



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



In the matter of:)	
)	
XXXXXXXXXXXX)	ISCR Case No. 11-12293
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Pamela C. Benson, Esquire, Department Counsel
For Applicant: *Pro se*

08/20/2013

Decision

HOWE, Philip S., Administrative Judge:

On June 21, 2011, Applicant submitted his electronic Questionnaire for Investigations Processing/Security Clearance Application (e-QIP; SF 86). On February 5, 2013, the Department of Defense (DoD) issued Applicant a Statement of Reasons (SOR) 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) effective within the Department of Defense on September 1, 2006.

Applicant acknowledged receipt of the SOR on February 15, 2013. He answered the SOR in writing on March 14, 2013, and requested a hearing before an administrative judge. Defense Office of Hearings and Appeals (DOHA) received the request on or about March 15, 2013. Department Counsel was prepared to proceed on April 30, 2013, and I received the case assignment on May 9, 2013. DOHA issued a Notice of Hearing on June 6, 2013, and I convened the hearing as scheduled on June

24, 2013. The Government offered Exhibits 1 through 6, which were received without objection. Applicant testified and submitted Exhibits A through N, without objection. DOHA received the transcript of the hearing (Tr.) on July 11, 2013. I granted Applicant's request to keep the record open until July 15, 2013, to submit additional matters. On July 19, 2013, he submitted Exhibits O through V, without objection. The record closed on July 19, 2013. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

Procedural and Evidentiary Rulings

Motion to Amend SOR

Department Counsel moved to amend the SOR by adding ¶ 1.j, alleging "Applicant is indebted to his state Department of Taxation, in the approximate amount of \$36,669.52 for delinquent taxes, and as of June 24, 2013, this debt remains unpaid." (Tr. 44, 45) Applicant admitted the debt listed in the new Subparagraph 1.j. (Tr. 51)

Findings of Fact

In his Answer to the SOR, and at his hearing, Applicant admitted the factual allegations in ¶¶ 1.a to 1.e, and 1.h to 1.j of the SOR, as amended, with explanations. He denied the factual allegations in ¶¶ 1.f and 1.g of the SOR because he asserted they were the same allegations as stated in ¶¶ 1.a and 1.b, respectively. He provided additional information to support his request for eligibility for a security clearance.

Applicant is 53 years old, divorced, and has no children. For 17 years, until 2011, he operated a pizza restaurant with his mother and sister. When the landlord died and the new management company wanted to increase the rent by 40%, Applicant decided to close the business. His mother and sister later reopened the restaurant in a smaller facility at another location. Applicant assumed the tax debts so his family could reopen the restaurant. He then returned to his prior work as a computer software developer as, he had previously obtained his college degree at a local university. (Tr. 19-22, 40, 53; Exhibits 1-6, M)

Applicant owes nine delinquent debts totaling \$46,425, as listed in the original SOR. With the addition of the additional allegation about the state tax debt, he owed 10 delinquent debts totaling \$73,672.52. Then, deducting two duplicate debts, he owes eight debts. Two debts he contends are duplicates (Subparagraphs 1.a and 1.f are owed to the same creditor, and Subparagraphs 1.b and 1.g are also owed to another creditor.) The debts are reconciled to only the higher amounts in Subparagraphs 1.f and 1.g. After deducting the two lesser amounts in Subparagraphs 1.a and 1.b, the total owed is \$37,003 plus the state tax debt for \$36,669.52, equaling the \$73,672.52 cited above. Applicant also owes \$12,000 to his former accountant for work done relating to Applicant's pizza restaurant business. That debt is not listed in the SOR or amended into it. (Tr. 9, 14, 15, 50; Exhibits 1-6, A-V)

Applicant owes \$7,315 on a credit card (Subparagraphs 1.a and 1.f). He arranged an installment payment agreement with the creditor and made four payments by the date of the hearing, starting in March 2013. The payments are \$300 each month. This debt is being resolved. (Tr. 15, 28; Exhibits 1-4, 6, A, I)

Applicant owes \$5,506 to a creditor on a credit card (Subparagraphs 1.b and 1.g). He negotiated with the collector to establish an installment payment agreement. He made four payments on that agreement by the time of the hearing, starting in March 2013. The payments are \$200 each. This debt is being resolved. (Tr. 15, 28; Exhibits 1-4, 6, B, I)

Applicant owes \$1,200 on a judgment entered for a creditor in 2010 (Subparagraph 1.c). This debt arose from a credit card used at a home improvement center. Applicant settled the account for \$776.94, which was paid on April 15,. This debt is resolved. (Tr. 15, 16; Exhibits 1-4, 6, A-K; Answer attachments)

Applicant owes \$115 to a medical creditor for services rendered (Subparagraph 1.d). This debt was paid in full on March 2, 2013. This debt is resolved as shown by the letter from the creditor attached to Applicant's answer and dated March 6, 2013. (Tr. 16; Exhibits 1-4, 6, D; Answer attachments)

Applicant owes \$52 for a telephone bill (Subparagraph 1.e). This debt is resolved by payment of \$31.49 on February 26, 2013. Applicant submitted a letter from the collector dated March 7, 2013, showing a zero balance. This debt is resolved. (Tr. 16; Exhibits 1-4, 6, E; Answer attachments)

Applicant owes \$21,815 to the U.S. Government on a tax lien filed against him in 2004 (Subparagraph 1.h) for unpaid payroll taxes. He filed all the required tax returns. This debt resulted from the failure of Applicant's pizza business. Applicant hired an attorney to represent him with the Internal Revenue Service (IRS) to attempt to resolve this debt. An offer in compromise was filed by the attorney on June 19, 2013, for \$1,000. Applicant made a \$200 good-faith payment on that offer. The offer is pending with the IRS. Applicant is attempting to resolve this debt. (Tr. 17-21, 41, 42; Exhibits 1-4, 6, F, G, O, P)

Applicant owes \$1,000 to a city taxing authority for an earnings tax (Subparagraph 1.i). This debt results from Applicant's business and its closure. He is represented by an attorney in this matter. The Answer states the matter is being resolved by an installment agreement on which Applicant is making payments until paid in full. Applicant claims that since August 2011 he has tried to pay \$300 monthly to repay this debt. Some months he cannot make a payment because his income and expenses do not allow him to do so. Applicant is attempting to resolve this debt by making the installment payments. The payment statements in Exhibit H show Applicant has paid about \$500 in 2013 on this debt, leaving a balance of about \$500. (Tr. 17-21, 39; Exhibits 1-4, 6, F, G, O, P, V; Answer attachments)

Applicant is indebted to his state Department of Taxation, in the approximate amount of \$36,669.52 for delinquent payroll taxes (Subparagraph 1.j). This debt remains unpaid, but Applicant has been paying since 2009 on this debt. He filed all required tax forms. In 2011 he contacted the assistant attorney general to enter an installment payment agreement on this debt. He has paid \$9,200 since 2009 on the debt. He paid \$300 monthly on the debt until his attorney recently filed an offer in compromise with the state, and the payments were reduced to \$200 monthly in February 2013. Applicant is attempting to resolve this debt. (Tr. 43-47; Exhibits 1-4, 6, G)

Applicant also owes about \$12,000 to an accounting firm he employed while his family operated its pizza restaurant. He pays the firm about \$100 monthly on the debt. This debt is not listed in the SOR. The balance on this debt Applicant thinks is about \$8,000. (Tr. 50; Exhibits 1-4, 6)

Applicant has not had any financial counseling. (Tr. 53)

Applicant submitted six character letters. The authors of these letters comment favorably on Applicant's diligence at work, his commitment to producing a quality product, his honesty, and individual responsibility. (Exhibit M)

Applicant presented his evidence in a logical and forthright manner. His testimony was detailed and credible about his past financial problems that arose substantially from his family's adversely affected business. He assumed all the tax debt to spare his mother and sister that burden. (Tr. 21)

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 useful 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 (AG ¶ 2(a)). 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. 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, 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, and has the ultimate burden of persuasion as to obtaining a favorable clearance 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

Guideline F, Financial Considerations

The security concern relating to the guideline 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 at AG ¶ 19 contains nine disqualifying conditions that could raise security concerns. Two conditions are applicable to the facts found in this case:

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

Applicant accumulated \$73,672.52 in delinquent debt from 2009 to the present time that was unresolved as stated in the SOR as amended. This total includes the deduction of the two duplicate debts. Applicant has eight delinquent debts listed in the SOR as amended. He owed another \$12,000 to his former accountant for work relating to Applicant's pizza restaurant, though that balance is reduced now to \$8,000.

The guideline in AG ¶ 20 contains six conditions that could mitigate security concerns arising from financial difficulties. Three conditions may be applicable:

(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 is paying his debts in an orderly manner within the available financial resources he has. He resolved three debts for \$115, \$52, and \$1,200. He makes payments on installment agreements for two other debts. He is also paying monthly amounts to the local and state taxing authorities on their debts. He was paying monthly amounts to the IRS on a payroll tax debt. Now he has an attorney who submitted an offer in compromise to resolve the \$21,815 federal tax debt. He made a good faith payment of \$200 on that debt. Applicant is addressing each debt as he is financially able to do so. His accountant's debt is reduced to \$8,000 from \$12,000.

AG ¶ 20 (b) is applicable because the economic conditions, a business downturn, that forced the closing of Applicant's pizza restaurant were beyond his control after 17 years in business. Applicant sought to minimize his financial losses by closing the restaurant. He assumed the debts so that his mother and sister could open a smaller restaurant later. Since then Applicant has tried to resolve his debts. AG ¶ 20 (c) has partial application because his debts are under control and being resolved. AG ¶ 20 (d) also applies because of Applicant's good-faith efforts to repay his delinquent debts based on the same facts.

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 an applicant's conduct and all the 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.

AG ¶ 2(c) requires each case must be judged on its own merits. In addition, 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. Applicant has not ignored his delinquent debts. He is attempting to resolve the largest ones by installment payment agreements and the tax debts by similar arrangements or through an offer in compromise. He paid three smaller debts before the hearing. Applicant is working through legal channels to resolve his debts, and there is no likelihood or potential for pressure, coercion, exploitation, or duress because of his efforts and the nature of the debts.

Applicant's testimony and his documents show his continuing efforts to resolve his delinquent debt, particularly the federal and state income tax debts. He is paying somewhat regularly on his local tax debt that it is now half of the original amount. His pattern of responsible payments makes it likely he will continue to seek resolution of the debts. His offer in compromise to the IRS and the contact with the state tax authorities on his own initiative support this conclusion. They demonstrate Applicant's honesty, trustworthiness, and good judgment in paying his past due debts. His character references support this evaluation of Applicant.

Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising from his financial considerations.

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.j:	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.

PHILIP S. HOWE
Administrative Judge