



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
XXXXXXXXXXXX, XXXXX) ISCR Case No. 11-05283
)
Applicant for Security Clearance)

Appearances

For Government: Ray Blank, Esq., Department Counsel
For Applicant: *Pro se*

January 10, 2012

Decision

TUIDER, Robert J., Administrative Judge:

Applicant has mitigated security concerns pertaining to Guideline F (financial considerations). Clearance is granted.

Statement of the Case

On November 4, 2010, Applicant submitted an Electronic Questionnaires for Investigations Processing (e-QIP). On July 20, 2011, the Defense Office of Hearings and Appeals (DOHA) issued 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 (AG) effective within the Department of Defense for SORs after September 1, 2006.

Applicant answered the SOR on August 1, 2011, and DOHA received his answer on August 8, 2011. Department Counsel was prepared to proceed on September 28, 2011. The case was assigned to me on October 14, 2011. DOHA

issued a notice of hearing on October 17, 2011, scheduling the hearing for October 31, 2011. The hearing was held as scheduled.

The Government offered Government Exhibits (GE) 1 through 5, which were received into evidence without objection. Applicant offered Applicant Exhibits (AE) A through E, which were received into evidence without objection, and he testified on his own behalf.

I held the record open until November 18, 2011, to afford the Applicant the opportunity to submit additional documents on his behalf. Applicant submitted AE F through G, which were received into evidence. DOHA received the hearing transcript (Tr.) on November 8, 2011. The record closed on November 18, 2011.

Findings of Fact

Applicant admitted all of the SOR allegations, except for SOR ¶ 1d. His answers are incorporated as findings of fact. After a thorough review of the evidence, I make the following additional findings of fact. I found Applicant's testimony to be credible.

Background Information

Applicant is a 51-year-old field service representative, who has worked for a defense contractor since November 2010. Upon being hired, he was granted an interim secret security clearance and deployed to Afghanistan. However, his interim security clearance was revoked as a result of these proceedings and he was required to return to the United States. Applicant seeks a security clearance, which is a requirement of his continued employment. He has been assured by his employer that he will be allowed to resume his duties in Afghanistan if he successfully vets for a security clearance. (Tr. 11-12, 15-17, 59-60, GE 1, AE D.)

Applicant graduated from high school in June 1978. He served in the U.S. Marine Corps from in June 1978 to March 1988, and was honorably discharged as a sergeant (pay grade E-5). While assigned to Headquarters, Marine Corps, Applicant was granted a top secret security clearance with access to sensitive compartmented information. Applicant's military occupational specialty was 0121 (personnel clerk) and 8511 (drill instructor). During Applicant's ten years in the Marine Corps, he was deployed to Okinawa two times and finished his enlistment as a drill instructor at Parris Island. He was awarded the Defense Meritorious Service Medal as a sergeant while assigned to the Rapid Development Joint Task Force, which is now part of U.S. Central Command, MacDill AFB. (GE 1, Tr. 17-20, 27-29.)

After Applicant's Marine Corps service, he completed 20 plus years with a major metropolitan police department from April 1988 to June 2008. During his time with the police department, he was assigned to one of the most violent sections within his department's jurisdiction. After "doing his time" on the streets, he applied for and

was accepted to the SWAT team. He retired from the police department after completing 13 years with the SWAT team as a senior sniper and as his department's senior breacher. (Tr. 20-21, 30.)

Applicant was previously married from September 1982 to July 1988, and that marriage ended by divorce. He remarried in November 1991. Applicant has a 27-year-old daughter who lives with his former wife, and a 16-year-old son who lives with him and his second wife. His wife is currently working two jobs – as an interim chief financial officer (CFO) and as a consultant. She was recently offered a permanent position as CFO with an anticipated annual salary of \$83,000 starting in November 2011. (GE 1, Tr. 21-24.)

Financial Considerations

Applicant's background investigation addressed his financial situation and included the review of his November 2010 e-QIP, his two sets of May 2011 DOHA Interrogatories; as well as his December 2010 and May 2011 credit reports. (GE 1 – 5.) Applicant's SOR alleged eight separate debts totaling \$67,732. (SOR ¶¶ 1a – 1h.)

Upon Applicant's retirement from the police department in June 2008 located in State A, he and his wife decided to relocate to a warmer climate in State B where they planned to continue working and eventually retire. Applicant and his wife sold their home in State A, and in the process lost their home owners income tax deduction for a period of time until after they moved to State B and purchased a home. Applicant found employment in State B as a manager of a well-known cigar store earning approximately \$400 per week, and his wife found employment as a CFO for a non-profit company with an annual salary of \$84,000. After settling in State B, Applicant and his wife were living comfortably within their means. Then in November 2009 without warning, Applicant's wife was laid off. Despite her efforts to find employment, she remained unemployed for almost two years. (Tr. 30-32, 41-43, 59-62, 65, 67-69.)

Applicant had factored his wife's income into his family's standard of living and budget. This sudden loss of income wreaked havoc on Applicant's financial situation and led to the debts listed in the SOR. Applicant and his wife never had financial problems until this time. In fact, they maintained a sterling credit record and were able to purchase their new home in State B without difficulty. (Tr. 42-46, GE 2 – GE 5.) To address his debts and family income shortfall, Applicant sought a job from his current employer. His compensation was set at \$12,516 per month while deployed to Afghanistan and he reasonably anticipated that he would be debt-free in a relatively short time. As noted above, Applicant was required to return to the United States after he was in Afghanistan for approximately two months, and he is currently receiving unemployment benefits. (Tr. 46-50 56-57, 69.)

When Applicant was unable to pay his creditors, he contacted them to apprise them of the change in his financial situation. Some of the creditors were willing to work with him, and others were not. In spite of Applicant's current income shortfall, he has

managed to put together a plan that addresses all of his debts. Specifically, he has set up a comprehensive payment plan that addresses seven of the eight SOR debts alleged (SOR ¶¶ 1b – 1h). Once Applicant has made sufficient headway with those seven debts, he plans to address his last remaining large debt (SOR ¶ 1a). His monthly budget reflects that Applicant lives a modest lifestyle and further demonstrates that he is living within his means. Applicant's monthly income is currently derived from his police department pension (\$3,038), his unemployment benefits (\$968), and his wife's income (\$5,194), for a total monthly income of \$9,200. His net monthly remainder after paying all his bills is \$2,928, which he is applying to his SOR debts. (Tr. 49-54, 56-58, 69-76, 78-80, AE E – G.)

In conclusion, Applicant has a viable plan in place for making payments to seven of the eight creditors. When Applicant has made sufficient headway with those creditors, he plans to pay off that remaining creditor. Applicant remains current on the rest of his monthly bills. His budget further demonstrates that he maintains a modest lifestyle and is living within his means.

Character Evidence

Applicant submitted two work-related reference letters. The first letter is from a senior trainer (ST) with a defense contractor, who was familiar with Applicant's in-country performance while in Afghanistan. The ST stated that he would "not only trust [Applicant] with the handling of classified material but with my life also." He provided ample comments in his reference letter to justify such a statement. (AE C.)

The second letter is from the director of operations (DOO) of his sponsoring defense contractor. The DOO discussed Applicant's work performance and contribution to their mission in Afghanistan. It is clear that the DOO views Applicant in a very favorable light. His comments perhaps are best summarized, "...the loss of [Applicant] ... in Afghanistan is a great loss to the warfighters and commanders in that theater He was the "poster child" of the type of individual we wanted downrange assisting in the current US combat operations." The DOO concluded by saying that his company would welcome Applicant back. (AE D.)

Policies

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

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 as to obtaining 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 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.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

AG ¶ 18 articulates the security concern relating to financial problems:

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 provides two financial considerations disqualifying 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 history of delinquent debt is established by his admissions and the evidence presented. As indicated in SOR ¶¶ 1a to 1h, he had eight delinquent debts totaling about \$67,732 that have been in various states of delinquency for several years. The Government established the disqualifying conditions in AG ¶¶ 19(a) and 19(c).

Five 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 conduct does not warrant full application of AG ¶ 20(a) because there is more than one delinquent debt and his financial problems are not isolated. His debt is a “continuing course of conduct” under the Appeal Board’s jurisprudence. See ISCR Case No. 07-11814 at 3 (App. Bd. Aug. 29, 2008) (citing ISCR Case No. 01-03695 (App. Bd. Oct. 16, 2002)). Nevertheless, he receives partial credit under AG ¶ 20(a) because the debt occurred under circumstances that are unlikely to recur and does not cast doubt on his current reliability, trustworthiness, or good judgment.

Applicant merits full credit under AG ¶ 20(b) because his wife’s sudden, unexpected lay-off in November 2009 that resulted in the loss of \$84,000 of income was beyond his control and he acted responsibly under the circumstances. Even

though he did not have the funds for full repayment, he remained in contact with his creditors during this timeframe and has taken reasonable steps to resolve his debts.¹

AG ¶ 20(c) is partially applicable even although Applicant did not seek financial counseling. He has, however, produced evidence that reflects he is living within his means and has regained financial responsibility. There are clear indications that his financial problems are being resolved. Furthermore, there is sufficient information to establish partial if not full mitigation under AG ¶ 20(d).² Applicant has paid, is paying, is attempting to pay, or has otherwise resolved seven out of eight debts. Applicant indicated that he will address that remaining debt when able to do so. Given the funds available to him, his plan is reasonable and prudent. AG ¶ 20(e) is not applicable because Applicant has not challenged the legitimacy of the debts.

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 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

¹“Even if Applicant's financial difficulties initially arose, in whole or in part, due to circumstances outside his [or her] control, the Judge could still consider whether Applicant has since acted in a reasonable manner when dealing with those financial difficulties.” ISCR Case No. 05-11366 at 4 n.9 (App. Bd. Jan. 12, 2007) (citing ISCR Case No. 99-0462 at 4 (App. Bd. May 25, 2000); ISCR Case No. 99-0012 at 4 (App. Bd. Dec. 1, 1999); ISCR Case No. 03-13096 at 4 (App. Bd. Nov. 29, 2005)). A component is whether he maintained contact with his creditors and attempted to negotiate partial payments to keep his debts current.

²The Appeal Board has previously explained what constitutes a “good-faith” effort to repay overdue creditors or otherwise resolve debts:

In order to qualify for application of [the “good-faith” mitigating condition], an applicant must present evidence showing either a good-faith effort to repay overdue creditors or some other good-faith action aimed at resolving the applicant's debts. The Directive does not define the term ‘good-faith.’ However, the Board has indicated that the concept of good-faith ‘requires a showing that a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation.’ Accordingly, an applicant must do more than merely show that he or she relied on a legally available option (such as bankruptcy) in order to claim the benefit of [the “good-faith” mitigating condition].

(internal citation and footnote omitted) ISCR Case No. 02-30304 at 3 (App. Bd. Apr. 20, 2004) (quoting ISCR Case No. 99-9020 at 5-6 (App. Bd. June 4, 2001)).

motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

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. AG ¶ 2(c). The discussion in the Analysis section under Guideline F is incorporated in this whole-person section. However, further comments are warranted.

Applicant's record of military service and superb employment weighs in his favor. There is no evidence of any security violation during the time Applicant may have held a security clearance. He is a law-abiding citizen. He is current on his day-to-day expenses, lives within his means, and his SOR debts are being addressed in a meaningful and thoughtful manner. 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 demonstrate 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. ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) (internal citations omitted).

Applicant established a meaningful plan for resolving his debts. He is making a significant contribution to the national defense. His company fully supports him and recommends him for a security clearance. Due to circumstances beyond his control, his debts became delinquent. Based on his background and demonstrated record of trustworthiness, there is sufficient reason to believe that Applicant will overcome this temporary setback. Until his wife lost her job, he has established a history of financial responsibility. These factors show responsibility, rehabilitation, and mitigation.

Both the mitigating conditions under Guideline F and the whole-person analysis support a favorable decision. I specifically considered Applicant's ten years of military service in the Marine Corps, his 20 years of high risk service as a police officer, his years of financial responsibility before falling into debt, his plan for financial recovery and substantial steps he has taken to resolve his financial situation, his potential for future service as a defense contractor in a demanding and critical position in Afghanistan, and his testimony and demeanor. After weighing the disqualifying and mitigating conditions, and all the facts and circumstances, in the context of the whole-person, I conclude he has mitigated the financial considerations security concerns.

I take this position based on the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), my careful consideration of the whole person factors and supporting evidence, my application of the pertinent factors under the adjudicative process, and my interpretation of my responsibilities under the adjudicative guidelines. Applicant has fully mitigated or overcome the government's case. For the reasons stated, I conclude he is eligible for 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 1a to 1h: For Applicant

Conclusion

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue Applicant's eligibility for a security clearance. Eligibility for a security clearance is granted.

Robert J. Tuider
Administrative Judge