



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



In the matter of:)	
)	
-----)	ISCR Case No. 14-04418
)	
Applicant for Security Clearance)	

Appearances

For Government: Caroline E. Heintzelman, Esquire, Department Counsel
For Applicant: *Pro se*

09/24/2015

Decision

HOWE, Philip S., Administrative Judge:

On December 12, 2013, Applicant submitted his Electronic Questionnaire for Investigations Processing (e-QIP). On September 25, 2014, the Department of Defense Consolidated Adjudications Facility (DODCAF) 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 answered the SOR in writing on October 24, 2014, and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on December 17, 2014, and I received the case assignment on December 18, 2014. DOHA issued a Notice of Hearing on May 12, 2015, and I convened the hearing as scheduled on May 28, 2015. The Government offered Exhibits 1 through 4, which were received without objection. Applicant testified on his own behalf, called one additional

witness, and submitted Exhibits A through K, without objection. DOHA received the transcript of the hearing (Tr.) on June 4, 2015. I granted Applicant's request to keep the record open until June 20, 2015, to submit additional matters. On June 20, 2015, he submitted Exhibits L to O, without objection. On August 4, 2015 he submitted a copy of his discharge in bankruptcy. I marked it as Exhibit P and Department Counsel had no objection. The record closed on August 4, 2015. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

Findings of Fact

In his Answer to the SOR Applicant admitted the factual allegations in Subparagraphs 1.a to 1.j, 1.l, 1.m, 1.p to 1.t, with explanations. He denied the factual allegations in Subparagraphs 1.k, 1.n, and 1.o. He also provided additional information to support his request for eligibility for a security clearance.

Applicant is 47 years old, divorced with one child, and has a high school degree. He seeks employment in construction and security work at a local military installation. If employed by the defense contractor Applicant will earn about \$52,000 annually for the six years it will take to build the building on the military installation. Applicant is currently unemployed. He was unemployed from September 2010 to the summer of 2011 recovering from a surgery. From July 2011 to December 2013, he was employed with various companies. He was unemployed again because of physical disabilities from December 2013 to April 2014. He worked at a job for about three months from April 2014 to July 2014? and since then has been unemployed. (Tr. 27-30, 50, 54; Exhibit 1)

Applicant's friend pays Applicant's child support, student loans, and back tax payments on his behalf. The friend, who testified, paid the child support for the past year, and the past six months of the student loans payments. In return for the child support payments, Applicant is renovating the witness's house. The student loan payments are a gift to Applicant. He owes about \$6,000 for his student loans. Prior to May 2015 Applicant paid those debts from any money he received from selling his personal belongings. (Tr. 30, 31, 48, 49)

Applicant contacted the Internal Revenue Service (IRS) in February 2015 to set up an installment payment plan. He owed Federal business income taxes for the 2009 tax year. The amount owed is \$12,000. They were the quarterly payments he should have made for his business. Applicant stated he filed the business and personal income tax returns for that year, does not owe on his personal income tax, but does owe for the business taxes. He testified he filed the tax returns for 2010 through 2014 on time. The SOR alleges the tax debt is \$7,000 (Subparagraph 1.r) but Applicant admits it is \$12,000. The installment payments are \$205 per month and have been paid since February 2015. (Tr. 31-33, 46, 47, 49; Exhibits 2-4)

Applicant has 18 separate delinquent debts listed in the SOR. One item is a Chapter 7 bankruptcy he filed in August 2005 and was discharged in February 2006 (Subparagraph 1.d). Two debt listings duplicate themselves, one owed to a bank for

\$1,122 (Subparagraph 1.g) and the other owed to a collector for \$1,123 (Subparagraph 1.s). The account numbers are the same for these debts. Therefore, including the \$12,000 owed to the IRS, Applicant's debts total \$31,203 without the duplicate debt. (Tr. 33, 47; Exhibits 2-4)

Applicant testified he filed Chapter 7 bankruptcy in 2015. That bankruptcy action is intended to resolve all the debts listed in the SOR except for his tax obligation and child support payments. After the hearing he filed documents showing he filed the bankruptcy on March 24, 2015. He testified his debts were credit card debts mainly to sustain his business. That business was constructing science labs in hospitals and colleges. At his business peak he had 14 employees. Applicant tried to pay his employees and used credit cards. He missed tax payments to obtain cash to pay his workers. After he lost the installation business he cut back the company until it was only him working on custom cabinets, but that business slowed also. (Tr. 34, 35, 38-41; Exhibits L, P)

While he denied certain debts in the SOR, he later ascertained they were legitimate debts. He testified he paid the \$1,041 debt in subparagraph 1.k, a medical bill. He also stated he paid the \$80 insurance debt listed in subparagraph 1.q. (Tr. 35-37, 42, 43, 46; Exhibits 2-4; Answer)

Applicant testified he is current on his child support payments of \$500 monthly (subparagraph 1.t). (Tr. 47, 48; Exhibits 2-4; Answer)

Applicant testified he also filed a business bankruptcy in 2005. The debts there were credit card debts also. (Tr. 37)

Applicant has no savings or investment accounts. He admitted he is unable to pay his debts at this time until he finds employment. (Tr. 38)

Applicant submitted three character letters. One letter is from a friend who stated Applicant helped his friend who was the witness at the hearing remodel her house and take care of her children while she worked. The next letter is from his witness elaborating on her testimony for Applicant at the hearing. The final letter is from someone who has known Applicant for two years as he helped her friend who was the Applicant's witness. All three letters discuss Applicant's character and honesty in a favorable manner. (Exhibits M-O)

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 \$31,203 in delinquent debt from 2009 to the present time that remains unpaid. Applicant has 18 delinquent debts listed in the SOR. The debts arose from his business failing during a time of economic downturn from 2009 onward. He has a 2005 Chapter 7 bankruptcy also related to his business. Applicant owes Federal business income tax from 2009 in the amount of \$12,000 after filing the returns but not paying the quarterly payments owed. Both of these disqualifying conditions are established.

The guideline in AG ¶ 20 contains six conditions that could mitigate security concerns arising from financial difficulties. Two 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; and

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant lost his business of installing science labs in hospitals and colleges during the recession of 2009. He used his credit cards and business tax payments to keep the business going, but it finally failed. He acted to save his business and hoped it would improve. Using credit cards and tax payments from 2009 to keep the business going was not the best financial mechanism to use. Applicant has not changed his financial situation because he has bartered his carpentry services for payment of one debt, no longer has his private business, filed bankruptcy to dispose of his debts, and seeks a salaried position with long term prospects. His income will be regular and he can better care for his financial needs. AG ¶ 20 (b) is established partially.

Applicant is current on his child support payments and his student loan debt payments because he received help from a friend who was a witness for him. Applicant traded his carpentry skills for the child support payments and accepted as a gift the past

six months of student loan payments. When he is gainfully employed again he will undertake those payments. He filed Chapter 7 bankruptcy on his debts listed in the SOR, except for two debts he paid. AG ¶ 20 (d) applies because of Applicant's good-faith efforts and innovative ways he arranged to repay his delinquent debts.

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. 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 voluntarily undertook to incur these debts as he struggled to keep his business and pay his employees. He finally closed the business instead of going deeper into debt than the \$31,203 he owed. He did not continue his financially imprudent actions, so there is no chance of a recurrence. He seeks a job as an employee with a steady income on a six-year project on a military installation for a defense contractor. There does not appear to be any chance for coercion, pressure, exploitation, or duress because he has his financial situation under control now, with the help of his friend.

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. I conclude the whole-person concept for Applicant.

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

Subparagraph 1.a to 1.t: 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