



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ISCR Case: 11-01581
)
Applicant for Security Clearance)

For Government: James Norman, Esquire, Chief Department Counsel¹
For Applicant: *Pro se*

07/31/2012

Decision

DAM, Shari, Administrative Judge:

Based upon a review of the case file, exhibits, and testimony, eligibility for access to classified information is granted.

On June 2, 2011, Applicant submitted a Questionnaire for National Security Positions (SF 86). On October 27, 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 effective within the Department of Defense for SORs issued after September 1, 2006.

¹ Mr. James Norman assumed representation for the Department after Mr. Paul Delaney passed away in early July 2012.

Applicant answered the SOR in writing on or about November 29, 2011 (AR), and requested a hearing before an administrative judge. On April 26, 2012, DOHA issued a Notice of Hearing, setting the case for May 16, 2012. On May 12, 2012, DOHA re-assigned the case to me due to a medical emergency experienced by the previously assigned administrative judge. The case was heard as scheduled. Department Counsel offered Government Exhibits (GE) 1 through 6 into evidence without objection. Applicant testified and offered Applicant Exhibits (AE) A through G into evidence without objection. DOHA received the hearing transcript on May 23, 2012. The record remained open until June 15, 2012, to give Applicant an opportunity to submit documents. Applicant timely submitted a revised AE C, and AE H, which were admitted into the record without objection.

Findings of Fact

In his Answer to the SOR, Applicant admitted all allegations contained in Paragraph 1, except those contained in Paragraphs 1.b, 1.f, 1.g, 1.h, and 1.j.

Applicant is 58 years old. He earned a Bachelor of Science degree in 1977 and a Master of Business Administration degree in 2003. He served in the Merchant Marine from July 1971 to August 1973. In May 2006 he and his wife divorced after 25 years of marriage. They have two children, ages 27 and 30.

In April 2006 Applicant's employer laid him off due to a cancellation of a military program. He had worked for the defense contractor for 22 years. His annual salary at the time was \$115,000. Prior to that position, he worked for another defense contractor for many years. After losing his position in 2006 he worked primarily with a partner in a start-up company and earned minimal income. (Tr. 29.) In July 2010 he obtained his current position as a program manager for a private company.² (GE 1.) He held a security clearance during his previous employment with defense contractors. (GE 1.)

Applicant's financial difficulties arose after he divorced in May 2006 and agreed to pay his wife \$1,900 per month for six years as alimony. He had not experienced financial problems before 2006. After losing his job in April 2006, he did not have sufficient income to make the monthly alimony payments to his wife. He subsequently withdrew about \$200,000 from his 401(k) retirement fund to pay his wife, his own living expenses, and his daughter's college costs. (Tr. 53; GE 2 at 4.) In 2009 or 2010 he sold the marital home and paid his wife \$40,000 from the proceeds per the divorce agreement. (AE G.)

Applicant's wife filed contempt charges against him three times for not timely paying alimony. He was subsequently placed in jail each time and borrowed approximately \$33,700 from friends to pay alimony arrearages, and to be released

² Applicant's former employer until 2006, a defense contractor, is sponsoring him for a security clearance. (Tr. 27.)

from jail. (Tr. 40; AR; GE 2 at 4.) In 2011 his former wife obtained an order to garnish his wages in the amount of \$950 bi-weekly. At the same time he was paying the IRS a \$400 monthly payment. In April 2012 he completed the alimony payments and his IRS payments increased to \$2,300 monthly. (AE G.)

The SOR alleged ten delinquent debts totaling \$106,924, of which \$67,706 relates to Internal Revenue Service (IRS) tax delinquencies. The debts became delinquent after 2006. Applicant stated he apprised some of the creditors of his financial situation and lack of money. (AE G.) The status of each allegation is set out in AE C, an Excel spreadsheet, and is as follows:

1. (¶ 1.a) The \$67,706 debt owed to the IRS is for 2006 and 2007 income taxes, and taxes and penalties related to Applicant's withdrawal of money from his 401(k). (GE 2 at 5.) According to Applicant, the total amount owed to the IRS was \$74,000. He has paid \$27,613 on the debt, leaving a balance of \$46,387. The tax lien has been released. He anticipated that the IRS debt will be paid by September 2013. (Tr. 31-46; AE C.) It is being resolved.
2. (¶ 1.b) Applicant disputes the debt for \$367 owed to a satellite TV company. He stated he returned the equipment and does not owe this bill. He has not disputed the debt through the credit reporting agency or filed a written one with the company. (Tr. 46- 48; AE C.) It is unresolved.
3. (¶ 1.c) The \$1,743 delinquent debt is owed to a bank credit card. His daughter used the credit card while in college and has not provided money to pay it. He intends to begin payments in October 2013. (Tr. 49-51; AE C.) It is unresolved.
4. (¶ 1.d) The \$4,072 debt owed to a credit card company is a marital debt that is Applicant's responsibility per his divorce settlement. He has been unable to pay it, but intends to begin payments in October 2013 when he anticipates having sufficient income after payment of the IRS debt. (Tr. 51-53; GE 2 at 6; AE C.) It is unresolved.
5. (¶ 1.e) The \$11,952 debt is owed to the same company as noted in ¶ 1.d above. It is a marital debt that remains his responsibility. He intends to begin payments in October 2013, after he completes his payment to the IRS. (Tr. 52-53; GE 2 at 6; AE C.) It is unresolved.
6. (¶ 1.f) Applicant does not recognize the debt for \$284 and intends to dispute it. (Tr. 53-54; GE 4 at 6; AE C.) It is unresolved.
7. (¶ 1.g) Applicant does not recognize the credit card debt for \$6,209, but has not filed a dispute to date. (Tr. 55-57; AE C.) It is unresolved.

8. (¶ 1.h) Applicant believed the \$2,989 debt owed to a collection agency related to a washer and dryer he purchased in 2006 and returned a year later. He attempted to dispute the bill with the department store. (Tr. 58-61; AE C.) It is unresolved.
9. (¶ 1.i) The \$8,722 debt owed to a bank remains unpaid to date because he lacks sufficient money. He intends to begin making payments in October 2013 after he completes his payments to the IRS. (Tr. 62; AE C.) It is unresolved.
10. (¶ 1.j) Applicant claimed this \$2,880 debt is a duplicate of the one listed in ¶ 1.h. He did not provide proof of that assertion. (Tr. 61-62; AE C.) It is unresolved.

Applicant's annual salary is \$77,000. According to his budget, his net monthly income is \$4,094 and expenses are \$1,640. After making a \$2,300 payment to IRS, he has \$164 remaining at the end of the month. (AE H.) He lives a frugal life, riding his bike to work. He does not have a credit card and has not made any major purchase over the past several years other than a new sports coat. (Tr. 70-71.) He thinks he has paid his wife at least \$200,000 since the divorce in 2006, which also included attorney's fees, costs, and her moving expenses. He noted that he paid her about \$35,000 in 2011. (Tr. 73.)

To date Applicant has paid \$27,613 of the \$106,924 SOR-listed debt, leaving \$79,311 to resolve or pay. (AE C.) If he could negotiate a lesser payment amount with the IRS, he would begin paying the other debts. (Tr. 76.)

Applicant acknowledged that he is responsible, as a co-signer, for his daughter's \$32,500 of student loans, which are in forbearance. He intended to help her with their repayment. (Tr. 64-65.) He has not participated in formal financial counseling, but has spoken to an IRS agent many times about his finances. While married, his wife managed the family budget. (Tr. 65, 79.) In his closing argument, he stated that his life is now moving in a new and more positive direction. (Tr. 82-83.)

Applicant testified candidly and exhibited embarrassment and remorse over his financial situation and tax problems. He understood the scope of his debts and organized a feasible plan for slowly resolving them. He will pay all debts as income becomes available.

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the revised adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying 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.

According to 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 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 an 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."

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.

AG ¶ 19 describes two conditions that could raise a security concern and may be disqualifying in this case:

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

Applicant's delinquent debts began accumulating in 2006 after he divorced and lost his employment. Since then, his income has been inadequate to pay all of his delinquent debts. The evidence is sufficient to raise these disqualifying conditions.

After the Government produced substantial evidence of those potential disqualifications, the burden shifted to Applicant to produce evidence to rebut and prove mitigation. AG ¶ 20 provides four conditions that could potentially mitigate the above security concerns:

- (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.

There is sufficient evidence to support a partial application of AG ¶ 20(b). Applicant's delinquent debts arose after he lost his employment in April 2006 and was divorced a month later. Those were circumstances beyond his control. There is evidence that he took responsible steps to manage certain debts, but not all of the SOR-listed debts, which is necessary for the full application of this mitigating condition.

The facts warrant a limited application of AG ¶ 20(c). Applicant has not participated in financial counseling. However, he has regularly paid his IRS debt and has a plan to begin paying the remaining financial obligations after he pays off that debt in September 2013 and his finances improve. Those facts indicate that his financial issues are slowly coming under control. AG ¶ 20(d) also has limited application as he reduced the IRS debt by about 37% through his good-faith efforts to resolve it. Applicant testified that five of the SOR-listed debts are not his responsibility. However, he did not provide documentation that he filed written disputes with those creditors or the credit reporting agency, which evidence is required for the application of AG ¶ 20(e).

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). They include the following:

- (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 include 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 facts and circumstances surrounding this case. Applicant is a 58-year-old engineer who has worked for defense contractors for most of his career. Applicant had not experienced financial problems until the spring of 2006 when he lost his job and was divorced. Subsequently, he withdrew money from his 401(k) to pay alimony, his living expenses, and his daughter's college costs. That withdrawal resulted in tax liabilities, in addition to income tax delinquencies that arose in 2006 and 2007. He was unable to begin recovering financially until he began a position with a private firm in July 2010. In April 2012 he completed his alimony payments and started sending more money to the IRS to pay off the remaining \$46,387 liability. To date his outstanding SOR-listed debt is approximately \$79,000, having reduced the total \$106,941 by about 25%.

The Appeal Board has addressed a key element in the whole-person analysis in financial cases stating:

In evaluating Guideline F cases, the Board has previously noted that the concept of “meaningful track record” necessarily includes evidence of actual debt reduction through payment of debts.” However, an applicant is not required, as a matter of law, to establish that he has paid off each and every debt listed in the SOR. All that is required is that an applicant demonstrates that he has “. . . established a plan to resolve his financial problems and taken significant actions to implement that plan.” The Judge can reasonably consider the entirety of an applicant’s financial situation and his actions in evaluating the extent to which that applicant’s plan for the reduction of his outstanding indebtedness is credible and realistic. See Directive ¶ E2.2(a) (“Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination.”) There is no requirement that a plan provide for payments on all outstanding debts simultaneously. Rather, a reasonable plan (and concomitant conduct) may provide for the payment of such debts one at a time.

ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) (internal citations omitted).

Applicant is an intelligent person and understands how to budget and what he needs to do to maintain his financial obligations, and resolve outstanding debts. He drafted a spreadsheet plan to resolve debts and achieve financial solvency over the next two years. There is no reason not to trust him to continue to follow that plan and resolve his debts. Moreover, he has demonstrated a “meaningful track record” of debt repayment, as indicated by the reduction of his IRS debt and completion of alimony obligations.

Given his budget, he should be able to manage, albeit slowly, the delinquent debt. While his lax attitude in aggressively addressing those debts that he claims are not his responsibility would be troubling, his long career with defense contractors and recent actions alleviate concerns that he would engage in illegal activities to resolve the outstanding debts. Furthermore, his knowledge that future financial delinquencies will jeopardize his employment opportunities diminishes the likelihood similar problems will occur in the future.

Overall, the record evidence does not create doubt as to Applicant’s eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant fully mitigated the security concerns arising under Financial Considerations and the whole-person analysis.

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 - j: 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.

SHARI DAM
Administrative Judge