



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



In the matter of:)
)
XXXXXXXXXXXX, XXXXX) ISCR Case No. 11-09785
)
Applicant for Security Clearance)

Appearances

For Government: Caroline Jeffreys, Esq., Department Counsel
For Applicant: *Pro se*

05/06/2013

Decision

TUIDER, Robert J., Administrative Judge:

Applicant has mitigated security concerns pertaining to Guideline F (financial considerations). Clearance is granted.

Statement of the Case

On April 28, 2011, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP). On November 28, 2012, the Department of Defense (DOD) issued a statement of reasons (SOR) to Applicant, pursuant to Executive Order 10865, *Safeguarding Classified Information within Industry*, dated February 20, 1960, as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended; and the adjudicative guidelines (AG) promulgated by the President on December 29, 2005.

The SOR alleged security concerns under Guideline F (financial considerations). The SOR detailed reasons why DOD was unable to find that it is clearly consistent with the national interest to continue a security clearance for

Applicant, and it recommended that his case be submitted to an administrative judge for a determination whether his clearance should be continued or revoked.

Applicant answered the SOR on December 20, 2012, and DOHA received his answer on December 28, 2012. Department Counsel was prepared to proceed on January 31, 2013. The case was assigned to me on February 8, 2013. DOHA issued a notice of hearing on February 15, 2013, scheduling the hearing for March 6, 2013. The hearing was held as scheduled.

At the hearing, the Government offered Government Exhibits (GE) 1 through 5, which were received into evidence without objection. Applicant offered Applicant Exhibits (AE) A through H, which were received into evidence without objection, and he testified on his own behalf.

I held the record open until March 22, 2013, to afford Applicant the opportunity to submit additional documents. Applicant timely submitted AE I through AE MM, which were received into evidence without objection. DOHA received the hearing transcript (Tr.) on March 14, 2013.

Findings of Fact

Applicant admitted all of the SOR allegations. His answers are incorporated as findings of fact. After a thorough review of the evidence, I make the following additional findings of fact.

Background Information

Applicant is a 49-year-old meteorological data specialist, who has worked for a defense contractor since March 1989. He seeks to retain his secret security clearance, which is a requirement of his current position. (Tr. 12-13, GE 1.)

Applicant graduated from high school in June 1981. He served in the U.S. Army from July 1981 to July 1984, and was honorably discharged as a specialist 4 (pay grade E-4.) His Army military occupational specialty was 93E (meteorological observer). Applicant's education beyond high school is limited to service schools while in the Army. (Tr. 13-15, GE 1, GE 5.)

Applicant has been married since March 1988. His wife was diagnosed with mental illness in approximately 1994 and has been unable to work outside the home since then. Applicant has a 29-year-old stepdaughter, a 24-year-old daughter, a 22-year-old son, and a 19-year-old daughter. At present, none of his children live with him nor are they dependent on him for support. (Tr. 15-17, GE 1, GE 5.)

Financial Considerations

In addition to the costs associated with his wife's mental illness, Applicant experienced significant unplanned expenses in 2008 when his family was forced to leave their home following a severe insect infestation. He also paid the uncovered medical and related expenses associated with his older daughter's two unplanned pregnancies and the unplanned pregnancy of his son's girlfriend, and the legal bills following his younger daughter's criminal conduct. Applicant and his wife moved to a two-bedroom apartment and his children no longer live with him. (SOR answer, Tr. 17-23, 26-33, AE G.)

Applicant's SOR alleges ten debts totalling \$27,418. After Applicant was forced to abandon his home as a result of insect infestation, the mortgage holders cancelled the arrearages owed in the amounts of \$40,832 and \$18,002 and issued him Forms 1099-Cs in 2010. Recognizing that he was in financial trouble, Applicant consulted a bankruptcy attorney in 2010. He "pushed" his attorney to take action and it was not until March 4, 2013 that Applicant's attorney filed for Chapter 13 bankruptcy protection. Applicant completed the mandatory financial counseling in conjunction with his bankruptcy filing. (Tr. 23-25, GE 5, AE A, AE I, AE L, AE HH, AE II, AE MM.)

Applicant's Schedule F -- Creditors Holding Unsecured Nonpriority Claims -- lists total liabilities of \$66,460, which include his wife's debts. All of Applicant's SOR debts are listed on his Schedule F. His Schedule I -- Current Income Of Individual Debtor(s) -- reflects gross monthly income of \$5,513 and net monthly income of \$4,328. Applicant is current on his \$840 monthly payments to the bankruptcy trustee. His budget reflects a modest lifestyle and reveals that he is living within his means. (Tr. 23-25, AE S, AE FF, AE GG, AE KK, AE LL.)

Character Evidence

Applicant submitted six reference letters -- one is from his immediate supervisor and five are from his co-workers. These letters collectively support the notion that Applicant is a long-term, loyal, dedicated, trustworthy, and valued employee. Applicant's employer strongly endorses Applicant for a security clearance. He also submitted a letter from his wife's physician, who has been treating her for bipolar mood disorder. The physician advised that since June 2009, her condition has stabilized and provided a favorable prognosis. (AE B -- AE H.)

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the AGs. In addition to brief introductory explanations for each guideline, the AGs potentially disqualifying conditions and mitigating conditions, which are 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 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." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record.

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 in seeking 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 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.

Section 7 of Executive Order 10865 provides that 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

AG ¶ 18 articulates the security concern relating to financial problems:

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.

AG ¶ 19 provides two financial considerations disqualifying conditions that could raise a security concern and may be disqualifying in this case, “(a) inability or unwillingness to satisfy debts,” and “(c) a history of not meeting financial obligations.” Applicant’s history of delinquent debt is established by his admissions and the evidence presented. The Government established the disqualifying conditions in AG ¶¶ 19(a) and 19(c).

Five financial considerations 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;

(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 conduct does not warrant full application of AG ¶ 20(a) because there is more than one delinquent debt and his financial problems are not isolated. His debt is a “continuing course of conduct” under the Appeal Board’s jurisprudence. See ISCR Case No. 07-11814 at 3 (App. Bd. Aug. 29, 2008) (citing ISCR Case No. 01-03695 (App. Bd. Oct. 16, 2002)). Nevertheless, he receives partial credit under AG ¶ 20(a) because the debt occurred under circumstances that are unlikely to recur and does not cast doubt on his current reliability, trustworthiness, or good judgment.

Applicant merits full credit under AG ¶ 20(b) because the combination of his wife’s mental illness and the problems with his children were circumstances beyond

his control and he acted responsibly under the circumstances. Even though he did not have the funds to remain current on his debts, he made efforts to mitigate his debts and took reasonable steps to resolve his debts.¹

AG ¶ 20(c) is applicable because Applicant sought financial counseling, albeit mandatory, in conjunction with his Chapter 13 bankruptcy. He has produced evidence that reflects he is living within his means and has taken substantial steps to regain financial responsibility. There are clear indications that his financial problems are resolved. Furthermore, there is sufficient information to establish full mitigation under AG ¶ 20(d).² Applicant sought the assistance of a bankruptcy attorney and is repaying his creditors through the structure provided under Chapter 13. Applicant's mortgage debts have been cancelled and he was issued Forms 1099-C. Given his resources, Applicant has done all that can be reasonably expected of him. AG ¶ 20(e) is not applicable.

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

¹"Even if Applicant's financial difficulties initially arose, in whole or in part, due to circumstances outside his [or her] control, the Judge could still consider whether Applicant has since acted in a reasonable manner when dealing with those financial difficulties." ISCR Case No. 05-11366 at 4 n.9 (App. Bd. Jan. 12, 2007) (citing ISCR Case No. 99-0462 at 4 (App. Bd. May 25, 2000); ISCR Case No. 99-0012 at 4 (App. Bd. Dec. 1, 1999); ISCR Case No. 03-13096 at 4 (App. Bd. Nov. 29, 2005)). A component is whether he maintained contact with his creditors and attempted to negotiate partial payments to keep his debts current.

²The Appeal Board has previously 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. June 4, 2001)).

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.

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. AG ¶ 2(c). The discussion in the Analysis section under Guideline F is incorporated in this whole-person section. However, further comments are warranted.

Applicant's military service and 28 years of service as a defense contractor employee weigh heavily in his favor. He is a law-abiding citizen and a productive member of society. He is current on his day-to-day expenses, lives within his means, and his SOR debts have been addressed. The Appeal Board has addressed a key element in the whole-person analysis in financial cases stating:

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

Appellant was faced with some very challenging family situations that adversely impacted his financial status. He was forced to divert funds to care for his family and fell behind on his mortgage and day-to-day bills. Unable to recover, he sought professional help from a bankruptcy attorney and is now in a Chapter 13 repayment plan. His lenders have cancelled his mortgages and issued him Forms 1099-C. In short, his lenders have cleared him of further liability under the terms of his first and second mortgages. He is making a significant contribution to the national defense. His company fully supports him and recommends him for a security clearance. Due to

circumstances beyond his control, his debts became delinquent. Despite Applicant's recent financial setback, it is clear from his actions that he is on the road to a full financial recovery. These factors show responsibility, rehabilitation, and mitigation.

Both the mitigating conditions under Guideline F and the whole-person analysis support a favorable decision. I specifically considered Applicant's military service and his lengthy service as a defense contractor. I considered his years of financial responsibility before falling into debt, his financial recovery, and substantial steps he has taken to resolve his financial situation. I considered his potential for future service as a defense contractor, the mature and responsible manner in which he dealt with his adverse situation, his reference letters, and his testimony and demeanor. After weighing the disqualifying and mitigating conditions, and all the facts and circumstances, in the context of the whole-person, I conclude he has mitigated the financial considerations security concerns.

I take this position based on the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), my careful consideration of the whole-person factors and supporting evidence, my application of the pertinent factors under the adjudicative process, and my interpretation of my responsibilities under the adjudicative guidelines. Applicant has fully mitigated the financial considerations security concerns. For the reasons stated, I conclude he is eligible for access to classified information.

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 and 1.j: For Applicant

Conclusion

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue Applicant's eligibility for a security clearance. Eligibility for a security clearance is granted.

ROBERT J. TUIDER
Administrative Judge