



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



In the matter of:)	
)	
)	ISCR Case No. 11-07478
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Braden M. Murphy, Esquire, Department Counsel
For Applicant: *Pro se*

03/11/2013

Decision

WHITE, David M., Administrative Judge:

Applicant incurred over \$55,000 in delinquent debts since 2007, when he lost his last steady employment before starting his current job two years ago. After failing to negotiate manageable repayment agreements, he filed for and is complying with a Chapter 13 bankruptcy. The evidence is sufficient to mitigate resulting security concerns. Based upon a review of the pleadings, testimony, and exhibits, eligibility for access to classified information is granted.

Statement of the Case

Applicant submitted a security clearance application (SF-86) on March 2, 2011. On May 11, 2012, the Department of Defense 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 for Determining Eligibility for Access to Classified Information*, effective within the Department of Defense after September 1, 2006.

Applicant answered the SOR in writing on June 7, 2012 (AR1), and again on July 26, 2012 (AR2), and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on November 19, 2012. The case was assigned to me on November 28, 2012. The Defense Office of Hearings and Appeals (DOHA) issued a Notice of Hearing on January 8, 2013, and I convened the hearing, as scheduled, on January 23, 2013. The Government offered Exhibits (GE) 1 through 4, which were admitted without objection, and Hearing Exhibit (HE) I, a Government exhibit list. Applicant offered Exhibits (AE) A through D, and testified on his own behalf. I granted Applicant's request to leave the record open for submission of additional evidence until February 7, 2013. DOHA received the transcript of the hearing (Tr.) on February 6, 2013. Applicant timely submitted AE E, which was admitted without objection, and the record closed as scheduled.

Findings of Fact

Applicant is a 42-year-old employee of a defense contractor, where he has worked for two years with an interim security clearance. He is recently separated, after 20 years of marriage, with three teenage children. He is a high school graduate, with no prior military service. He worked for six years as a project and site manager for a residential construction company, but quit that job in August 2007 because he was having to work 80-90 hours per week on salary. He was then unemployed or self-employed as a homebuilder until September 2009. Due to the bad economy and housing market, he could not obtain enough work so he went to work for two other construction companies. By February 2011 the available construction work was insufficient so he obtained his present full-time position. (GE 1; GE 4; Tr. 39-46.)

In his responses to the SOR, Applicant admitted the truth of all of the factual allegations except SOR ¶ 1.b, for which he submitted proof of payment on April 2, 2012. (AR1.) Applicant's admissions, including his statements in response to DOHA interrogatories (GE 4), are incorporated in the following findings.

Applicant admits that he owes the seven remaining delinquent debts, as listed in the SOR and corroborated by the record credit reports, totaling \$55,238. These debts became delinquent during 2010 and 2011, as a result of their financial hardships, Applicant and his wife separated around the beginning of 2012. She and their children still live in their family home. Applicant is temporarily living in a motor home on a friend's property, in return for which he performs work for the friend. Applicant and his wife also still own their former home, which they have rented to a tenant since 2001 for enough to cover the mortgage and escrow payments. (AR1; AR2; GE2; GE 3; GE 4; Tr. 54-56, 70.)

Applicant attributes his financial problems to his inability to secure regular full-time employment for several years after he left his job in August 2007, and the increased costs of maintaining two households. As of April 2012, he was working to enter a debt consolidation program and obtain mortgage assistance. Those efforts were unsuccessful, so he reluctantly consulted a bankruptcy attorney who helped him and his

wife to file a Chapter 13 bankruptcy petition on November 20, 2012. (GE 4; AE D; Tr. 37-38.)

Due to some confusion about automatic pay deductions, Applicant missed the first two payments, but he has made the required weekly \$581 payments to the trustee since December 20, 2012. He made a double payment the week before his hearing to help catch up, and had a pending modification to increase his weekly payments to \$604 to recover the remaining amount. His income is sufficient to make those payments, which are scheduled to continue until November 2017. (AE A; AE C; AE D; Tr. 34-35, 53.)

All of the debts listed on the SOR are covered under Applicant's bankruptcy plan, including the mortgage loan on their family home. The rental home is not included in the plan, and he makes payments toward that mortgage loan separately. The plan also includes several debts that were not alleged on the SOR, and covers a total of \$56,424 in unsecured nonpriority claims. Applicant completed both financial counseling courses required under the bankruptcy code. (AE D; Tr. 52-58, 62-63.)

Applicant submitted a copy of a letter from his manager congratulating him for his good work performance. He also submitted four good-character letters from two other supervisors and two former employers commending his outstanding work ethic, reliability, and dedication. (AE B; AE E.) He was well organized and knowledgeable about his financial circumstances, and credibly testified to his commitment to complete resolution of his debts through his bankruptcy plan.

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 (DCs) and mitigating conditions (MCs), 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, these guidelines are applied in conjunction with the factors listed in AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶¶ 2(a) and 2(c), the entire process is a conscientious scrutiny of applicable guidelines in the context 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 the 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, “[t]he 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.” Section 7 of Executive Order 10865 provides: “[a]ny 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.”

A person applying for access to classified information seeks to enter 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.

Analysis

Guideline F, Financial Considerations

The security concerns under the guideline for financial considerations are set out in AG ¶ 18, which reads in pertinent part:

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 record evidence established security concerns under two Guideline F DCs, as set forth in AG ¶ 19:

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

Applicant’s SOR-listed delinquent debts arose over the past several years. He paid the debt alleged in SOR ¶ 1.b in April 2012, but was unable to negotiate a workable repayment plan for the other seven delinquencies on his own after obtaining his present

employment. When the SOR was issued, they remained unresolved, and totaled \$55,238. This evidence raised substantial security concerns under DCs 19(a) and (c), thereby shifting the burden to Applicant to rebut, extenuate, or mitigate those concerns. The evidence does not support any other DC under this guideline.

The guideline includes five conditions in AG ¶ 20 that could mitigate security concerns arising from Applicant's financial difficulties:

- (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 seven delinquent debts accumulated over the past few years, total more than \$55,000, and continue to date. They arose due to his inability to obtain enough work in the construction industry during the recent recession, but that situation followed his decision to voluntarily leave the job that paid him enough to pay all his bills up until summer 2007. He has since regained full-time employment with enough income to fund his bankruptcy plan, but his family circumstances and living situation are unsettled. The evidence establishes partial mitigation under MC 20(a), at best.

Applicant offered sufficient evidence to support partial mitigation under MC 20(b). His inability to pay some debts arose largely due to his inability to obtain enough construction work during an unexpected and severe economic downturn that hit that industry very hard. He endured several years of unemployment and underemployment with moderate delinquent debt given his family with three teenagers. Finally, unable to negotiate terms for resolution of these debts on his own, he entered into a Chapter 13 bankruptcy plan to repay as much of his debt as his circumstances permit under supervision of a trustee. This demonstrates responsible action under the circumstances.

Applicant underwent legal and financial counseling, and established clear indications that the financial problems are being resolved and are under control for the future. He provided evidence to establish his good-faith effort to repay his overdue creditors or otherwise resolve his debts through his Chapter 13 plan. MC 20(c) and 20(d) are therefore applicable.

Applicant did not dispute the legitimacy of the debts alleged in SOR, to which he admitted or had repaid, and for which the record credit reports provide substantial evidence. Accordingly, he made no effort to mitigate those allegations under MC 20(e).

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 pertinent facts and circumstances surrounding this case. Applicant is a sincere and hard-working individual, who suffered economic hardship due to the severe economic recession since 2008. He is mature and accountable for his choices and actions, and prioritized his spending of limited resources in a reasonable way. His action toward resolution of his remaining delinquent indebtedness, through the Chapter 13 bankruptcy process, demonstrates positive permanent behavioral changes and rehabilitation. The potential for exploitation or duress is greatly diminished, and the likelihood of recurrence of financial issues has been minimized. Overall, the record evidence creates no doubt as to Applicant's present eligibility and suitability 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.h: 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.

DAVID M. WHITE
Administrative Judge