



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



In the matter of:)
)
 REDACTED) ISCR Case No. 11-06506
)
 Applicant for Security Clearance)

Appearances

For Government: Tovah A. Minster, Esq., Department Counsel
For Applicant: Nancy A. Thoma, Esq.

08/13/2012

Decision

MENDEZ, Francisco, Administrative Judge:

Applicant mitigated the Financial Considerations and Personal Conduct concerns. After graduating from college, he was unable to find a job and fell behind on his student loans and credit cards that he had amassed while going to school. He has brought his student loans current, paid his credit cards, and put his financial house in order. He did not falsify his security clearance application when he omitted his delinquent debts. Clearance is granted.

Procedural History

On May 4, 2012, the Defense Office of Hearings and Appeals (DOHA) sent Applicant a Statement of Reasons (SOR), setting out security concerns under Guideline F (Financial Considerations) and Guideline E (Personal Conduct).¹ On May 30, 2012, Applicant answered the SOR and requested a hearing.

¹ DOHA took this action 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.

On June 20, 2012, Department Counsel indicated the Government was ready to proceed with a hearing. I was assigned the case on June 29, 2012 and, after coordinating with the parties, scheduled the hearing for July 25, 2012. At hearing, Department Counsel offered Government Exhibits (GE) 1 – 6, which were admitted without objection. Applicant appeared at the hearing with counsel, testified, and offered Applicant's Exhibits (AE) A - I.² The transcript (Tr.) was received on August 2, 2012.

Findings of Fact

Applicant is in his early thirties. He went to an in-state college from 2000 to 2005. He worked while going to college, but still had to take out about \$15,000 in student loans to pay for his education. He also amassed credit card debt to pay for living expenses while going to school. He left school in 2005 and moved back home with his mother with the expectation that he would be able to secure a well-paying job in the near term. He was unemployed for approximately six months and was only able to find work as a bartender, which did not pay enough to cover his monthly expenses and the debt he had accumulated while going to school. Applicant admits that after leaving college he did not know how much debt he had amassed, nor did he have a plan to pay the debts. He defaulted on his student loans and a number of other financial obligations, including his credit cards. (Tr. at 17-18, 39-40, 49-50; GE 1; AE G – H)

Applicant was able to secure a job with his current employer, his first professional job, in March 2009. He married his wife the following year and they have a child. When they started house hunting, Applicant became aware of his delinquent debts and contacted his creditors. He was able to settle and pay eight debts totaling approximately \$4,500 prior to the issuance of the SOR. He also consolidated his student loans and brought them current. In order to save money and repair his credit, Applicant and his young family moved in with his in-laws. Applicant was then able to satisfy the remaining debts listed on the SOR, including the credit card debt from college. (Tr. at 17-29, 31-33, 38-40, 42; GE 2; AE A – I; HE III)

Applicant testified regarding the significant and lasting impact recovering from his financial trouble has had on him. He and his family live within a budget. He does not have any credit cards, and the only consumer debt that he and his wife have is a used car that has a modest monthly car payment. He has saved over \$12,000 in a dedicated savings account and has about \$3,000 saved in an employer-sponsored retirement account. He has not amassed any other debt. (Tr. at 29-30, 40-41; GE 2)

Applicant requires a security clearance for his job. On June 9, 2010, he filled out and submitted a security clearance application (SCA). This was Applicant's first application for a security clearance. He disclosed derogatory information on his SCA, including an alcohol-related arrest and marijuana use. (GE 1 at 49-51) However, when Applicant attempted to answer the questions regarding his finances, he was unable to because the online version of the SCA that he was filling out required him to input specific information about his delinquent debts and he did not have the information. He

² See Hearing Exhibits (HE) I and II for a listing of the parties' exhibits.

did not know how to get a credit report in order to get the needed information and was too embarrassed to ask his parents for assistance. He also could not mark “yes” to the pertinent questions regarding his finances and type in that he had some delinquent debts in general, because the online version would not allow him to complete the application without specific information about his debts. Applicant knew he would be interviewed after submitting his SCA, and decided at that moment to mark “no” to the questions about his finances and to bring the negative information about his debts to the interviewer’s attention. A month later, Applicant appeared for his background interview. He voluntarily disclosed that he had financial issues and, with the assistance of the investigator who was able to access Applicant’s credit report, was able to discuss each of his delinquent debts in detail. He later voluntarily provided information about his finances and other issues in response to DOHA interrogatories. (Tr. at 18, 33-36, 45-49; GE 2; GE 3; Answer)

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 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 Government must present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.14. On the other hand, an 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.” Directive ¶ E3.1.15. An applicant has the ultimate burden of persuasion to obtain a favorable security decision. In resolving this ultimate question, an administrative judge must resolve “[a]ny doubt concerning personnel being considered for access to classified information . . . in favor of national security.” AG ¶ 2(b).

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

classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Analysis

Guideline F, Financial Considerations

The security concern relating to financial problems is articulated 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.

"This concern is broader than the possibility that an applicant might knowingly compromise classified information in order to raise money in satisfaction of his or her debts."³ The concern also encompasses financial irresponsibility, which may indicate that an applicant would also be irresponsible, unconcerned, negligent, or careless in handling and safeguarding classified information.

Applicant accumulated a significant amount of college-related debt. A situation that is neither uncommon, nor sufficient on its own to raise a concern. However, after leaving college in 2005, Applicant defaulted on his student loans and became delinquent on his other debts. He did not address his debts for several years thereafter. It is this history of financial irresponsibility that raises the financial considerations concern and establishes the following disqualifying conditions under AG ¶ 19:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

However, an applicant's past or current indebtedness is not the end of the analysis under Guideline F, because "[a] security clearance adjudication is not a proceeding aimed at collecting an applicant's debts. Rather, it is a proceeding aimed at

³ ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012). See also ISCR Case No. 10-00925 at 2 (App. Bd. June 26, 2012) (The Guideline F concern "is broader than a concern that an applicant might commit criminal acts in order to pay off his debts. Rather, Guideline F requires a judge to consider the totality of an applicant's circumstances—the reasons underlying his financial problems and his efforts to address them—in order to arrive at a conclusion as to whether the applicant possesses the judgment and self-control required of those who have access to national security information.")

evaluating an applicant's judgment, reliability, and trustworthiness."⁴ Accordingly, Applicant may mitigate the financial considerations concern by establishing one or more of the mitigating conditions listed under AG ¶ 20. The relevant mitigating conditions are:

(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 situation is, in part, due to matters beyond his control, namely, a long period of unemployment and underemployment. However, AG ¶ 20(b) is not fully applicable because Applicant did not address his debts in a responsible fashion until relatively recently.

On the other hand, AG ¶¶ 20(a), (c), and (d) fully apply. Applicant initiated a good-faith effort to resolve his delinquent debts before the SOR was issued. He fully resolved several of his debts, including his student loans, before the SOR was issued. He has satisfied the remaining debts listed in the SOR and has not amassed any other debt. It was clear by his demeanor while he testified that this experience has had a significant impact on Applicant. His actions over the past three plus years has been consistent with his testimony. He has slashed his living expenses by moving in with his in-laws, and used the savings to pay his outstanding debt and save a substantial sum. In short, Applicant has put his financial house in order and his past history of financial trouble no longer casts doubt on his reliability, trustworthiness, or good judgment.

Guideline E, Personal Conduct

The personal conduct concern is set forth at AG ¶ 15:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect

⁴ ISCR Case No. 07-08049 at 5 (App. Bd. Jul. 22, 2008). See also ISCR Case No. 09-07916 at 3 (App. Bd. May 9, 2011).

classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

The guideline notes several disqualifying conditions that could raise a security concern under AG ¶ 16, and only the following warrants discussion:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities.

The security clearance process is contingent upon the honesty of all applicants. It begins with the answers provided in the SCA. An applicant should disclose any potential derogatory information. However, the omission of material, adverse information standing alone is not enough to establish that an applicant intentionally falsified his or her SCA. Instead, an administrative judge must examine the facts and circumstances surrounding the omission to determine an applicant's true intent.⁵

Applicant did not deliberately fail to disclose his delinquent debts on his SCA. He genuinely did not know the specifics regarding his debts at the time he submitted his SCA. He thought that by bringing the information about his finances to the investigator's attention during the ensuing background interview he would satisfy his obligation to reveal this potentially adverse information. His testimony is fully consistent with the evidence. He voluntarily disclosed other adverse information about his past on the SCA that was far more derogatory. More importantly, prior to being confronted with the adverse information about his finances, Applicant voluntarily revealed to the agent that he had delinquent debts, but did not know the specifics of his debts due to his financial irresponsibility.⁶ He then fully cooperated with the background interview and the processing of his security clearance application, including voluntarily answering interrogatories posed to him by DOHA. This level of complete openness and full cooperation is wholly consistent with what is expected of those granted a clearance.

Furthermore, this was Applicant's first application for a security clearance. He was far from the sophisticated applicant who would be familiar with the questions on the SCA, the security clearance process in general, and steps one can take when confronted with ambiguous questions or other issues with the SCA. Moreover, I had an opportunity to observe Applicant's demeanor as he was questioned by counsel and I

⁵ See *generally* ISCR Case No. 02-12586 (App. Bd. Jan. 25, 2005); ISCR Case No. 02-15935 (Appl. Bd. Oct. 15, 2003).

⁶ AG ¶ 17(a): "the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts."

thoroughly questioned him myself. I found him credible.⁷ Applicant mitigated the concerns raised by the omission of his delinquent debts from his SCA.

Whole-Person Concept

Under the whole-person concept, an administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of an applicant's conduct and all the relevant circumstances. An administrative judge should consider the nine factors listed at AG ¶ 2(a).⁸ I incorporate my above analysis herein and note some additional whole-person factors. Applicant's financial trouble began when he was a young man. He could not find a job that paid him enough to satisfy the debts he had amassed while going to college. He worked as a bartender for several years until securing his current job. He has matured greatly over the past few years, as evidenced by his responsible decision to move in with his in-law, which may not result in immediate personal satisfaction but will secure his and his young family's financial future. Overall, the record evidence leaves me with no questions or doubts about Applicant's eligibility and suitability for a security clearance.

Formal Findings

I make the following formal findings regarding the allegations in the SOR:

Paragraph 1, Guideline F (Financial Considerations):	FOR APPLICANT
Subparagraphs 1.a – 1.m:	For Applicant
Paragraph 2, Guideline E (Personal Conduct):	FOR APPLICANT
Subparagraphs 1.a – 1.b:	For Applicant

⁷ An administrative judge is not required to accept an applicant's bare assertions, especially when such assertions are contradicted by the record evidence, or are implausible, or are internally inconsistent with other statements made by an applicant. Applicant's statements that he lacked knowledge about his debts and the difficulty he encountered with the SCA were initially met with skepticism. However, such skepticism is not a substitute for substantial evidence. More importantly, Applicant met his heavy burden in demonstrating that he did not deliberately falsify his SCA. *Contrast with*, ISCR Case No. 09-00266 (App. Bd. Jan. 26, 2012) (judge's finding that applicant deliberately falsified his SCA when he omitted adverse employment information was supported by circumstantial evidence of applicant's state of mind).

⁸ The non-exhaustive list of adjudicative factors are: (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.

Conclusion

In light of the record evidence and for the foregoing reasons, it is clearly consistent with the national interest to grant Applicant access to classified information. Applicant's request for a security clearance is granted.

Francisco Mendez
Administrative Judge