



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ISCR Case No. 11-08543
)
Applicant for Security Clearance)

Appearances

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

12/11/2012

Decision

LOUGHRAN, Edward W., Administrative Judge:

Applicant has not mitigated financial considerations security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On August 10, 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 (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.

Applicant answered the SOR on September 10, 2012, and requested a hearing before an administrative judge. The case was assigned to another administrative judge on October 15, 2012. DOHA issued a notice of hearing on November 5, 2012, scheduling the hearing for November 28, 2012. The case was reassigned to me on

November 26, 2012. The hearing was convened as scheduled. Government Exhibits (GE) 1 through 7 were admitted without objection. Applicant testified and submitted Applicant Exhibits (AE) A through C, which were admitted without objection. DOHA received the hearing transcript (Tr.) on December 7, 2012.

Findings of Fact

Applicant is a 53-year-old engineer for a defense contractor. He has worked for his current employer since October 2010. He is applying for a security clearance for the first time. He has a bachelor's degree. He married in 1999 and divorced in 2004. He does not have any children.¹

Applicant provided his ex-wife a larger amount than was required when their assets were divided in their divorce. He invented a product and started a limited liability company (LLC) to market and sell the product. He has invested heavily into the company to obtain a patent, but the company has yet to achieve any substantial sales of the product.²

Applicant worked for a company from 1991 through 2005. The company was downsizing in 2005 and asked for volunteers to be laid off in return for a severance package that included a year's salary. As part of the severance package, the employee was not permitted to reapply to the company for one year. Applicant accepted the severance package in 2005. He hoped to reapply to the company and get his job back after a year. The company instituted a policy that it did not rehire their former employees who took the severance package. Applicant was out of work for about 18 months. He was unable to pay all his bills, and a number of debts became delinquent.³

The SOR alleges three unpaid judgments totaling about \$38,000 and 13 other delinquent debts. Applicant denied owing the \$8,000 state tax debt alleged in SOR ¶ 1.p, stating the debt was paid by garnishment. He admitted owing all the remaining debts and judgments. Two of the judgments alleged in the SOR appear to have resulted from underlying debts that are also alleged in the SOR. The \$3,305 debt alleged in SOR ¶ 1.i is owed to the same collection company that obtained the \$2,759 judgment alleged in SOR ¶ 1.a. The \$13,104 debt alleged in SOR ¶ 1.g is owed to the bank that obtained the \$13,493 judgment alleged in SOR ¶ 1.c. There may be other duplicate accounts alleged in the SOR, but Applicant made no attempt to differentiate or dispute the allegations. When the identified duplicate accounts are omitted, the amount owed is still well over \$100,000.⁴

¹ Tr. at 14, 21-22, 41-42; GE 1.

² Tr. at 19-21, 33, 43-44; GE 3.

³ Tr. at 14-19; Applicant's response to SOR; GE 3-7.

⁴ Tr. at 33-36, 42; Applicant's response to SOR; GE 2-7.

Applicant owed the Internal Revenue Service (IRS) about \$10,000 and his state about \$8,000 for tax year 2008. He paid the IRS through a payment plan and seizure of his tax refunds. He paid the state through garnishment and seizure of his tax refunds. He does not owe the IRS, but he still owes the state about \$1,564 for LLC fees for tax years 2009 and 2010.⁵

Applicant has retained an attorney to file a Chapter 7 bankruptcy petition on his behalf. He has consulted with the attorney and provided him documents, but the petition has not yet been filed. He has completed the financial counseling required in order to file bankruptcy. Applicant anticipates the petition being filed in December 2012. He earns a good salary, and he believes his finances will be in order after the bankruptcy.⁶

Policies

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 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 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 the applicant or proven by Department Counsel." The applicant has the ultimate burden of persuasion to obtain 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

⁵ GE 3, 4; Applicant's response to SOR; AE A. Applicant's IRS debt and state LLC debt were not alleged in the SOR. Any debts that were not specifically alleged in the SOR will not be used for disqualification purposes. They may be considered when assessing Applicant's overall financial situation, in the application of mitigating conditions, and in analyzing the "whole person."

⁶ Tr. at 23-24; GE 2-4; AE B, C.

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.

Section 7 of EO 10865 provides that adverse 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

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. Two are potentially applicable in this case:

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

Applicant accumulated a number of delinquent debts and was unable or unwilling to pay his financial obligations. The evidence is sufficient to raise the above disqualifying conditions.

Conditions that could mitigate financial considerations security concerns are provided under AG ¶ 20. The following 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 accepted a severance package from his company, expecting to be rehired in a year. He was not rehired, and he was unemployed for 18 months. He has invested heavily into his LLC to market and sell his invention, but there has not been any significant sales. Neither event was outside his control. His divorce does qualify as a condition that was beyond his control. To be fully applicable, AG ¶ 20(b) also requires that the individual act responsibly under the circumstances.

Applicant's state and federal taxes from 2008 have been paid, but he still owes the state about \$1,564 for LLC fees for tax years 2009 and 2010. Applicant retained an attorney to file bankruptcy, and he received financial counseling as a requirement of the bankruptcy, but the petition has not yet been filed.

I am unable to find that Applicant acted completely responsibly under the circumstances or that he made a good-faith effort to pay his debts.⁷ His finances are not yet under control. His financial issues are recent and ongoing. I am unable to determine that they are unlikely to recur. They continue to cast doubt on his current reliability, trustworthiness, and good judgment. AG ¶¶ 20(a) and 20(d) are not applicable. AG ¶ 20(b) is partially applicable. The first section of AG ¶ 20(c) is applicable; the second section is only applicable to the \$8,000 state tax debt alleged in SOR ¶ 1.p. The duplicate debts alleged in SOR ¶¶ 1.g and 1.i are concluded for Applicant. I find that financial concerns remain despite the presence of some mitigation.

⁷ The Appeal Board has 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. Jun. 4, 2001)).

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 the facts and circumstances surrounding this case. I have incorporated my comments under Guideline F in this whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

Applicant is educated and accomplished. His debts may be discharged in bankruptcy, and he may go on to financial stability. However, he does not yet have a track record of fiscally responsible behavior.

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. I conclude Applicant has not mitigated financial considerations security concerns.

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: | Against Applicant |
| Subparagraphs 1.a-1.f: | Against Applicant |
| Subparagraph 1.g: | For Applicant |
| Subparagraph 1.h: | Against Applicant |
| Subparagraph 1.i: | For Applicant |
| Subparagraphs 1.j-1.o: | Against Applicant |
| Subparagraph 1.p: | For Applicant |

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Edward W. Loughran
Administrative Judge