period of financial struggle occurred in approximately 1995-1996. His wife got out of the Air Force in 1995 with no immediate follow-on job. They struggled financially with the loss of one income. Consequently, they decided to file Chapter 7 bankruptcy. The amount discharged through this bankruptcy was approximately \$4,000-\$5,000. Applicant's finances remained steady through the ensuing years. However, in 2007, Applicant experienced his second period of financial difficulty. He decided to retire from the Air Force rather than face a remote overseas deployment at this stage of his life. Unfortunately, he was unprepared for retirement. Although he quickly gained civilian employment, it was at a considerably lower pay rate (about \$10,000 less) than what he had received from the Air Force. Additionally, in December 2007, his wife had emergency surgery that resulted in her being off work as an RN for three months. She was a pool nurse at the time, so she did not receive any benefits from her job. The loss of income to the family during her time off was about \$8,000 to \$10,000 per month. It was during this time frame that they incurred about \$30,000 worth of credit card debt from which they could not recover.²

Specifically, the debts in the included six credit cards with balances of \$8,780, \$3,392, \$5,036, \$780, \$1,314, and \$6,840 (SOR ¶¶ 1.b - 1.g). The other two remaining debts are for federal (\$12,000) and state (\$2,500) tax liability.

¹ Tr. at 6, 34, 36; GE 1.

² Tr. at 31, 35-37, 63; GE 2.

Regarding the credit card debt with the balance of \$8,780 (SOR ¶ 1.b), Applicant presented documentary proof showing that this account was taken out by his wife, that he was not a joint account holder, but only an authorized user. He was unaware of the account at the time his wife opened it and he never used the account. Applicant's wife tried to resolve the account by contacting both the original creditor and the subsequent collection agencies to no avail. Applicant disputes this debt.³

Regarding the credit card debt with the balance of \$3,392 (SOR ¶ 1.c), the creditor accepted a settlement amount and the debt was satisfied on November 21, 2011. This debt is resolved.⁴

Regarding the credit card debt with the balance of \$5,036 (SOR ¶ 1.d), Applicant worked out a payment plan with the creditor/collector. He has made \$200 monthly payments since November 2011. Once he makes six months worth of payments, he can approach the creditor/collector about a settlement amount. This debt is under control.⁵

Regarding the credit card debt with the balance of \$780 (SOR ¶ 1.e), the creditor accepted a settlement amount and the debt was satisfied on October 26, 2011. This debt is resolved.⁶

Regarding the credit card debt with the balance of \$1,314 (SOR ¶ 1.f), the creditor accepted a settlement amount and the debt was satisfied on November 21, 2011. This debt is resolved.⁷

Regarding the credit card debt with the balance of \$6,840 (SOR ¶ 1.g), Applicant worked out a payment plan with the creditor/collector. He started making \$416 monthly payments in December 2011. He will have this debt paid off by the end of 2012. This debt is under control.⁸

Applicant's federal and state tax liability arose because he failed to have enough withheld from his paychecks when he first began his civilian job. He failed to understand the significance of claiming exemptions for the purpose of year-end federal and state taxes. He also did not have taxes withheld from his military retirement pay. He has since rectified these errors and is having additional amounts withheld from his civilian and retirement pay. He worked out a payment plan with each taxing authority. He has made monthly payments to the IRS since August 2010. The payments were initially \$150 per

³ Tr. at 39-40; GE 2; AE B.

⁴ Tr. at 41; AE A-1, C.

⁵ Tr. at 41; AE D, T-1 to T-4.

⁶ Tr. at 43; AE E.

⁷ Tr. at 44; AE F-G.

⁸ Tr. at 44-46; AE H-J, U-1 to U-3.

month, but he has been paying \$300 per month since April 2011. Regarding his state tax liability, he has made \$150 monthly payments periodically to reduce the overall debt to \$1,000. He will continue making payments until the debt is fully paid. Both these tax obligations are under control.⁹

Applicant is currently contributing to a 401K retirement plan. He is an active volunteer in his community. Because he is taking advantage of his GI Bill benefits since resuming his education, he will receive an additional \$16,000 (nontaxable) per year while he attends school. His wife is also working as an RN with full benefits. Consequently, Applicant's finances have turned around and he currently has about \$2,300 disposable income at the end of the month. He received financial counseling in 2008 and has made a point of becoming much more active in his family's financial affairs.¹⁰

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 that 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 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 decision.

⁹ Tr. at 47-53; AE A-7, K, V.

¹⁰ Tr. at 60, 90; AE N-Q.

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 about 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* Executive Order 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 as follows:

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. 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 debts and was unable or unwilling to satisfy his obligation. The evidence is sufficient to raise the above disqualifying conditions.

Several Financial Considerations mitigating conditions under AG ¶ 20 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;

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

(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.

Applicant's prior bankruptcy is remote and does not cast doubt on his current reliability, trustworthiness, and good judgment. Applicant was put into his financial difficulty when he retired from the Air Force and took a significant pay cut when he started his new civilian job. At the same time, his wife underwent emergency surgery that put her out of work for three months. This cost them about \$10,000 per month. They relied on credit cards to make it through that time frame. Both he and his wife are now fully employed and it is unlikely that he will experience this type of financial difficulty again. Additionally, his actions do not cast doubt on his current reliability, trustworthiness, or good judgment. AG ¶ 20(a) is partially applicable.

Applicant's financial difficulties were caused by his reduced income and the loss of his wife's income which was necessary to meet all of his obligations. This was a condition outside his control. Additionally, Applicant acted reasonably by contacting his creditors and achieving settlements or establishing payment plans for his undisputed delinquent accounts. Additionally, he worked out payment plans with both federal and state taxing authorities. AG ¶ 20(b) is applicable.

Applicant received financial counseling and has settled or set up payment plans for his remaining debts. His good faith efforts to pay his debts indicate that he has them under control. Through his payment plans, he has established a track record of financial stability. AG ¶¶ 20(c) and 20(d) are both applicable.

Applicant provided sufficient documentary evidence to establish a reasonable basis to dispute the debt listed in SOR ¶ 1.a. AG ¶ 20(e) is applicable to this debt. Applicant met his burden to establish sufficient mitigation evidence on the debts listed in the SOR.

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 relevant 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.

Applicant served honorably in the U.S. Air Force for over twenty years. I found him to be honest and candid about his finances. He found himself with a difficult situation when he started a lower paying job after retirement and his wife was unable to work for three months. These events caused them to rely heavily on credit cards to make ends meet. Applicant has bounced back by settling several accounts and by establishing payment plans for the remaining accounts, including the taxing authorities. He has established a sufficient track record of responsible payment to establish that he is not a security risk.

Overall, the record evidence leaves me without questions or doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the 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.i: 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.

Robert E. Coacher
Administrative Judge