



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 07-08318
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Melvin A. Howry, Esquire, Department Counsel
For Applicant: *Pro Se*

March 26, 2008

Decision

WHITE, David M., Administrative Judge:

Applicant submitted his Security Clearance Application (SF 86), on February 23, 2007. On September 28, 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 (DoD) for SORs issued after September 1, 2006.

Applicant acknowledged receipt of the SOR on October 11, 2007. He answered the SOR in writing on October 30, 2007, and requested a hearing before an Administrative Judge. DOHA received the request in November 2007. Department Counsel was prepared to proceed on January 14, 2008, and the case was assigned to me on January 25, 2008.

DOHA issued a notice of hearing on February 4, 2008, and I convened the hearing as scheduled on February 22, 2008. The government offered exhibits (GE) 1 through 6, which were admitted without objection. Applicant testified on his own behalf, and submitted exhibits (AE) A and B, which were admitted without objection. I granted Applicant's request to keep the record open until March 7, 2008, to submit additional matters. DOHA received the transcript of the hearing (Tr.) on March 3, 2008. While the record remained open, Applicant submitted six letters from coworkers via Department Counsel, who forwarded them without objection on March 10, 2008. These letters were collectively marked AE C, and the record was closed. Based upon thorough 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 30, 2007, Applicant denied all the factual allegations in SOR ¶¶ 1.a through 1.j, with explanations. During the hearing, however, he admitted that, as far as he has been able to determine, he was most likely jointly liable for each of the debts. Applicant's admissions and explanations are incorporated in the following findings of fact.

Applicant is a 56-year-old Manager of a major defense contractor. Applicant is a college graduate who has worked for the company for 28 years. He successfully held a Secret clearance from 1983 to 1988, but his duties have not required a clearance again until recently. His net salary is about \$6,800 per month.

Applicant and his wife married in May 1980. She is also employed, and earns about \$60,000 per year. They began having marital problems in 2003. In January 2007, she served him with divorce papers, and he moved out of the family home to an apartment. He recently moved in with a friend to reduce his monthly rent from \$1,100 to \$500. This will increase his monthly surplus income over regular expenses from \$1,200 to at least \$1,800. The divorce proceedings should be final within the month. (GE 6; AE B; Tr. at 30, 52, 66, 68.)

Applicant's two daughters are ages 30 and 19. The older daughter suffers from bipolar disorder, with delusional aspects, that began after she started working. She earned a bachelor's degree with a 3.5 grade average, and two varsity letters in athletics from a major university. Eventually unable to live on her own, she moved home around Labor Day, 2006. She has since needed psychological evaluation and care, which Applicant and his wife pay for. (Tr. at 31-33.) His younger daughter is 19 years old. She suffers from obsessive-compulsive disorder, and had difficulty finishing high school. She also lives at home with her mother, and requires significant medical attention. (Tr. at 36-37, 76.)

Applicant has no information concerning the \$51 delinquent debt to a collection agency alleged in SOR ¶1.a. An examination of the credit bureau reports (CBR) in the record shows that this debt was reported by the original creditor, a restaurant, to have

been paid in full in July or August 2004. (*Compare* GE 3 at 5 - 2nd entry; GE3 at 13 - 1st entry; GE 3 at 15 - 2nd entry.) The entry does not appear at all on Applicant's more recent CBR. (GE 4.) Applicant and Department Counsel agreed that Applicant fully repaid the \$3,323 credit card debt alleged in SOR ¶ 1.b. This was his wife's credit card, but he was an authorized user and jointly liable for her charges. (AE B at 1; Tr. at 59, 75, 77.)

The \$4,944 delinquent debt to a store, listed in SOR ¶ 1.c also involved a joint account. Applicant and his wife used it to buy some furniture. When their marital problems started, they lost track of who was supposed to be making the payments and the account became delinquent. This debt is specifically identified in their Decree of Dissolution (divorce) to be paid from a \$20,000 fund that will be set aside from proceeds of selling their home for payment of unsecured debts. This arrangement has been made in recognition that they each owe half of their joint debts and should each pay half. Appellant's attorney advised him not to personally pay any of these debts until the divorce provisions are effected because that would simply reduce the total debt of which his wife is to pay half, without reimbursement to him. He will already be providing her \$1,900 per month in alimony and voluntary support for their daughters, and does not feel he should simply give her more money by paying debts on which she is jointly liable and which will be settled under the decree. The house is presently listed for sale, and should sell for at least \$440,000. They have an interested potential buyer. The combined mortgage debt outstanding is \$295,000. They are also evenly dividing their \$52,200 worth of non-real estate community property. (AE A; AE B; Tr. at 67-68, 71.)

The remaining debts listed in SOR ¶¶ 1.d through 1.j involve medical bills for Applicant's wife and daughters. One of these is \$1,988 and the other six total \$700. Both Applicant and his wife have medical insurance through their employers. They had some trouble coordinating first and second payer obligations and remaining deductibles and co-pays, particularly since January 2007 when Applicant moved to an apartment and had no access to bills. These represent a very small proportion of their significant medical bills over the past several years, and will all be paid jointly in connection with the divorce settlement. His wife has recently resumed some communication to coordinate resolution of these outstanding issues. (Tr. at 53-55, 61-63.)

In sum, Applicant remains a joint debtor with his soon to be ex-wife on one \$4,944 retail debt and about \$2,700 in medical bills alleged in the SOR. He could pay all of them today, but is following his attorney's advice to wait for finalization of their negotiated property settlement and divorce so that his wife pays her half. Their family home is likely to sell soon for around \$440,000, yielding more than \$110,000 for them to pay joint debt and split the rest. Applicant earns almost \$100,000 per year in a secure employment situation, and his monthly income exceeds his regular expenses by more than \$1,700.

Four senior managers and colleagues from Applicant's company wrote to express their complete confidence in his integrity, responsibility and dedication to following proper procedures and protecting sensitive information. (AE C.) Applicant's

demeanor was serious, his testimony was credible, and he demonstrated both understanding of, and intent to honorably resolve, his finances in connection with finalizing his divorce proceedings.

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(a) and 2(c), the entire process is a conscientious scrutiny of applicable guidelines in the context 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 "Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the 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 the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision." Section 7 of Executive Order 10865 provides that "Any determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned."

A person applying for access to classified information seeks to enter 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

AG ¶ 18 expresses the security concern pertaining to financial considerations:

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 over-extended is at risk of having to engage in illegal acts to generate funds. Compulsive gambling is a concern as it may lead to financial crimes including espionage. Affluence that cannot be explained by known sources of income is also a security concern. It may indicate proceeds from financially profitable criminal acts.

AG ¶ 19 describes conditions that could raise a security concern and may be disqualifying. Of these nine different disqualifying conditions, the Government asserted that two were raised by Applicant's financial circumstances (Tr. at 123.): "(a) inability or unwillingness to satisfy debts;" and "(c) a history of not meeting financial obligations."

The evidence shows that Applicant is quite willing to satisfy his portion of remaining delinquent joint debts, and is approaching their resolution in a reasonable manner under the advice and counsel of his divorce attorney. He could use present assets to repay those debts in full if he had to, but that would be financially foolish since his wife is jointly liable and has agreed to pay half in connection with dividing their joint assets. He has never been unable to pay these relatively minor debts, and has both the assets and income to resolve them and remain solvent in the future. Security concerns are raised under both AG ¶¶ 19(a) and 19(c), but the concerns are not significant in light of his overall financial and marital situation.

AG ¶ 20 provides conditions that could mitigate security concerns. Four pertinent conditions are:

(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;

Applicant's delinquent debts all arose during his recent marital problems leading to his imminent divorce. The first two SOR-listed debts have been repaid in full, resolving more than 30% of the alleged total. The remaining \$7,700 in delinquencies arose due to problems coordinating financial issues with his wife as their marriage unraveled and he moved out of their home. Their divorce is almost final, and the decree sets forth their obligations and agreement to sell their home and pay off their joint debts from the proceeds. Applicant has reduced his separate living expenses to the point that he has more than \$1,700 per month in excess income, and will realize well over \$50,000 from the pending home sale. His decision not to immediately repay these debts is both reasonable and based on advice of his attorney. This establishes substantial mitigation under AG ¶¶ 20(a), (b), (c) and (d) for the relatively minor security concerns raised by the continuing existence of these debts at the time of the hearing.

Applicant's debts did not arise from any lack of judgment, poor self-control, or unwillingness to abide by rules and regulations. With a salary of nearly \$100,000 and substantial positive monthly cash flow, he is not financially overextended. Combined with his demonstrated integrity and good character, his finances create extremely small, if any, risk of illegal activity to generate funds.

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 common sense 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's conduct of potential concern involves delinquent debts that were incurred largely due to circumstances beyond his control as his 27-year marriage broke apart. The amount of delinquent debt is relatively small, and all but one remaining debt involves medical deductibles or co-pays arising from his wife's and daughters' treatment under different insurance plans. He did not have access to the bills since moving out of their home when served with divorce papers. Applicant is a mature, senior manager in a stable and well-paying job, and his wife also earns a substantial salary. He intends to continue financial assistance for his two troubled daughters, but has more than sufficient income to do so. There is no potential for pressure, coercion, exploitation or duress since his financial situation is minor and on track for prompt full resolution. His pending divorce will eliminate his joint obligation for his wife's debts. This factor, and his substantial solvency, make continuation or recurrence quite unlikely.

On balance, Applicant presented sufficient evidence to fully mitigate reliability and trustworthiness security concerns arising from his former failure to satisfy debts and history of not meeting financial obligations. He established his integrity, good character, and ability to protect classified information. "An applicant is not required to show that [he] has completely paid off [his] indebtedness, only that [he] has established a reasonable plan to resolve [his] debts and has 'taken significant actions to implement that plan.'" ISCR Case No. 06-12930 at 2 (App. Bd. Mar. 17, 2008) (quoting ISCR Case No. 04-09684 at 2-3 (App. Bd. Jul. 6, 2006)). Overall, the record evidence leaves neither questions nor doubts as to Applicant's present eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has fully 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 section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	For Applicant
Subparagraph 1.e:	For Applicant
Subparagraph 1.f:	For Applicant
Subparagraph 1.g:	For Applicant
Subparagraph 1.h:	For Applicant
Subparagraph 1.i:	For Applicant
Subparagraph 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 interests of national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

DAVID M. WHITE
Administrative Judge