



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ISCR Case No. 11-03200
)
Applicant for Security Clearance)

Appearances

For Government: Richard Stevens, Esquire, Department Counsel
For Applicant: *Pro se*

08/22/2012

Decision

CREAN, Thomas M., Administrative Judge:

Based on a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

Statement of the Case

On September 23, 2010, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to obtain a security clearance required for a position with a defense contractor. After an investigation conducted by the Office of Personnel Management (OPM), the Defense Office of Hearings and Appeals (DOHA) issued an interrogatory to Applicant to explain potentially disqualifying information in his background. After reviewing the results of the background investigation and Applicant's response to the interrogatory, DOHA could not make the preliminary affirmative findings required to issue a security clearance. DOHA issued a Statement of Reasons (SOR), dated November 23, 2011, detailing security concerns for financial considerations. These actions were 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 in the Department of Defense on September 1, 2006.

Applicant answered the SOR on December 13, 2011. He admitted 20 of the 23 allegations and denied three (SOR 1.m, 1.n, and 1.q). Department Counsel was ready to proceed on January 4, 2012. The case was assigned to another administrative judge, but a hearing could not be held because Applicant was deployed to Afghanistan. The case was assigned to me on June 27, 2012, since Applicant would be returning on leave from Afghanistan. DOHA issued a Notice of Hearing on June 28, 2012, scheduling a hearing for July 25, 2012. I convened the hearing as scheduled. The Government offered four exhibits that I marked and admitted into the record without objection as Government Exhibits (Gov. Ex.) 1 through 4. Applicant testified, and submitted 23 documents that were marked and admitted into the record without objection as Applicant Exhibits (App. Ex.) A through W. I left the record open for Applicant to submit additional documents. Applicant timely submitted one document, which was marked and admitted into the record without objection as Applicant Exhibit (App. Ex. X). DOHA received the transcript of the hearing (Tr.) on August 13, 2012.

Findings of Fact

After a thorough review of the pleadings, transcript, and exhibits, I make the following essential findings of fact.

Applicant is a 27-year-old high school graduate with a vocational education certificate in carpentry. He married in March 2005. He and his wife separated for a time but reconciled in March 2012. They have two children, ages five and seven. He worked in Iraq for a defense contractor as a warehouse supply specialist from June 2007 until November 2009. He was a fork lift operator in Afghanistan for a defense contractor from January 2011 until August 2012. He recently returned home from Afghanistan but is scheduled to return to Afghanistan shortly. His net monthly income is approximately \$5,000, with \$4,000 in recurring monthly expenses, leaving him \$1,000 in monthly discretionary funds. (Tr. 10-11, 20-21, 46-47; Gov. Ex. 1, e-QIP, dated September 23, 2010; Gov. Ex. 2, Response to Interrogator, dated July 10, 2011)

Applicant sent funds home to his wife when he was on his first deployment to Iraq to pay the family bills. He employed a debt consolidation company which was to help his wife pay the family bills. When Applicant returned home in late 2009, he learned his wife had not been paying the bills, and that the couple had significant delinquent debt. He consulted the debt consolidation company, finished his contract with them, and assumed responsibility for paying the family debts. His wife experienced a severe medical problem in early 2010, and she is still receiving medical treatment for her condition. He now pays almost of the debts, even when deployed, using an on-line bill payment system. Two debts, which can only be paid by check, are paid by his wife using funds he provides her. He checks to insure the debts are paid. He also enrolled in and completed an on-line debt education program. (Tr. 42-45).

Credit reports (Gov. Ex. 3, dated January 4, 2012; and Gov. Ex. 4, dated October 5, 2010), Applicant's answers to an interrogatory, and his response to questions from a security investigator (Gov. Ex. 2, dated July 10, 2011) enumerate 23 delinquent debts for Applicant. These debts include two judgments, charged-off accounts, two jewelry store accounts in collection, nine medical accounts in collection; two fitness center

accounts in collection; an apartment rent account in collection; two telephone accounts in collection; a cable service account in collection; and credit card accounts in collection. The total for the delinquent debts listed in the SOR is approximately \$34,000. Department Counsel noted that two debts (SOR 1.f and SOR 1.r) are duplicates bringing the total debt to approximately \$30,000. Applicant's response to the SOR contains receipts for payment of the debts listed at SOR 1.m, 1.q, and 1.w. (Tr. 11-12, 22-23)

Applicant presented documentation to show he paid all of the debts listed in the SOR. Applicant satisfied the judgment at SOR 1.a as shown on the court documents at App. Ex. A. The debt at SOR 1.b is paid in full as shown by App. Ex. B. The debt in SOR 1.c is paid in full by the document at App. Ex. C. App. Ex. D, consisting of nine documents, establishes payment of the debt at SOR 1.d. The two documents at App. Ex. E are receipts for payment of the debt at SOR 1.e. App. Ex. F is a receipt for payment of debt at SOR 1.f. App. Ex. G is a receipt for payment of the debts at SOR 1.g through SOR 1.k, and SOR 1.u. App. Ex. H is the receipt for payment of SOR debt 1.l. The debt at SOR 1.m is paid in full as shown by the receipt at App. Ex. I. The receipt at App. Ex. K shows SOR debt 1.n is paid in full. App. Ex. L is the receipt for payment of the debts at SOR 1.o and 1.p. The debt at SOR 1.q is paid in full as shown by App. Ex. M. The debt at SOR 1.r duplicates the debt at SOR 1.f. The receipt for payment of the debt at SOR 1.s is at App. Ex. N, and the receipt for payment of the debt at SOR 1.t is at App. Ex. O. As noted, SOR 1.u is paid in full as shown by App. Ex. G. App. Ex. P includes receipts for payment of debts not listed in the SOR. The debts at SOR 1.v and 1.w. were paid as shown on App. Ex Q.

The deputy military commander of the unit Applicant supported in Afghanistan wrote that Applicant provided excellent support to his unit in a combat environment. Applicant's duty performance was superb. Applicant is a person of character with strong values tested in a combat environment. Others in the command seek out Applicant for advice and guidance. He strongly recommends Applicant be granted access to classified information. (App. Ex. S, letter, dated July 14, 2012)

Applicant's senior supervisor in Afghanistan noted that Applicant is an integral part of his team supporting military units in the field. Applicant provides professional and courteous service and is one of his best employees. He is always professional, takes pride in his job, and goes the extra mile to accomplish the mission. (App. Ex. T, letter, undated) Applicant's intermediate supervisor notes that Applicant's job performance is excellent and he has high standards of professionalism in dealing with others. (App. Ex. U, Letter, dated April 8, 2012) Applicant's immediate supervisor noted that Applicant is a hard worker who performs his job in a timely manner. (App. Ex. V, Letter, undated) Applicant presented a Letter of Appreciation from some of his customers noting that he provided them outstanding support. They said that Applicant is a hard worker whose paramount goal is customer service. They noted that Applicant is a great asset to the company and the command. (App. Ex. W, Letter, dated April 8, 2012) A military chaplain who had the opportunity to observe Applicant in Afghanistan, wrote Applicant showed positive character traits and professionalism. Applicant is an exceptional person and family man. He demonstrates leadership and personal relationship skills. He

strongly recommends that Applicant be granted access to classified information. (App. Ex. X, Letter, dated June 20, 2012)

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 must be considered 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.

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. . . ." The applicant has the ultimate burden of persuasion in seeking 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 that the applicant may deliberately or inadvertently fail to 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.

Analysis

Financial Considerations

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 ¶ 18) Similarly, an individual who is financially irresponsible may also be irresponsible, unconcerned, or careless in his or her obligations to protect classified information. Behaving responsibly or irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life.

A person's relationship with his creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to repay debts under agreed terms. Absent evidence of strong extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties exhibits a risk inconsistent with the holding of a security clearance. An applicant is not required to be debt free, but is required to manage his finances in such a way as to meet his financial obligations. Applicant's delinquent debts established by credit reports and Applicant's admissions raise Financial Considerations Disqualifying Conditions AG ¶ 19(a) (inability or unwillingness to satisfy debts); and AG ¶ 19(c) (a history of not meeting financial obligations). The evidence indicates an inability and not an unwillingness to satisfy debt. Applicant incurred financial problems when he was deployed overseas and his wife did not use the funds he provided her to pay their bills.

I considered Financial Considerations Mitigating Conditions AG ¶ 20(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) and AG ¶ 20(b) (the conditions that resulted in the financial problems 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). These mitigating conditions apply. When Applicant was deployed overseas, he provided funds to his wife to pay the family bills. She did not pay their debts. This was an unusual circumstance and a condition beyond his control. He acted responsibly towards the debts. When he learned of the debts, he took over responsibility for payment of the debts. He paid all of the debts listed in the SOR, as well as other debts not listed. He presented documentation to show all debts are paid in full. He has sufficient income to live within his means and pay his present debts. He has steady and good employment, and is not likely to incur additional debts. His finances are under control. Applicant established that he acted responsibly towards his debts under the circumstances.

I considered AG ¶ 20(d) (the individual has initiated a good-faith effort to repay the overdue creditors or otherwise resolve debts). For AG ¶ 20(d) to apply, there must be an "ability" to repay the debts, the "desire" to repay, and "evidence" of a good-faith effort to repay. Good faith means acting in a way that shows reasonableness, prudence, honesty, and adherence to duty and obligation. A systematic method of handling debts is needed. Applicant must establish a "meaningful track record" of debt payment. A "meaningful track record" of debt payment can be established by evidence of actual debt payments or periodic payment to reduce debts. Applicant is not required to establish that he paid each and every debt listed. All that is required is that Applicant

has an established plan to resolve his financial problems, and show he has taken significant actions to implement that plan.

I considered AG ¶ 20(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). Applicant sought financial counseling to assist him and his wife to manage their finances when he was deployed to a combat area. Unfortunately, his wife did not always adhere to the financial advice and they incurred delinquent debt. Applicant took back management of their finances and he has paid all of their past debts. His financial problems are resolved and his finances are under control.

Applicant established that he paid all debts listed in the SOR, and other debts not listed. His efforts to learn about and pay his debts are significant and credible information to show a desire to resolve debt. His payment of debts establishes a meaningful track record of debt payment. These efforts show a reasonable and prudent adherence to financial obligations, and establish a good-faith effort to resolve and pay debts. His past delinquent debts do not reflect adversely on his trustworthiness, honesty, and good judgment. Based on all of the financial information provided by Applicant, he has mitigated security concerns based on financial considerations.

Whole-Person Analysis

Under the whole-person concept, the administrative judge must evaluate an applicant's security eligibility by considering the totality of the applicant's conduct and all relevant circumstances. An 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 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 considered Applicant's contractor service in support of the United States military mission in Afghanistan. I considered that Applicant is highly regarded by those he serves with and supports in Afghanistan. Applicant provided funds to his wife to pay their debts while he was deployed in a combat area. When he learned the debts had not been paid and were delinquent, he paid all of his delinquent debts. He has assumed responsibility for all of the family debts except two that must be paid by check. Applicant has shown his good-faith efforts to

pay or resolve his delinquent debts. His actions to pay his past financial obligations indicate that he will be concerned, responsible, and careful regarding classified information. 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 security concerns arising from financial considerations. He is granted access to classified information.

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.w: 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.

THOMAS M. CREAN
Administrative Judge