



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 14-06592

Appearances

For Government: Adrienne Strzelczyk, Esquire, Department Counsel
For Applicant: *Pro se*

05/12/2016

Decision on Remand

HOWE, Philip S., Administrative Judge:

On February 28, 2012, Applicant submitted his Electronic Questionnaires for Investigations Processing (e-QIP). On May 9, 2015, the Department of Defense Consolidated Adjudications Facility (DODCAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F. 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 August 12, 2015. Applicant requested his case be decided on the written record in lieu of a hearing.

On September 28, 2015, Department Counsel submitted the Department's written case. A complete copy of the file of relevant material (FORM), consisting of Items 1 to 6, was provided to the Applicant on September 28, 2015. He was given the opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant received the file on October 13, 2015.

Applicant did not file a Response to the FORM within the 30 day time allowed that would have expired on November 12, 2015.

Department Counsel submitted six Items in support of the SOR allegations. Item 3 is inadmissible. It will not be considered or cited as evidence in this case. It is the summary of an unsworn interview of Applicant conducted by an interviewer from the Office of Personnel Management on April 23, 2012. Applicant did not adopt it as his own statement, or otherwise certify it to be accurate. Under Directive ¶ E3.1.20, this Report of Investigation summary is inadmissible in the absence of an authenticating witness. In light of Applicant's admissions, it is also cumulative.

I received the case assignment on December 18, 2015. I issued a decision on February 3, 2016, finding Applicant was not eligible for a security clearance.

Procedural Matters

Applicant appealed the denial to the DOHA Appeal Board (Board). On April 20, 2016, the Board remanded the decision for reconsideration of the documents submitted as Items 4-6 to determine which debts were paid. Based upon reconsideration of the pleadings and exhibits, eligibility for access to classified information is granted.

Findings of Fact

Applicant admitted the allegations in the SOR. There are six financial allegations. (Items 1, 2)

Applicant is 34 years old, married, and has one child. He served six years in the U.S. Air Force, from December 2001 to December 2007. Since leaving active military service in 2007 he worked for a company that terminated him when he took a job with another defense contractor. At his first civilian job he would work four months and be unemployed for three months. He would collect unemployment insurance and have any money he saved from working the four months. Therefore, he would work eight months of every year. The only e-QIP in the file is from September 2012 and Applicant states in it his "current employment" is from October 2007 to "present" which would mean

September 2012, His debts started being delinquent in 2012. Applicant did not provide any information about the current terms and conditions of his present employment. However, in his Answer dated August 12, 2015, he reiterated he was unemployed for four months. (Answer; Items 1, 2)

Applicant owed a bank on a home mortgage (Subparagraph 1.a). The mortgage balance is \$247,990, and the monthly payments were past due in the amount of \$19,204. Applicant's Answer states he was told by his mortgage lender that to take advantage of a short sale procedure he would have to stop paying on his mortgage. He did so and the house was sold in a short sale. The credit report of September 28, 2015, states the house was sold and the balance owed has been paid. The debt was resolved in June 2012. This debt is resolved. (Items 1, 2, 4-6)

Applicant owed \$622 on a credit card (Subparagraph 1.b). The credit report of September 28, 2015, states the account was charged off and paid. Applicant's Answer states he paid off the debt. This debt is resolved. (Items 1, 2, 4-6)

Applicant owed a debt collector \$1,274 on a credit card (Subparagraph 1.c). The debt became delinquent in that time period when Applicant was unemployed. The credit reports and Applicant contend he paid off this debt. The September 28, 2015 credit report shows that the debt is paid. This debt is resolved. (Items 1, 2, 4-6)

Applicant owed a university for tuition the amount of \$1,157 (Subparagraph 1.d). Applicant admits this debt because the G.I. Bill did not cover this expense and he was unemployed making him unable to pay the debt. The credit report of October 7, 2014, states this debt is charged off and not paid. The September 28, 2015 credit report states the debt is a paid charge off. This debt is resolved. (Items 1, 2, 4-6)

Applicant owed a bank \$810 (Subparagraph 1.e). He admitted the debt and attributed his inability to repay it to the four month unemployment period between his job with his current employer and his former employer. The debt delinquency started in December 2012. The credit report of September 28, 2015, shows Applicant disputed the debt and the creditor charged it off. The debt is now showing as a paid charge off account. It is resolved according to the latest credit report. (Items 1, 2, 4 (at account #7, and 5, 6)

Applicant owed a bank on a real estate mortgage with a loan balance of \$146,274 and a past-due monthly payment of \$2,833 (Subparagraph 1.f). Applicant admits this debt and was not able to pay it because he was unemployed for a four month period. The September 28, 2015 credit report shows the account is paid as

specified in the loan agreement. This debt is resolved. (Items 1, 2, 4 (at account #7, 5, 6)

Applicant did not submit any documentation that he has participated in credit counseling or budget education. He provided no evidence concerning the quality of his job performance. He submitted no character references or other evidence tending to establish good judgment, trustworthiness, or reliability. I was unable to evaluate his credibility, demeanor, or character in person since he elected to have his case decided without a hearing.

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, the administrative judge applies the guidelines in conjunction with the factors listed in AG ¶ 2 describing the adjudicative process. 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.

According to 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. 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. From these nine conditions, 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.

From 2012 to the present, Applicant accumulated six delinquent debts, totaling \$25,900, which remained unpaid or unresolved when the SOR was issued. These two disqualifying conditions are established.

The guideline in AG ¶ 20 contains six conditions that could mitigate security concerns arising from financial difficulties. Two mitigating conditions may apply:

(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;

AG ¶ 20 (b) would apply if the loss of employment were shown by Applicant to have a substantial effect on his ability to repay his debts. In the past seven years, Applicant was unemployed for four months at some time, he claims. The termination of employment by his previous employer when he obtained a position with a defense contractor was unforeseen and beyond his control. He had the new job commitment and was awaiting his security clearance. He continued to pay what debts he could. He met his burden of proof of acting responsibly under the circumstances.

Applicant proved AG ¶ 20 (d) applied because he did show that he made good-faith efforts to repay the debts with what funds he had during his four months of unemployment. The three credit reports show his continuing efforts to pay his debts for the past several years. This mitigating condition applies.

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 relevant 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.

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 facts and circumstances surrounding this case. Applicant was an adult when he incurred the debts. He suffered an unforeseen four month period of unemployment when he changed employers that adversely affected his ability to repay his debts at that time. Now he has rectified the situation and has resolved or is resolving his remaining debts.

Overall, the record evidence leaves me without questions or substantial doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising under the guideline for Financial Considerations.

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

Subparagraphs 1.a to 1.f: 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