



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ISCR Case No. 07-06482
SSN:)
)
Applicant for Security Clearance)

Appearances

For Government: Carolyn H. Jeffreys, Esquire, Department Counsel
For Applicant: *Pro Se*

February 12, 2008

Decision

HOWE, Philip S., Administrative Judge:

Applicant submitted his Security Clearance Application (SF 86), on June 15, 2006. On October 15, 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline F for Applicant. 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 revised adjudicative guidelines (AG) promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant acknowledged receipt of the SOR on October 24, 2007. He answered the SOR in writing on October 26, 2007, and requested a hearing before an Administrative Judge. DOHA received the request on November 13, 2007. Department Counsel was prepared to proceed on November 28, 2007, and I received the case assignment on December 13, 2007, after it was transferred from another administrative judge because of caseload. DOHA issued a notice of hearing on December 17, 2007,

and I convened the hearing as scheduled on January 8, 2008. The government offered Exhibits (Ex.) 1 through 4, which were received without objection. Applicant testified on his own behalf and offered no exhibits. DOHA received the transcript of the hearing (Tr.) on January 25, 2008. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

Findings of Fact

In his Answer to the SOR, dated October 26, 2007, Applicant admitted the factual allegations in ¶¶ 1.a, 1.c to 1.e of the SOR, with explanations. He denied the factual allegations in ¶¶ 1.b and 1.e of the SOR. He also provided additional information to support his request for eligibility for a security clearance.

Applicant is 28 years old, divorced, with one child from his present relationship. He works for a defense contractor as an engineering technician. He has an associate's degree, obtained in May 2003. He started work at his current job in May 2005. Previously, he had employment with several local companies. He is the sole support of his family. (Tr. 13, 16, 27; Exhibit 1)

Applicant has six delinquent debts, totaling about \$30,000. He is currently paying \$18,000 in federal insured student loans, which he revived from default status in 2007. Applicant made a down payment using part of his last year's income tax refund. He made payments for one year at \$150 monthly. The lender then considered the loans rehabilitated, and lowered the payments to \$125 monthly. Applicant continues to make those payments intending to repay the loans in full. (Tr. 8, 22, 23, 30; Exhibits 1-4)

Applicant owes \$318 on a medical bill for treatment of a work-related injury in 2000 (SOR Subparagraph 1.a). He did not have medical insurance and eventually realized he had to pay for the emergency room treatment. Applicant intends to repay this debt in 2008 from his 2007 income tax refund. (Tr. 19, 20, 33, 38; Exhibits 2-4)

Applicant owes \$360 on a lease for a former apartment (SOR Subparagraph 1.b). He lived there two years, never had a written lease, and moved with giving only two weeks notice. The landlord retained his deposit and seeks the balance of the last month's rent of \$360. Applicant disputes owing the debt because he does not think he had to give 30 days notice without a written lease being in effect. Applicant intends to pay this debt from his income tax refund. This debt occurred in October 2006. (Tr. 20, 33; Exhibits 2-4)

Applicant owes \$215 for a medical bill (SOR Subparagraph 1.c). This debt dates from 2000. Applicant is not certain the basis for this debt. However, he intends to repay it from his income refund received this year. (Tr. 21, 33; Exhibits 2-4)

Applicant has two student loans on which he is not currently paying because he does not have sufficient income to do so. They are private student loans (SOR

Subparagraphs 1.d and 1.e), totaling about \$17,000. Applicant had insufficient income before obtaining his current job to repay all the student loans, both the federal and private student loans. Now, he intends to use a substantial portion of his income tax refund to make a down payment on these private loans, and enter a repayment installment plan. He intends to repay all his debts as quickly as he is financially able to do so. He contacted the lender last year about arranging repayment plan, but the lender would not negotiate a plan with him. Applicant intends to keep trying to negotiate a repayment plan. (Tr. 22-25, 29, 33, 38, 39, 46; Exhibits 2-4)

Applicant's last delinquent debt is \$13,036 for a car repossessed in 2000. Applicant bought the car after graduating from high school. He could pay the \$300 monthly loan payments, but the additional insurance monthly payments of \$225 were more than he could afford at his previous income level. After a year of making payments, he surrendered the car, which was later sold., Applicant asked for, but never received an accounting of the amount for which the car sold. Applicant disputes the amount sought by the creditor because he has not been given the sale amount. He would like to establish a reasonable amount for repayment on this debt, and then enter an installment payment plan with that creditor. (Tr. 14-19, 40; Exhibits 2-4)

Applicant has two credit cards, with balances of \$170 and \$200. He pays those credit card debts regularly. He also pays his monthly expenses on time. (Tr. 28, 37)

Policies

When evaluating an Applicant's suitability for a security clearance, the Administrative Judge must consider the revised 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. The Administrative Judge's over-arching adjudicative goal is a fair, impartial and common sense 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, 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 as to obtaining 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

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 notes several conditions that could raise security concerns. Under AG ¶ 19(a), an “inability or unwillingness to satisfy debts” is potentially disqualifying. Similarly under AG ¶ 19(c), “a history of not meeting financial obligations” may raise security concerns. Applicant accumulated some delinquent debt and was unable to pay some obligations for a period of time. The evidence is sufficient to raise these potentially disqualifying conditions, requiring a closer examination.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. AG ¶ 20(d) applies where the evidence shows “the individual initiated a good-faith effort to repay overdue creditors or otherwise

resolve debts.” Applicant rehabilitated on his own initiative the federal-insured student loans. He has faithfully paid that debt for over one year. He has a plan to repay the privately issued student loans, though his income will necessitate a long repayment time period. Applicant is the sole support of his family, and pays his monthly bills on time. The listed debts date from four to seven years ago, with only one debt dating from 2006. Applicant has not incurred additional delinquent debt during this time period. He also intends to repay the first three debts listed in the SOR from his tax refund this year. His testimony appeared sincere. I conclude he is credible in his explanations of his financial history and his plans to repay the debts. Additionally, AG ¶ 20(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) applies because Applicant intends to repay the two debts he denied and disputed. The credit reports show he disputed the auto repossession debt, and he denied the lease debt in his SOR answer. Based on the totality of the evidence, I conclude these potentially mitigating conditions apply

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 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) 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. When these problems first began, Applicant was a young man. (See AG ¶ 2(a)(4).) He accumulated debt due to a desire to obtain an education and to better himself. He accomplished that goal, but the debt remains. (See AG ¶ 2(a)(2).) Most significantly, he has taken affirmative action to pay or resolve the larger of the two student debts raising security concerns. (See AG ¶ 2(a)(6).) He took the initiative in 2006 to start that process. Thus, this debt cannot be a source of improper pressure or duress.

Applicant intends to pay his other debts. His sincerity and credibility, coupled with his performance on the student debt, persuade me that he will accomplish that goal also. He has legitimate reasons to dispute the amount of money demanded by the creditor for his repossessed car. He attempted to contact that creditor, along with the private student loan creditor, to arrange reasonable installment repayment plans. To

