



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ISCR Case No. 07-08047
)
)
Applicant for Security Clearance)

For Government: Jeff A. Nagel, Esquire, Department Counsel
For Applicant: *Pro Se*

February 18, 2009

Decision

DAM, Shari, Administrative Judge:

Based upon a review of the case file, pleadings, and exhibits, eligibility for access to classified information is granted.

On April 27, 2006, Applicant submitted a security clearance application (e-QIP). On February 8, 2008, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F (Financial Considerations) and Guideline E (Personal Conduct). 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 answered the SOR on or about March 10, 2008, and waived his right to a hearing. The Department subsequently exercised its right to request a hearing. DOHA

assigned the case to me on December 4, 2008, and issued a Notice of Hearing on December 16, 2008. The case was heard on January 14, 2009, as scheduled. Department Counsel offered exhibits (GE) 1 through 6 into evidence without objection. Applicant testified, called one character witness, and offered exhibits (AE) A through M into evidence without objection. At the conclusion of the hearing, I left the record open until January 28, 2009, to give Applicant an opportunity to submit additional information. On January 27, 2009, Applicant submitted exhibits AE N through Z, which were admitted into the record without objection by the Government. DOHA received the hearing transcript (Tr.) on January 26, 2009.

Findings of Fact

In his written Answer to the SOR, Applicant admitted all allegations contained in Paragraph 1, except those in Paragraphs 1.a, 1.c, and 1.e. He admitted the allegations contained in Paragraph 2, but denied intentionally falsifying his security application. His admissions are incorporated into the following findings of fact:

Applicant is 37 years old and married. He and his wife have three children, ages 16, 11 and 9. After completing high school, he started working in the aerospace industry. In April 1996, he left to take over his uncle's automotive business. He owned and managed the business until April 2001, when he sold it because of a diminished income and financial difficulties. He was earning about \$30,000 per year. He then obtained another position in the aerospace industry, which required him to travel extensively. In October 2004, he started working for his current employer, a federal contractor. He is a measurement technician and works on aircraft.

In April 2006, Applicant completed an e-QIP and was later granted an interim Secret clearance. In response to "*Section 27: Your Financial Delinquencies (c) In the last 7 years, have you had a lien placed against your property for failing to pay taxes or other debts,*" he failed to list the tax lien alleged in the SOR. In response to *Section 27: Your Financial Delinquencies (d) In the last 7 years, have you had any judgment against you that have not been paid,* he answered "no," and failed to list the judgment alleged in the SOR.

In response to "*Section 28: Your Financial Delinquencies (a). In the last 7 years, have you been over 180 days delinquent on any debt(s)?"* he answered "no," and failed to list any of the delinquent debts alleged in the SOR. He did not disclose any debts in response to subparagraph b of this section, inquiring if, "*In the last 7 years, have you been over 90 days delinquent on any debt(s)?"*

When Applicant completed his first security clearance application in 2006, he was unaware of his delinquent debts and had never reviewed his credit bureau report (CBR). His company did not provide him any assistance when he completed the form. (Tr. 79) He did not intentionally fail to disclose his financial delinquencies to the government. (Answer)

Sometime in late 2007, Applicant reviewed his CBR for the first time. He was very surprised at the scope of his delinquent debts that began accumulating in 2000. (GE 2) He attributes the delinquent debts to a failed business and extensive traveling for his previous job. During the time that he was away from home, his wife handled the finances along with all of the other household duties, resulting in unpaid bills and marital difficulties. (Tr. 38-39) After learning of the financial situation, he immediately began addressing the delinquencies. (Tr. 42-43)

Applicant's wife testified and confirmed the underlying reasons leading to the delinquent debts. She was responsible for taking care of their three children, handling the household budget, and paying the bills while Applicant was gone. At times, she fell behind in managing the finances and failed to tell Applicant about it. (Tr. 39; 72) Since working for his current employer, Applicant no longer travels and has assumed responsibility for paying the bills and managing the finances. Their marriage has also improved. (Tr. 85-95)

Based on CBRs, dated October 2006, December 2007, March 2008, and January 2009, the SOR alleged eleven debts, totaling about \$15, 280. The status of the debts is as follows:

1. The \$181 debt alleged in SOR ¶ 1.a was owed to a cell phone company. It is paid. (GE 6)
2. The \$2,603 debt alleged in SOR ¶ 1.b is owed to a credit card company. Applicant paid \$100 on January 23, 2009, leaving a balance of \$2,499. He spoke to the company, which offered him a settlement for 50% of the balance. He intends to pay the debt with his 2008 tax refund. (AE O; Tr. 44)
3. The \$60 debt alleged in SOR ¶ 1.c was owed to a telephone company. It is paid. (GE 6)
4. Applicant has formally disputed the \$160 alleged in SOR ¶ 1.d. (AE T)
5. The \$3,124 debt alleged in SOR ¶ 1.e was a tax lien. It has been paid and the lien is released. (AE I)
6. Applicant formally disputed the \$170 debt alleged in SOR ¶ 1.f because he does not recognize it. (AE R; Tr. 50)
7. The \$160 debt alleged in SOR ¶ 1.g is paid. He called the company to obtain a zero balance verification, but has not yet received it. (Tr. 51; AE P)
8. Applicant was unfamiliar with the \$33 debt alleged in SOR ¶ 1.h and disputed it. (GE 3)

9. Applicant disputed the \$7,393 debt listed in SOR ¶ 1.i. He filed a complaint with the appropriate attorney general's office, alleging that his payment of \$350 previous resolved the car lease matter.¹ (AE K; Tr. 52) It does not appear on the January 2009 CBR. (GE 6)
10. The April 2001 \$600 default judgment alleged in SOR ¶ 1.j is owed to a previous automotive customer and is unpaid. Applicant attempted to locate her to resolve the matter, but has been unable to find her. (Tr. 55) He disputed it and it no longer appears on his January 2009 CBR.
11. The \$733 debt alleged in SOR ¶ 1.k is paid. (AE N)

In summary, Applicant has paid or taken steps to resolve the eleven debts. He is willing and financially able to pay any of the debts he has disputed, should it be determined that he owes the debts. (Tr. 70-72)

Applicant has assumed responsibility for paying the household bills. According to his budget, he has a net monthly income of approximately \$4,400 and expenses of \$3,400, leaving approximately \$1,000 for additional expense. (AE Y) Since assuming managing the finances, he routinely pays the bills on-line when they arrive. He has not incurred additional delinquent debt for a long time and uses only one credit card. (Tr. 74) He believes his financial problems were limited to that period of time when he owned a business and later when he was traveling. He does not envision similar problems occurring in the future. (Tr. 73)

Applicant submitted a copy of his Performance Management Process for 2008. Overall, he has received good ratings and in some areas is "exceeding expectations." (AE E) A colleague, for over seven years, considers him to be a loyal, dependable, and an asset to the unit. (AE D). A co-worker for five years commented on Applicant's "upstanding work ethic and an extraordinary detail for quality." (AE W) Applicant's direct manager for five years finds Applicant "to be loyal, honorable, hardworking, dependable and highly skilled in his areas of expertise." (AE C) The plant manager is highly impressed with Applicant's work relationships, skill and dedication. He wrote, "I feel confident in saying that he is capable of handling any situation with thoughtfulness, maturity and level-headedness. He has consistently responded in many situations with ethical and "common sense" solutions that were based on "Doing the Right Thing" for Customer and Company." (AE B)

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the revised adjudicative guidelines (AG). In addition

¹The June 2006 and December 2007 CBRs provided by the Government list two separate lease debts, one owed to LFG and one to Cit/Lease. The Cit/Lease is paid or closed on each CBR. AE K addresses the LFG account listed in the SOR. Both are now resolved.

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 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, 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." 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."

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.

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.

AG ¶ 19 describes two conditions that could raise a security concern and maybe be disqualifying in this case:

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

Applicant began accumulating a significant amount of delinquent debt between 2000 and 2001 after his business failed and he then worked at a position, requiring him to travel and be away from home. Some of the debts were not addressed or resolved until 2008. The evidence is sufficient to raise these two potentially disqualifying conditions.

After the Government produced substantial evidence supporting the two disqualifications, the burden shifted to Applicant to produce evidence and prove mitigation of the security concerns. AG ¶ 20 includes six conditions that could mitigate security concerns arising from financial difficulties:

- (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;
- (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; and

(f) the affluence resulted from a legal source of income.

Applicant's financial indebtedness arose around 2000 when his business failed and later when he relied on his wife to manage the finances while traveling for work. After learning of the problems in late 2007, he began to address them. Both of those circumstances are unlikely to occur in the future and do not cast doubt on his current reliability or trustworthiness. AG ¶ 20(a) is applicable. Some of Applicant's financial problems are attributable to a failed business, which was a situation beyond his control. However, there is no evidence that while accumulating the debts he took steps to manage his obligations. Hence, AG ¶ 20(b) has limited application. Although he has not obtained credit counseling, he has addressed the eleven debts listed in the SOR, and his current budget is sufficient to cover any of the outstanding disputed debts. Thus, there are "clear indications that the problem is being resolved or is under control," warranting the application of AG ¶ 20(c). Applicant paid six of the eleven debts and is attempting to resolve the others. His actions demonstrate a good-faith effort to resolve the debts, triggering the application of AG ¶ 20(d).

Applicant disputed five debts and provided supporting documentation thereby establishing the application of AG ¶ 20(e). The record evidence does not support the application of AG ¶ 20(f).

Guideline E, Personal Conduct

The security concern pertaining to the guideline for Personal Conduct is set out in AG ¶ 15:

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.

The Government alleged in SOR ¶¶ 2.a through 2.d that Applicant falsified answers to four questions on his e-QIP, in that he failed to disclose debts over 90 and 180 days old, a tax lien and a judgment. The Government contended that those omissions may raise a security concern and be disqualifying under AG ¶ 16(a):

deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment

qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities.

Applicant admitted that he failed to include the information in the e-QIP, but denied that he intentionally omitted the information.

When a falsification allegation is controverted or denied, the government has the burden of proving it. Proof of an omission, standing alone, does not establish or prove an applicant's state of mind when the omission occurred. An administrative judge must consider the record evidence as a whole to determine whether there is direct or circumstantial evidence concerning an applicant's state of mind at the time the omission occurred. See ISCR Case No. 03-09483 at 4 (App. Bd. Nov. 17, 2004) (explaining holding in ISCR Case No. 02-23133 at 5 (App. Bd. Jun. 9, 2004)).

Applicant was unaware of the delinquencies until he reviewed his credit report for the first time in December 2007, which was after he completed his e-QIP. Up to that time, his wife had been managing the finances, and unbeknownst to him many of the bills had not been paid. Given his wife's candid testimony, confirming that she had not told him about the debts, his explanation for not disclosing the financial information is credible. The omission of the information was not intentional. Hence, the evidence does not establish deliberate falsification. This Guideline is found in favor of Applicant.

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). They include the following:

- (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 include 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 is a 37-year-old man, who began experiencing financial difficulties between 2000 and 2001. Upon learning of the delinquent debts, he promptly began addressing them, demonstrating his commitment to responsible financial management. According to both his supervisor and plant

manager, he exhibits similar characteristics at work. His supervisor is aware of the Government's security concerns, diminishing a potential for coercion or manipulation. The Appeal Board in ISCR Case No. 04-09684 at 2-3 (App. Bd. Jul. 6, 2006), noted that "an applicant is not required to show that she has completely paid off her indebtedness, only that she has established a reasonable plan to resolve her debts and has 'taken significant actions to implement that plan.'" Applicant's current income and budget are solid, indicating that he appears to be living within his means and resolving his obligations.

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

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 through 1.k: For Applicant

Paragraph 2, Guideline E: FOR APPLICANT

Subparagraphs 2.a through 2.d: For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the interests of national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

SHARI DAM
Administrative Judge