



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



In the matter of:)
)
) ISCR Case No. 11-03904
)
Applicant for Security Clearance)

Appearances

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

08/17/2012

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 May 18, 2012, 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 June 4, 2012, and requested a hearing before an administrative judge. The case was assigned to me on July 10, 2012. DOHA issued a notice of hearing on July 10, 2012, scheduling the hearing for August 7, 2012. The hearing was convened as scheduled. Government Exhibits (GE) 1 through 10 were

admitted in evidence without objection. Applicant testified, called a witness, and submitted Applicant's Exhibits (AE) A through D, which were admitted without objection. DOHA received the hearing transcript (Tr.) on August 15, 2012.

Findings of Fact

Applicant is a 41-year-old employee of a defense contractor. He served in the U.S. military from 1989 until he was honorably discharged in 2003. He has worked for his current employer since 2003. He seeks to retain his security clearance, which he has held since 1989. He has a bachelor's degree. He is married with three children, ages 25, 23, and 21.¹

Applicant's finances were unremarkable before his wife's retail business failed in about 2007. She was the manager of a store for several years. In about 2004, Applicant and his wife bought the business, and it operated profitably for several years. Applicant worked long hours on his job on the military base and was uninvolved in the business other than assisting in its purchase. The real estate collapse and recession hit Applicant's state particularly hard. The store lost customers. Applicant incurred delinquent debts while attempting to keep the store open. They closed the store in late 2007 or early 2008.²

Applicant has been attempting to resolve the financial problems created by the failed business for several years. He paid or settled multiple debts before the SOR was issued.³

The SOR alleges five delinquent debts with balances ranging from \$65 to \$15,762. SOR ¶ 1.b alleges a \$14,480 debt to a credit union. SOR ¶ 1.d alleges a \$15,762 debt to a collection company on behalf of the same credit union. These two allegations are duplicate listings of the same underlying debt. Individual debts are discussed further below.

SOR ¶ 1.a alleges a delinquent debt of \$6,361 to a collection company on behalf of a bank. Applicant settled the debt for \$3,000 in July 2012. He paid the \$65 delinquent debt alleged in SOR ¶ 1.e in June 2012.⁴

Applicant has never received financial counseling, but his finances are currently in better shape. His wife is working and Applicant earns a good salary. His daughter moved back home with her two children for a period. He helped them financially before they moved out about six months ago. His son also moved back home. Applicant credibly testified that he intends to pay or settle the two remaining delinquent debts

¹ Tr. at 22, 42-43; GE 1, 9.

² Tr. at 18, 23-25, 35; GE 2, 3, 9.

³ Tr. at 26, 35-36, 52-53; GE 4, 7-10.

⁴ Tr. at 28-30, 33-35, 39; Applicant's response to SOR; GE 4, 5, 7, 10; AE B, C.

totaling about \$21,000 for the deficiencies owed on his repossessed pickup truck and motorcycle. He has been in contact with the creditors for those accounts. One of the creditors was unable to locate his account. Applicant is current on his other accounts.⁵

Applicant received numerous awards and decorations while serving in the military, and he deployed in support of Operations Desert Shield and Desert Storm. He volunteers in his community. A witness testified and Applicant submitted a number of documents and letters attesting to his character and excellent job performance. He is praised as a hard-working family man who displays integrity, reliability, trustworthiness, loyalty, and honesty.⁶

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."

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

⁵ Tr. at 27, 30-32, 36-41; GE 4, 5, 7, 10; AE A.

⁶ Tr. at 15-20; GE 6; AE D.

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 finances were unremarkable before his wife's retail business failed in about 2007. That business failure qualifies as a condition beyond his control. To be fully applicable, AG ¶ 20(b) also requires that the individual act responsibly under the circumstances.

Applicant has been actively working to resolve his financial problems since 2007. He paid or settled multiple debts before the SOR was issued, and he settled two of the debts alleged in the SOR. He credibly testified that he will pay or settle the remaining two debts. He has not received financial counseling, but his finances are back on track.

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) and 20(d) are applicable. AG ¶¶ 20(a) and 20(c) are 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.

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.e: 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 continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is granted.

Edward W. Loughran
Administrative Judge