



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



In the matter of)
)
) ISCR Case No. 09-05514
)
)
Applicant for Security Clearance)

Appearances

For Government: Candace L. Garcia, Esquire, Department Counsel
For Applicant: *Pro se*

March 31, 2010

Decision

O'BRIEN, Rita C., Administrative Judge:

Based on a review of the case file, pleadings, exhibits, and testimony, I conclude that Applicant has mitigated the security concerns raised under the guideline for financial considerations. Accordingly, his request for a security clearance is granted.

Statement of the Case

On November 25, 2008, Applicant submitted a security clearance application (Standard Form 86) to request a security clearance required as part of his employment with a defense contractor. After reviewing the results of the ensuing background investigation, adjudicators for the Defense Office of Hearings and Appeals (DOHA) were unable to make a preliminary affirmative

finding¹ that it is clearly consistent with the national interest to grant Applicant's request.

On October 9, 2009, DOHA issued to Applicant a Statement of Reasons (SOR) that specified the basis for its decision: security concerns addressed in the Directive under Guideline F (Financial Considerations) of the Adjudicative Guidelines (AG).² In his notarized Answer to the SOR, Applicant admitted all the allegations under Guideline F. He also requested a hearing before an administrative judge.

Department Counsel was prepared to proceed on November 24, 2009, and the case was assigned to me on December 7, 2009. DOHA issued a Notice of Hearing on January 6, 2010, and I convened the hearing as scheduled on January 22, 2010. During the hearing, the government offered four exhibits, admitted as Government Exhibits (GE) 1 through 4. Applicant testified, and offered six exhibits, which I admitted as Applicant's Exhibits (AE) A through F. I held the record open to allow Applicant to submit additional documentation. He timely provided three documents, which I admitted as AE G through I. DOHA received the transcript on January 29, 2010.

Findings of Fact

Applicant's admissions in response to the SOR are incorporated herein as findings of fact. After a thorough review of the pleadings, Applicant's response to the SOR, and the evidence presented by both parties, I make the following additional findings of fact.

Applicant, 44 years old, completed a bachelor's degree in computer science in 1992 (GE 1). He is currently employed as a network administrator for a defense contractor. He married in 1991. He and his wife separated in March 2009 (Tr. 60 AE I). Their divorce will be final in March 2010. (Tr. 52) He has three sons who are 13, 15, and 17 years old. He was an active-duty enlisted member of the Army from 1985 to 1988. He has held secret and top secret security clearances continuously since the mid-1980s. (GE 1; AE A; Tr. 18-22)

During Applicant's marriage, his wife handled the family bills. Applicant worked two jobs simultaneously, and his wife worked part-time. He did not have the time or the ability to handle the family finances, and he trusted and relied on

¹ Required by Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended, and by DoD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as amended.

² Adjudication of this case is controlled by the Adjudicative Guidelines, approved by the President on December 29, 2005, which were implemented by the Department of Defense on September 1, 2006. The Revised Adjudicative Guidelines supersede the guidelines listed in Enclosure 2 to the Directive, and they apply to all adjudications or trustworthiness determinations in which an SOR was issued on or after September 1, 2006.

his wife. (Tr. 47) Applicant testified that their debts related to the ordinary expenses of a family of five, including schooling for three adolescents. (Tr. 17) He knew they had some past-due debts, and he had “bailed them out” in the past. (Tr. 57) However, he did not pay enough attention to how much money they were spending (Tr. 50) and was not fully aware of the extent of the family’s indebtedness. He admits he should have kept a closer watch on the bills, because, “...a lot of it was going on, getting spent, that I did not know about.” (Tr. 17, 57) In addition, when his wife encountered financial problems, she turned to her parents and they provided funds to keep them afloat. She did not tell Applicant about receiving money from her parents. (Tr. 57) In the fall of 2008, he sought an attorney to file a joint bankruptcy petition. It was only when he began to complete the bankruptcy paperwork that Applicant realized the full extent of their indebtedness. (Tr. 54-56)

Applicant testified that he and his wife were in a credit counseling program and that he made monthly payments that were to be paid toward his debts. He did not know the timeframe that he was in this plan, and did not provide documentation. He also took online credit counseling, as well as the counseling that is required as part of the bankruptcy process. (Tr. 48)

When Applicant began looking into the family debts more closely, he and his wife had arguments. (Tr. 46) In about March 2009, they decided to separate. While Applicant was out of the house, his wife left the home, taking the children and the furniture. (Tr. 60) Applicant kept the family home, and bore the expense of re-furnishing it. In May 2009, Applicant and his wife signed a formal separation agreement. (AE D, I)

In June 2009, Applicant's wife re-filed a bankruptcy petition in her own name. (AE D; Tr. 54-56) Her bankruptcy has been discharged. (Tr. 54-56) Applicant's attorney advised him to postpone filing his own petition because he was in the midst of negotiating a loan modification on his home mortgage. (AE C, H) The attorney suggested he wait until the modification of his home mortgage loan was finalized. The modification, which was approved in December 2009, reduced his mortgage payment to \$1,507 per month, an amount that Applicant states is affordable. (AE H; Tr. 24-25, 51)

In 2008, Applicant's bankruptcy attorney also advised him not to make any further payments on his debts because they would be included in his bankruptcy. (Tr. 17-18, 51) Applicant testified that,

So the way it looks on paperwork is that I have not paid anything.
But I was informed by my lawyer, the lawyer, not to pay anything.
So that's why I was in a catch-22, to where it just didn't make any
sense to me. (Tr. 18)

Applicant was uncomfortable leaving his debts unpaid for approximately one year, but he followed his attorney's advice. (Tr. 18) After the loan modification was approved in December 2009, Applicant filed a Chapter 7 bankruptcy petition the same month, and his first meeting was scheduled for February 2010. (AE E, G; Tr. 23-25)

Applicant's children live with his spouse, and he has custody one day per week and two weekends per month. He pays \$2,000 per month in child support. (Tr. 19) Although Applicant's spouse was assigned responsibility for their van in the separation agreement, she did not make the payments, and Applicant has agreed to take over the payments. (AE F, I; Tr. 17) Applicant does not have credit cards. (Tr. 51) He now handles his own finances, and has a written budget. (Tr. 53)

The debts alleged in the SOR total approximately \$49,000. Most of them became delinquent in 2008 (GE 4). The debts, included in Applicant's bankruptcy (AE G), are the following:

- Credit cards: allegations 1.a. (\$1,018), 1.b. (\$3,028), 1.e. (\$5,357), and 1.h. (\$9,453);
- Personal loans: allegations 1.c. (\$9,091); 1.d. (\$2,000) and 1.g. (\$6,236);
- Mortgage: allegation 1.f. (\$13,139);

Applicant submitted a character reference from his co-worker of ten years, attesting to Applicant's dedication to the government client and mission. In their work together, Applicant has demonstrated high moral standards. As a personal friend, he is aware of Applicant's financial problems, and his difficult pending divorce. He helped Applicant during the separation by providing furniture for Applicant's house. He stated that Applicant assumed debts that were his ex-wife's responsibility, and curtailed his lifestyle in order to handle those obligations. (AE B)

Policies

Each security clearance decision must be a fair, impartial, and common-sense determination based on examination of all available relevant and material information, and consideration of the pertinent criteria and adjudication policy in the AG.³ Decisions must also reflect consideration of the factors listed in ¶ 2(a) of the Guidelines, commonly referred to as the whole-person concept.

³ Directive 6.3

The presence or absence of a disqualifying or mitigating condition does not determine a conclusion for or against an applicant. However, specific applicable guidelines should be followed whenever a case can be measured against them as they represent policy guidance governing the grant or denial of access to classified information. In this case, the pleadings and the information presented by the parties require consideration of the security concerns and adjudicative factors addressed under Guideline F (Financial Considerations) at AG ¶ 18.

A security clearance decision is intended only to resolve whether it is clearly consistent with the national interest⁴ for an applicant to either receive or continue to have access to classified information. It is not a determination as to the loyalty of the applicant.⁵ The government bears the initial burden of producing the substantial evidence on which it based the preliminary decision to deny or revoke a security clearance for an applicant. Additionally, the government must be able to prove controverted facts alleged in the SOR. If the government meets its burden, it then falls to the applicant to refute, extenuate or mitigate the government's case.

Because no one has a "right" to a security clearance, an applicant bears the burden of persuasion. A person who has access to classified information enters into a fiduciary relationship with the government based on trust and confidence. Therefore, the government has a compelling interest in ensuring each applicant possesses the judgment, reliability, and trustworthiness to protect the national interests as his or his own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an applicant's suitability for access in favor of the government.⁶

Analysis

Guideline F, Financial Considerations

AG ¶ 18 expresses the security concern about 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

⁴ See *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

⁵ See Exec. Or. 10865, § 7.

⁶ See *Egan*; Revised Adjudicative Guidelines, ¶ 2(b).

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.

The evidence supports application of two disqualifying conditions: AG ¶19 (a) (inability or unwillingness to satisfy debts) and AG ¶19 (c) (a history of not meeting financial obligations). Applicant's failure to keep abreast of the status of his family's finances led to numerous delinquencies over the past two years.

Under AG ¶ 20, the following potentially mitigating factors are relevant:

(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; and

(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.

Applicant's delinquencies occurred under circumstances that are unlikely to occur in the future, implicating AG ¶ 20(a). His wife handled the family finances. He was working two jobs and relied on his wife to pay their bills and inform him of problems. Although he was aware generally that they had delinquencies, he was unaware of the extent, in part because his spouse sought funds from her parents to deal with the problems, without informing Applicant. As Applicant and his wife are in the process of divorcing, it is unlikely that such a situation will recur in the future. Applicant's efforts to resolve the situation, including seeking financial counseling and legal advice since 2008, demonstrate his trustworthiness. AG ¶ 20(a) applies.

Applicant receives partial credit under mitigating condition AG ¶ 20(b), which focuses on an applicant's response to factors beyond his control. Here, Applicant's spouse incurred expenses of which Applicant was unaware. She also sought funds from her parents without Applicant's knowledge. These actions were beyond his control. However, Applicant had some awareness of their debts, and should not have relied completely on his wife. Applicant did act responsibly by seeking legal assistance.

AG ¶ 20(c) applies because Applicant credibly testified that he worked with a counseling service and made payments to that service to resolve his debts. He also participated in online counseling in the past, and again as part of the bankruptcy process. Ultimately, based on his attorney's advice, he decided to resolve his debts through bankruptcy. His documentation supports his claim that he has been working to resolve his financial situation for the past one-and-one-half years. His bankruptcy is under way and his finances are under control.

Whole-Person Concept

Under the whole-person concept, an administrative judge must evaluate the applicant's security eligibility by considering the totality of the applicant's conduct and all the circumstances. I have evaluated the facts presented and have applied the appropriate adjudicative factors under the cited guideline. I have also reviewed the record before me in the context of the whole-person factors listed in 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 that the ultimate determination of whether to grant a security clearance must be an overall commonsense judgment based on careful consideration of the guidelines and the whole-person concept. Under the appropriate guideline, I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case.

When Applicant realized that his wife's handling of the finances was inadequate, and they were significantly in debt, he made efforts to bring his finances under control: he sought credit counseling and he sought legal assistance. Although he preferred not to leave his debts unpaid, he followed the attorney's advice and did not pay the debts because they were to be included in his bankruptcy petition. The bankruptcy petition was on hold for almost one year while he awaited approval of a loan modification on his mortgage. He filed his petition as soon as the modification was approved. An applicant is not required to be debt-free, or establish that he paid every debt. But he must demonstrate that he established a plan to resolve his debts and has taken significant action to implement that plan. Applicant has not merely promised to pay his debts, but has a plan in place to resolve them and provided documentation to support that his plan is in progress.

It is also noteworthy that Applicant's efforts are not in response to the SOR. He started working with the attorney in 2008, long before the SOR was issued in 2009. Applicant's testimony as to his finances and his efforts to resolve debts was sincere and credible. His friend and co-worker of ten years attested to his dedication and trustworthiness. Applicant's reliability is underscored by the fact that he has held a security clearance for decades without incident.

A fair and commonsense assessment of the available information bearing on Applicant's suitability for a security clearance shows he has satisfied the doubts raised about his suitability for a security clearance. For all these reasons, I conclude Applicant has mitigated the security concerns arising from the cited adjudicative guideline.

Formal Findings

Formal findings on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are as follows:

Paragraph 1, Guideline F:	FOR APPLICANT
Subparagraphs 1.a. - 1.h.	For Applicant

Conclusion

In light of all of the foregoing, it is clearly consistent with the national interest to allow Applicant access to classified information. Applicant's request for a security clearance is granted.

RITA C. O'BRIEN
Administrative Judge