



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



In the matter of:)
)
) ISCR Case No. 14-01354
)
Applicant for Security Clearance)

Appearances

For Government: Andrea Corrales, Esq., Department Counsel
For Applicant: *Pro se*

07/26/2016

Decision

HEINY, Claude R., Administrative Judge:

Applicant contests the Department of Defense's (DoD) intent to deny his eligibility for a security clearance to work in the defense industry. In 2010 and 2011, Applicant was suspended and terminated from his job. He also cosigned on the lease of a car that was returned to the leasing company. The leasing company has made a settlement offer on the debt. Applicant has mitigated the personal conduct and the financial considerations security concerns. Clearance is granted.

History of the Case

On August 21, 2014, acting under the relevant Executive Order and DoD Directive,¹ the DoD issued a Statement of Reason (SOR) detailing personal conduct and financial considerations security concerns. DoD adjudicators could not find that it is

¹ Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DoD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the DoD on September 1, 2006.

clearly consistent with the national interest to grant or continue Applicant's security clearance. On March 9, 2015, Applicant answered the SOR and requested a hearing. On May 27, 2015, I was assigned the case. On October 29, 2015, the Defense Office of Hearings and Appeals (DOHA) issued a Notice of Hearing for a hearing to be convened on November 18, 2015.

At the hearing, Government's Exhibits (Ex.) 1 through 7 and Applicant's Exhibits A through L were admitted without objection. The record was kept open to allow Applicant to present additional documents. A character letter, a credit union letter, and a letter from an automobile manufacture loan servicing company were presented and admitted without objection as Exs. M, N, and O. Applicant testified at the hearing. On November 30, 2015, DOHA received the hearing transcript (Tr.).

Findings of Fact

Applicant is a 59-year-old plant protection officer who has worked for a defense contractor since December 2011 and he seeks to obtain a security clearance. From October 1983 until September 2011, he worked for the same company. In his October 2013 Electronic Questionnaires for Investigations Processing (e-QIP), he explained in detail his termination in September 2011 that was reduced to a suspension for failing to write up an incident report on a plant perimeter breach. (Ex. 1) He also explained in great detail his October 2010 written warning and his ten-day suspension in January 2011. (Item 1) He provided numerous and extensive documents concerning each of the incidents alleged under the personal conduct guidelines.

Applicant has two adult children and did not serve in the military. He has lived at the same location since December 1978 and owes approximately \$14,000 on his mortgage. (Ex. 1) Applicant has approximately \$1,400 in his checking account, more than \$2,000 in his saving account, and more than \$113,000 in his company retirement fund. (Ex. H, J)

Co-workers and friends state Applicant is dedicated, knowledgeable, hard-working, loyal, dependable, honest, proficient, courteous, and professional. (Ex. C, D, E, F, G) The plant security officer states he has known Applicant since 2004 and Applicant is professional, trustworthy, reliable, very security conscientious, and diligent in his duty performance. (Ex. M) He does not believe Applicant is a risk to national security. (Ex. M)

Applicant asserts that in May 2010 a new facility's security officer (FSO) arrived with an agenda to bring in new people. The FSO's actions, Applicant asserts, resulted in a 145% turnover of personnel. The FSO has since been terminated from his position (Ex. C)

In January 2003, Applicant was terminated for providing false information. An arbitrator found the company's evidence failed to meet even a minimal standard of proof. (Ex. L) The arbitrator also found the company did not have just or proper cause to discharge Applicant and he was immediately reinstated and made whole as to back pay

and other contractual entitlements. (Ex. L) This adverse action was not alleged in the SOR, but was submitted by Applicant.

In October 2010, individuals cut the plant's security fence and took contractor property. Applicant orally told his supervisor about the breach. (Ex. A) Applicant had to review a security camera's video recording of the breach. By the end of his shift on Friday, Applicant had not completed his review of the video recording. On Monday, Applicant's next duty day, he completed reviewing the video and submitted his report. (Ex. 7) He received a written warning for not reporting the incident in a timely manner. (Ex. 2) Applicant asserted that, in the past, the following duty day was considered timely reporting.

In January 2011, a suspect was arrested in the executive parking lot. (Ex. 7) The police informed Applicant that someone would be coming to pick up the suspect's car in a few hours and asked if the car could be left in the parking lot until picked up. (Ex. A) The car was not retrieved in a timely manner. The suspect was later convicted and served 30 days in jail. Applicant was asked to have the vehicle removed from the parking lot. Applicant waited for the owner's permission to have the car towed. (Ex. A) Eight days later, the vehicle was towed. (Ex. 7) Applicant received a 10-day-suspension for failing to follow a supervisor's instructions concerning having the vehicle removed immediately. (Ex. 7) In March 2011, after a review of the facts, the discipline was determined fair and the punishment just. (Ex. A)

In September 2011, there was another breach of security in the fence. The breach was discovered by camera. The supervisor was in the control room when the dispatcher sent Applicant to investigate the breach. (Ex. B) He verbally reported the incident. (Ex. 7) For failing to make a written report of the incident in a timely manner, Applicant was terminated from his position. (Ex. 2) In December 2011, the termination was changed to a suspension. (Ex. 2) No infractions have occurred since the September 2011 incident.

In Applicant's October 2013 e-QIP, he stated he owed a vehicle leasing company approximately \$9,000 for a vehicle that had been returned to the lender. (Ex. 1) He had cosigned² on the vehicle with a business partner. (Ex. 7) He stated he was in negotiations concerning the debt. His December 2013 and February 2015 credit reports indicate the account was opened in January 2009. (Ex. 5, 6) The high credit was \$50,570 on which there was a balance owed of \$29,957. (Ex. 5, 6, A) In November 2015, the lender has offered to settle the debt for \$19,472. (Ex. N)

On the same e-QIP, Applicant stated he owed approximately \$1,700 on another vehicle on which he cosigned. (Ex. 1) When the cosigner could no longer make payments, \$15,851 was owed on the vehicle. The credit union sold the vehicle for \$12,500, which left a balance owed of \$4,299 on the loan. (Ex. A) Between June 2012 and May 2014, Applicant made 31 payments of \$175 each. (Ex. A) As of September

² Applicant said he cosigned on a purchase of the vehicle and also said that it was not a purchase, but a lease of the vehicle. (Ex. 7)

2014, the credit union indicated the remaining balance was \$617 and he had approximately 3.5 payments to make to pay the debt in full. (Ex. A) In a November 2015 letter, the credit union indicated the loan had been paid in full in March 2015. (Ex. O)

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 must be considered 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 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 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 Executive Order 10865 provides that decisions shall be "in terms of the national interest and shall in no sense be a determination of 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

Personal Conduct

AG ¶ 15 explains why personal conduct is a security concern stating:

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 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.

With respect to the personal conduct concerns involving adverse actions taken by his company against Applicant, the pertinent disqualifying condition is AG ¶ 16(d)(3), a pattern of rule violations. In October 2010, Applicant received a written warning for failing to report a security breach in a timely manner. In January 2011, he was suspended for failing to follow instructions to have a vehicle towed. And in September 2011, he was terminated for failing to report a security breach in a timely manner. In December 2011, the termination was changed to a suspension.

Applicant asserts it was the policy to file the written report when the investigation was completed. In the October 2010 incident, he had to review a video recording before completing the investigation. He viewed a portion of the recording on Friday and completed it on Monday, his next duty day. He asserts a change of policy by the FSO resulted in the written warning, when previously the submission of written reports was made after the investigation was completed.

In January 2011, it was eight days before a vehicle in the executive parking lot was towed. Applicant was suspended for not following instructions to have it towed sooner. In the September 2011 incident Applicant's supervisor was in the control room when a fence breach was discovered and Applicant was sent to investigate the breach. Although his supervisor knew of the breach, Applicant failed to make a written report. Applicant has provided numerous and extensive documentation on each of these incidents. The keeping of such records shows Applicant's security consciousness, the way he conducts himself as a plant protection specialist, and his attitude in security matters.

The mitigating condition outlined in AG ¶ 17(c) “the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment” applies.

The three derogatory incidents were not minor for they resulted in a suspension and termination from employment. However, these three incidents occurred four and five years ago. Additionally, documents were presented indicating that even though written reports were not timely made, his supervisors were aware of the incidents. The car should have been towed sooner from the plant's executive parking lot, but failing to do so does not rise to the level that it is of security significance. Any personal conduct security concerns pertaining to these three incidents are mitigated.

Guideline F, Financial Considerations

Adjudicative Guideline (AG) ¶ 18 articulates the security concerns 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.

Additionally, an individual who is financially irresponsible may also be irresponsible, unconcerned, negligent, or careless in properly handling and safeguarding classified information. Behaving responsibly or irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life.

A person's relationship with his creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to repay debts under agreed upon terms. Absent evidence of strong extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a position of risk that is inconsistent with holding a security clearance. An applicant is not required to be debt free, but is required to manage his finances to meet his financial obligations.

In January 2009, Applicant cosigned on a vehicle with a business partner. The loan went delinquent. There was also a small debt on a second vehicle that has been paid. Disqualifying Conditions AG ¶ 19(a), "inability or unwillingness to satisfy debts" and AG ¶ 19(c), "a history of not meeting financial obligations" apply.

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.

In December 2012 Applicant cosigned on a vehicle loan. That vehicle was repossessed resulting in a debt of approximately \$4,300. He made monthly payments on the obligation until that debt was paid. Approximately two years earlier, in January 2011, Applicant cosigned with a business partner on a vehicle lease. At the hearing, he acknowledged the debt and was attempting to negotiate settlement of the debt. In November 2015, the lender offered to settle the debt for \$19,477. Having honored the repayment agreement on the one vehicle, I believe Applicant will repay his one remaining debt.

Applicant has been employed since 1983 and owes approximately \$14,000 on his home. He has more than sufficient funds in his retirement fund from which he could borrow to pay the settlement amount. It is unlikely he would experience problems in addressing this one remaining obligation.

Since there is only one delinquent account, the debt is found to be infrequent. The mitigating condition listed in AG ¶ 20(a) applies. The mitigating conditions listed in AG ¶ 20(d) applies to the repossessed vehicle he cosigned on in December 2012 since that debt has been paid in full. Payment occurred months before the hearing.

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. Applicant has been a plant protection officer for 32 years. He leads a stable life having lived in the same home for the past 37 years. The last adverse plant protection action occurred in October 2011, more than four years ago. There is evidence his supervisor was in the control center when the fence breach was identified and Applicant assigned to investigate it. Applicant did not immediately make a written report of the incident, but his supervisor was orally informed of the incident. The plant security manager has full confidence in Applicant and Applicant's abilities as a plant protection officer.

Applicant had two delinquent debts. One has been paid and the other creditor has made a settlement offer. His prior history of arranging a repayment agreement and honoring the agreement indicate he will repay this remaining debt. The issue is not simply whether all his debts are paid—it is whether his financial circumstances raise concerns about his fitness to hold a security clearance. See AG ¶ 2(a)(1). Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. Neither the remaining debt nor the personal conduct incidents raise financial or personal conduct 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, Personal Conduct: FOR APPLICANT

Subparagraphs 1.a – 1.c: For Applicant

Paragraph 2, Financial Considerations: FOR APPLICANT

Subparagraphs 2.a and 2.b: 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 a security clearance. Eligibility for access to classified information is granted.

CLAUDE R. HEINY II
Administrative Judge