



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 11-03577
)
)
Applicant for Security Clearance)

Appearances

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

For Applicant:
Pro se

August 3, 2012

DECISION

ROSS, Wilford H., Administrative Judge:

Applicant submitted his Electronic Questionnaire for Investigations Processing (e-QIP) on November 17, 2010. (Government Exhibit 1.) On February 14, 2012, 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 March 9, 2012, and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on April 30, 2012. This case was assigned to me on May 8, 2012. DOHA issued a notice of hearing on May 10, 2012. I convened the hearing as scheduled on June 8,

2012. The Government offered Government Exhibits 1 through 7, which were received without objection. Applicant testified on his own behalf, and submitted Applicant Exhibits A through J, which were also received without objection. Applicant asked that the record remain open until June 29, 2012, for the receipt of additional documents. Applicant submitted Applicant Exhibit K on June 27, 2012, which was admitted without objection. DOHA received the transcript (Tr.) of the hearing on June 20, 2012. The record closed on June 29, 2012. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

Findings of Fact

Applicant is 36, and divorced with custody of his two children. 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 subparagraphs 1.a through 1.g of the SOR. Those admissions are findings of fact. Regarding subparagraph 1.h, Applicant submitted and Department Counsel agreed that it was a duplicate of subparagraph 1.a. Upon motion of the Department Counsel, subparagraph 1.h was stricken from the SOR. (Tr. 43-44.) Applicant also submitted additional information to support his request for a security clearance.

Applicant served in the Navy from 1995 to 2002, and received an honorable discharge. After his naval service he began working in the mortgage industry. He was successful. By 2004 and 2005, in conjunction with his then wife's income, his taxable income was \$144,648 and \$157,297, respectively. (Applicant Exhibit K at 7-13.) The company he was working for went out of business in 2007. Applicant then began a series of jobs with different entities in the mortgage industry, at the same time the financial crisis was hitting its peak in 2008-2010. (Government Exhibit 1, Section 13; Tr. 30.) In 2007 his income had dropped to \$90,000, and most of that money was from his wife's employment. (Tr. 56-57.)

Applicant and his wife were divorced in 2008. Starting in that year Applicant's income took a precipitous drop as the financial crisis deepened. In 2008 his taxable income was \$15,050; in 2009 it was \$10,387; and in 2010 it was \$22,528. (Applicant Exhibits G, H, and I.) He began working with his current employer in August 2010, doing the same kind of work he did in the Navy. Applicant testified that his gross income for taxable year 2011 was approximately \$63,000. (Tr. 39-40.)

Applicant described his financial situation this way:

I was able to kind of live off savings for a while, that I had accumulated before; but, by about the middle of 2008, it just became apparent that I had to make decisions whether I was going to pay a credit card bill or, you know, pay electric bill. It was a difficult decision. I knew it was going to, you know, obviously lead to destroying my credit, but, you know, I had to do it just to kind of survive at that point. (Tr. 31.) (See Tr. 59-62.)

Applicant got custody of his minor children beginning in 2009. Providing the necessities for his children seriously impacted on his ability to repay any of his old debts, even after he began his current employment in August 2010. At one time Applicant was paying rent in two places because his daughter was attending an advanced school in one city where his lease had not expired, while Applicant had begun working in another city, which was a considerable distance away. (Government Exhibit 4; Tr. 33-34.)

Beginning in March 2012, once his life and financial situation had stabilized, Applicant began working to resolve his delinquent credit, which amounted to \$23,552. (Government Exhibits 2, 3 and 7.) He settled and paid the \$2,650 debt set forth in subparagraph 1.b. (Applicant Exhibit D; Tr. 34, 37, 44-45.)

He has also been working with budget consultants at the Fleet and Family Service office at the naval base where he works, as well as his county Consumer Credit Counseling Service (CCCS). Because of the physical separation between where he lives and works and the location of the CCCS office, this has taken a while longer than he wanted. He made his initial payment to set up the program in June 2012, which has been confirmed by the CCCS. Other than subparagraph 1.b, all the remaining past-due debts are included in the debt management plan. He will be paying \$450 per month towards the debt management plan, which is well within his budget. (Applicant Exhibits F, J, and K at 3, 4, 13, 14; Tr. 35, 45-55.)

Applicant's present financial situation is stable. 2011 was the first year since 2007 that he was employed regularly for the entire year. Even though his current income is approximately half of what it was in 2006-7, he lives in a significantly lower cost area and is able to pay his current monthly expenses without a problem. He had to purchase a used car for transportation in August 2011, and has been maintaining his monthly payments for that without a problem. (Applicant Exhibit E; Tr. 38, 59.)

Mitigation

Applicant is a well-respected person and employee. He submitted a letter from his site manager. This person, with knowledge of the issues in the SOR, says Applicant has been "very proactive in trying to take the necessary steps required to obtain his clearance." The site manager also states, "[Applicant] has been an exemplary employee and a real asset to our team." (Applicant Exhibit A.)

A friend who has known Applicant for eight years, both in the Navy and in civilian life, also submitted a letter on Applicant's behalf. It is very laudatory. (Applicant Exhibit B.)

Finally, he is also a member in good standing of his union, and has "met all the financial requirements" for membership. (Applicant Exhibit C.)

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 the 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 concerns for Financial Considerations are 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 approximately \$23,000 in past-due indebtedness that he could not resolve for several years. 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), disqualifying conditions 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 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.” The evidence shows that both of those mitigating conditions apply to Applicant. Through no fault of his own, his income dropped almost 90% in a period of two years during the financial crisis. In addition, he was unemployed or underemployed for over two years before finally getting full time employment in August 2010. Finally, he had the financial pressures of having to take care of his two minor children once he received custody of them. At all times he behaved responsibly, even though he could not pay the past-due

debts. While he is in indebted, it is highly commendable under these circumstances that he did not get more than \$23,000 in debt. There is no evidence of poor judgment on his part.

Once his financial condition had reached a position of stability, Applicant began the process of paying his past-due debts. He paid one debt in full, and has a reasonable plan with his local CCCS, a non-profit organization recommended by his Fleet and Family Support office, to pay the others. That plan, while in the early stages, is reasonable and he expresses a credible intent to carry through with the plan. Based on the particular facts of this case, I also find that he has “initiated a good-faith effort to repay overdue creditors or otherwise resolve debts,” as required by AG ¶ 20(d).

As found above, Applicant’s current financial situation is stable. In addition, Applicant has been proactive in attempting to resolve the debts through the CCCS process. I find that “there are clear indications that the problem is being resolved or is under control,” as required by AG ¶ 20(c).

The Appeal Board has explained, “An applicant is not required to show that [he] has completely paid off [his] indebtedness, only that [he] has established a reasonable plan to resolve [his] debts and has taken significant actions to implement that plan.”¹

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. Likewise, there is no requirement that the first debts actually paid in furtherance of a reasonable debt plan be the ones listed in the SOR.²

The Applicant has acted in a way that shows good judgment, making the best he could out of a difficult situation. He has taken “significant actions” to implement his plan to repay his remaining creditors. The stated mitigating conditions apply to the facts of this case.

¹ISCR Case No. 06-12930 at 2 (App. Bd. Mar. 17, 2008) (quoting ISCR Case No. 04-09684 at 2-3 (App. Bd. Jul. 6, 2006)).

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

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's financial difficulties were not a result of poor judgment on his part. Rather, as described above, they were brought about by the turmoil in the mortgage industry as well as the general economy, which particularly affected him since he was employed in the mortgage industry. Under AG ¶ 2(a)(2), I have considered the facts of Applicant's debt history. As stated above, this situation concerning his past-due debts is an aberration, which he is resolving, and not indicative of his usual conduct. Based on the record, I find that there have been permanent behavioral changes under AG ¶ 2(a)(6). In light of the relatively small amount of delinquent debt, and his manageable plan to methodically resolve it while avoiding new debt, I find that there is little to no potential for pressure, coercion, exploitation, or duress (AG ¶ 2(a)(8)); and that there is a low 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. 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.g: 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