



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



In the matter of:)
)
) ISCR Case No. 11-05928
)
Applicant for Security Clearance)

Appearances

For Government: Julie R. Mendez, Esq., Department Counsel
For Applicant: John L. Mays, Esq.

11/2/2012

Decision

CURRY, Marc E., Administrative Judge:

Applicant mitigated the financial considerations security concerns. Clearance is granted.

Statement of the Case

On April 27, 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 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.

On May 29, 2012, Applicant answered the SOR, admitting all of the allegations. The case was assigned to me on September 4, 2012. A notice of hearing was issued on September 11, 2012, scheduling the case for October 4, 2012. I held the hearing as

scheduled and received four Government exhibits (GE 1-4) and 22 Applicant exhibits. (AE A-O) Also, I considered the testimony of Applicant and his father. DOHA received the transcript (Tr.) on October 12, 2012.

Findings of Fact

Applicant is a 29-year-old, single man who lives with his fiancée and their child, age two. Applicant has another child, age four, from a previous relationship. The mother of the four-year-old child has physical custody.

In 2000, after graduating from high school, Applicant joined the U.S. Navy, where he served honorably through his discharge in 2005. As a naval air crewman, he flew on numerous combat missions in support of Operation Iraqi Freedom and Operation Enduring Freedom. (AE C at 7) According to his command, he was a team builder and inspiring motivator who greatly exceeded standards. (AE C at 6) Applicant held a top secret clearance with sensitive compartmented information during his entire stint in the Navy.

Shortly after leaving the Navy, Applicant enrolled in college. He financed his education primarily with the GI bill, together with a combination of private loans and Pell grants. (Tr. 47) In 2007, Applicant “lost his focus” on school. (Tr. 31) Consequently, his grades dropped, he flunked out in 2008, and he lost his financial aid. (Tr. 46, 51-52) Applicant attributes his lost of focus to immaturity.

Applicant had already been struggling to keep up with his credit card debts when he was receiving financial aid and enrolled in school.¹ When he was not in school, he completely lost control of his finances. (Tr. 60) The menial, part-time jobs that he worked did not enable him to keep up with his finances.

Applicant returned to school in the fall of 2009 and successfully re-applied for financial aid. In 2010, Applicant was offered a part-time job in another state. Because it was a professional opportunity, Applicant took the job, relocated, and transferred to another school. (Tr. 51) By 2012, he had earned a bachelor’s degree in management science. (Tr. 71)

By the time Applicant returned to school in 2009, he had approximately \$25,000 in delinquent debt. Applicant owed approximately \$22,500 of this debt to two credit card companies, as listed in subparagraphs 1.b and 1.c. Subparagraph 1.a, totaling \$346, is a bill Applicant incurred while in college when he misplaced his cable television box. (Tr. 24) Subparagraph 1.d is a medical bill totaling \$1,114. Subparagraphs 1.e and 1.f are medical bills, totaling approximately \$1,100, for emergency room service Applicant received on two separate occasions after leaving the military. Subparagraph 1.g,

¹While Applicant was enrolled in school, there was a \$25,000 gap between the tuition and the amount of financial aid that Applicant was receiving. (Tr. 47)

totaling \$163, is a fine for overdue library books. Additionally, Applicant owed approximately \$6,000 to the same creditor listed in subparagraph 1.c, on another account. (Tr. 64) This debt was not listed on the SOR.

Applicant began working full time in January 2011. He continued to work at his part-time job. As his annual income gradually began to increase, he started contacting creditors to pay his delinquencies. By September 2011, he had paid the medical account listed in subparagraph 1.f and the overdue library fine, as listed in subparagraph 1.g. (GE M, O) By September 2012, he had satisfied the medical account listed in subparagraph 1.e, and had negotiated a settlement for the unlisted debt, satisfying it with an \$1,800 lump-sum payment. (GE H, N) In sum, these satisfied debts totalled approximately \$2,700.

The creditor listed in subparagraph 1.b, refused to negotiate a settlement, and demanded \$16,686, the entire debt balance, in one lump sum. (Tr. 61-62) Unable to afford a lump-sum payment, Applicant consulted an attorney who recommended that he file for Chapter 7 bankruptcy protection. Applicant took the attorney's advice, and filed for bankruptcy protection in February 2012. (Answer at 2) On August 27, 2012, the court discharged approximately \$30,000 of debt, including unlisted debt, and those listed in subparagraphs 1.a through 1.d. (GE G)

In June 2011, Applicant's employer promoted him to a full-time employee. In January 2012, Applicant began working another part-time job. Applicant earns a total of approximately \$50,000 from both jobs. (Tr. 72) Applicant maintains a budget. Although he has minimal discretionary income, he has managed to invest \$1,700 in his 401k account since beginning the part-time job in January 2012. Also, he has saved approximately \$1,000 for his children's college fund. (Tr. 59) He is current on his child support payments and has no delinquent debt. (Tr. 41)

Applicant's primary employer is a consulting firm. (Tr. 71) He is a junior analyst, focusing on program development. (Tr. 76) His father is the firm's owner. (Tr. 78) According to Applicant's father, he has vastly matured over the past few years. (Tr. 78)

Policies

The adjudicative guidelines list potentially disqualifying conditions and mitigating conditions. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, they are applied together with the factors listed in the adjudicative process. 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 applicant or proven by department counsel” The applicant has the ultimate burden of persuasion for obtaining a favorable security decision.

Analysis

Guideline F, Financial Considerations

Under this guideline, “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” (AG ¶ 18). Applicant’s history of financial problems triggers the application of AG ¶ 19(a), “inability or unwillingness to satisfy debts,” and AG ¶ 19(c), “a history of not meeting financial obligations.”

The following 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; and
- (d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant’s financial problems began after he flunked out of school and lost his financial aid. Because Applicant’s academic problems resulted from his immaturity rather than circumstances beyond his control, AG ¶ 20(b) does not apply.

In 2009, Applicant re-enrolled in college, and graduated in 2012. While enrolled in college, he obtained a professional job, supplemented his income with a part-time job, and began satisfying his debts. He satisfied approximately \$2,700 of delinquent debt, including \$1,800 which was not listed on the SOR.

Applicant's debt reduction efforts were not entirely successful. The creditor holding the largest debt refused to negotiate a settlement, prompting Applicant, upon his attorney's advice, to file for Chapter 7 bankruptcy protection. Subsequently, all of Applicant's remaining debts, including debts that were not listed on the SOR, were discharged.

When evaluating security-clearance worthiness, obtaining the discharge of one's debts through the bankruptcy process is not the optimal manner of addressing delinquencies. Nevertheless, it is an acceptable legal remedy. Moreover, Applicant did not utilize this option until his good-faith efforts at negotiating a payment plan with the creditor holding the largest debt were rejected. Also, while the bankruptcy process was pending, he chose to satisfy approximately \$2,700 of his delinquent debt. Under these circumstances, I conclude AG ¶¶ 20(a) and 20(c) apply, and AG ¶ 20(d) partially applies.

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. 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.

Applicant is a veteran who served in combat. During his stint in the military, he was well-respected by his supervisors. A few years after leaving the military, however, Applicant's judgment lapsed, as he failed to focus on school and flunked out. During the next three years, Applicant demonstrated maturity by re-enrolling in school and finishing. This accomplishment is particularly impressive because he was working two jobs for part of the period that he was re-enrolled in school.

Applicant currently has no debts. He maintains a budget. Although he has minimal discretionary income, he is paying his child support payments, saving money for his children's college education, and investing money in his 401k account. Also, Applicant has a part-time job. Applicant's maintenance of a part-time job while having a full-time job is strongly indicative of his intent to remain financially stable. These facts constitute ample evidence of rehabilitation, and render the likelihood of the recurrence of his financial problems minimal. I conclude Applicant has mitigated the security concern.

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.g: 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.

MARC E. CURRY
Administrative Judge