



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 11-05310
)
)
Applicant for Security Clearance)

Appearances

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

For Applicant: *Pro se*

January 31, 2013

DECISION

ROSS, Wilford H., Administrative Judge:

Applicant submitted his Electronic Questionnaire for Investigations Processing (e-QIP) on November 30, 2010. (Government Exhibit 3.) On June 4, 2012, the Department of Defense 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 issued after September 1, 2006.

Applicant answered the SOR in writing on June 24, 2012, and requested a decision without a hearing (Answer). On August 14, 2012, Applicant requested a hearing before an administrative judge. Department Counsel was prepared to proceed on August 15, 2012. This case was assigned to me on August 29, 2012. DOHA issued a notice of hearing on September 4, 2012. I convened the hearing as scheduled on October 9, 2012. The Government offered Government Exhibits 1 through 9, which

were received without objection. Applicant testified on his own behalf, and submitted Applicant Exhibits A through C, which were also received without objection. Applicant asked that the record remain open for the receipt of additional documents. Applicant submitted Applicant Exhibit D on October 23, 2012, which was admitted without objection. DOHA received the transcript (Tr.) of the hearing on October 17, 2012. The record closed on October 23, 2012. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

Findings of Fact

Applicant was 59 at the time of the hearing, and married. He is employed by a defense contractor and seeks to retain 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 all the factual allegations in the SOR, except as described under 1.d, below. Those admissions are findings of fact. He also submitted additional information to support his request for a security clearance.

Applicant was a career Federal employee, working for one of the armed services, retiring in late 2008. At that point Applicant and his wife moved from State One to State Two, where they owned a second home. The downturn in the economy, and family issues, made it impossible to continue to live in State Two. Finally, in November 2009 Applicant returned to State One and was able to get a job working for a defense contractor at the same base where he worked as a Federal employee. Applicant's financial difficulties were partially the result of these two moves, as well as the drop in income brought about by his retirement. In addition, Applicant's wife has been unable to find employment due to physical problems, which began in 2010. (Answer; Government Exhibit 6 at 4; Tr. 26.)

The SOR contains four past-due debts, totalling approximately \$40,564. The existence of these debts is supported by credit reports concerning the Applicant dated December 4, 2010; March 1, 2012; August 2, 2012; and October 4, 2012. (Government Exhibits 4, 5, 7 and 9.)

The status of the debts set forth in the SOR is as follows:

1.a. Applicant admits owing this past-due credit card debt, originally in the amount of \$9,681. Applicant has made a payment arrangement with the successor to this creditor. He has been making payments on this account for approximately two years. His current monthly payment is \$158.85. As of September 21, 2012, he owed \$8,578. This debt is being resolved. (Government Exhibit 6 at 14-15; Applicant Exhibit A at 2, 6, 8; Tr. 31-37.)

1.b. Applicant admits owing this past-due credit card debt in the amount of \$18,187.¹ Applicant has made a payment arrangement with the successor to this creditor. He has been making payments on this account for approximately two years. His current monthly payment is \$180. This debt is being resolved. (Government Exhibit 6 at 14, 16; Applicant Exhibit A at 3, 7, 8; Tr. 37-42.)

1.c. Applicant admits owing this past-due credit card debt, originally in the amount of \$7,263. Applicant has made a payment arrangement with the successor to this creditor. He has been making payments on this account for approximately two years. His current monthly payment is \$50.26. As of September 21, 2012, he owed \$6,891. This debt is being resolved. (Government Exhibit 6 at 14, 22; Applicant Exhibit A at 1, 4, 5; Tr. 42-43.)

1.d. The current situation surrounding this debt is unclear. Applicant admitted owing this past-due credit card debt, originally in the amount of \$7,144, in his Answer. Applicant states he unsuccessfully made attempts to resolve this debt through negotiated monthly payments in 2010. The debt was eventually referred to a law firm, who filed suit against Applicant in May 2012. Applicant retained counsel, who filed an Answer to the Complaint in June 2012, which disputes the validity of the debt. A case management meeting was set for November 9, 2012. This debt is unresolved, but in litigation to determine its status and Applicant's liability. (Applicant Exhibits B and D; Tr. 43-48, 58-60.)

The financial statement prepared by Applicant in April 2012 showed a monthly deficit of \$284. He testified that annually he is breaking even on his finances, if not a bit ahead. He has no credit cards, and his credit reports show no delinquencies other than those in the SOR. (Government Exhibit 9; Applicant Exhibit C; Tr. 48-52.)

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,

¹The SOR was amended to show the past-due amount of \$18,178, in accordance with Directive ¶ E3.1.17. (Tr. 60-61.)

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 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 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 over \$40,000 in past-due debt that was not resolved as of the date the SOR was issued. 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 the above mitigating conditions apply to Applicant. His financial situation was caused by a drop in his income, due to his retirement, two moves, and his wife’s physical problems. There is no evidence of poor judgment on his part. Rather, as shown above, he has been attempting to resolve this indebtedness once he regained employment.

Three of the four creditors are content with the payment arrangements they have made with Applicant. The fourth debt is in litigation. The credit reports in the file show that Applicant’s financial situation is stable. I find that “there are clear indications that the problem is being resolved or is under control,” as required by AG ¶ 20(c).

As stated, Applicant has made payment arrangements with three of his creditors. Accordingly, based on the particular facts of this case, I find that he has “initiated a good-faith effort to repay overdue creditors or otherwise resolve debts,” as required by AG ¶ 20(d). As the DOHA Appeal Board has said, “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.”²

Finally, Applicant is in litigation with the creditor in SOR 1.d. That litigation was not resolved as of the date the record closed. Under the particular facts of this case, I find that his conduct in obtaining an attorney and filing a responsive pleading bring him under the orbit of AG ¶ 20(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

²ISCR 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)).

documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.”

The Appeal Board has also said:

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.³

Applicant has acted in a way that shows good judgment, making the best he could out of a very difficult situation. All of these mitigating conditions apply to the facts of this case. Guideline F is found for Applicant.

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

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

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, they were brought about by Applicant's unexpected loss of income due to the drop in the economy, his retirement, his wife's injuries, and two moves within a brief period of time. Under AG ¶ 2(a)(2), I have considered the facts of Applicant's debt history. As stated above, this situation concerning the past-due debts is not indicative of his usual conduct. Based on the record, I find that there have been permanent behavioral changes under AG ¶ 2(a)(6). Accordingly, I find that there is little to no potential for pressure, coercion, exploitation, or duress (AG ¶ 2(a)(8)). There is a low likelihood of recurrence because he is resolving his delinquent debts and is currently living within his means. (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.d: 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