

DATE: November 29, 2007

In re:)
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 -----) ISCR Case No. 06-26701
 SSN: -----)
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 Applicant for Security Clearance)
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)

**DECISION OF ADMINISTRATIVE JUDGE
SHARI DAM**

APPEARANCES

FOR GOVERNMENT

Caroline H. Jeffreys, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is a 56-year-old senior project manager, who has worked for a federal contractor for the past 30 years. Applicant began accumulating debt in 1991. He resolved some of it through bankruptcies he filed in 1994 and 2000. He recently paid the debts listed in the Statement of Reasons, demonstrating a good-faith effort to repay his creditors. He mitigated the security concerns raised by financial considerations. Clearance is granted.

STATEMENT OF THE CASE

Applicant applied for a security clearance on January 10, 2005, in conjunction with his employment with a defense contractor. On May 29, 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant, pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program (Directive)*, dated January 2, 1992, as amended. The SOR detailed reasons under Guideline F (Financial Considerations) of the Adjudicative Guidelines (AG) issued on December 29, 2005, and implemented by the Department of Defense effective September 1, 2006, as to why DOHA could not make a preliminary affirmative finding under the Directive that it is clearly consistent with national interest to grant a security clearance for Applicant. DOHA recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied or revoked.

Applicant responded to the SOR in writing on or about June 29, 2007, and elected to have a hearing before an administrative judge. The case was initially assigned to another administrative judge on August 22, 2007, and reassigned to me on October 5, 2007. DOHA issued a Notice of Hearing on October 10, 2007, setting the case for hearing on October 25, 2007. At the hearing, Department Counsel introduced Government Exhibits (GX) 1 through 8 into evidence without objections. Applicant testified in his case, called one witness, and introduced Applicant Exhibits (AX) A through F into evidence without objections. The record was left open until November 5, 2007, to give Applicant additional time to submit documents. DOHA received the hearing transcript (Tr.) on November 2, 2007. On that same day, Department Counsel received additional documents from Applicant, which I marked as AX G . She had no objection to the documents and they were admitted into the record.

FINDINGS OF FACT

Applicant admitted the truth of the factual allegations set forth in the SOR pertaining to financial considerations under Guideline F (subparagraphs 1.a through 1.g). Those admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence in the record, I make the following additional findings of fact:

Applicant is a 56-year-old senior project manager for a federal contractor. In 1971, he enlisted in the U.S. Air Force. He left military service in 1977, as a staff sergeant (E-5), and began working with his current employer. He has held a security clearance for approximately 40 years and works with classified information. He has two associate degrees and a bachelor's degree in business. In January 2005, he completed a security clearance application (SF-86), in order to renew his Secret clearance.

In December 1991, Applicant divorced his wife and obtained custody of his four children, two of whom live on their own. His twin sons, ages 24, reside with him. Both of them have special needs and have required additional care growing up. One of the sons started working about a year ago; the other son began a position within the last four months. His former wife provided limited monetary or emotional support for the children over the years. (Tr. 10; 26).

Paragraph 1 of the SOR alleges security concerns under the financial guidelines. Applicant admitted that he filed bankruptcy twice. In February 1994, he petitioned for Chapter 13 bankruptcy, having accumulated approximately \$22,000 in liabilities. After completing the repayment plan, the debts were discharged in August 1996. (GX 5). Those debts arose subsequent to his divorce and after assuming custody of his children and additional expenses. (Tr. 27-28).

In July 2000, Applicant filed a Chapter 7 bankruptcy petition. In September 2000, the court discharged approximately \$244,500 in debts, including \$144,000 of an unpaid mortgage on his residence. At the time, he began having problems with one of his twins, requiring him to move his residence. As he was unable to manage his bills, while paying off his former wife, he relinquished all equity in his home and the bank ultimately foreclosed on it. (Tr. 29-31). He attributed part of the debt to indiscriminate spending during that time period. (Tr. 60). He subsequently reaffirmed several debts and repaid them. (Response 23-27).

From November 2005 until April 2006, Applicant paid \$15,000 of his son's court imposed restitution, after learning that his son was not making the payments. He did so, in order to prevent his son from going to prison. (Response at 29). That expenditure placed an additional strain on Applicant's finances. (Tr. 36-38) That son, along with his other son, recently began contributing small amounts of money to the family's monthly budget. (Tr. 48-49).

The SOR listed five delinquent debts, all of which are paid. Applicant paid the \$874 credit card debt, noted in ¶ 1.c, in June 2007. (Response at 9-10). He paid the \$452 debt, noted in ¶ 1.d, in June 2007. (Response at 11-13). At the end of June, 2007, he paid the charge card debt of \$1,979 listed in ¶ 1.e. (Response at 14-17). He completed his payment plan to the creditor listed in ¶ 1.f for \$2,897 in September 2007. In June 2007, he paid the \$147 credit card debt, listed in ¶ 1.g. (Response at 20-21). According to Applicant, some of his financial problems began in approximately 1991 with his first bankruptcy and continued until recently. (GX 6, 7 & 8).

Applicant presented evidence that he also resolved debts not listed in the SOR. He paid off a credit card debt of \$492 in October 2007. He recently completed his payments to the IRS on a \$1,740 tax liability for 2005 taxes, which he miscalculated on his tax return. (AX D; Tr. 56). In January 2006, he completed payments to his father on a \$15,000 car loan he had since May 2002, and recently repaid him \$2,200 for another short term loan. (AX A & D).

After meeting with a credit counselor in January 2007, Applicant prepared a Personal Financial Statement in February 2007. According to that Statement, he earns \$8,577 a month, with a net monthly income of \$5,999. His monthly expenses are a \$3,136, leaving him about \$2,860 for other items. Since that time, he paid several debts, including those listed in the SOR. He has six remaining financial obligations, totaling \$1,000 a month, which includes five credit cards and an automobile loan. (GX 2 at 73, 102-103). He anticipates paying off the credit cards by January 2008, leaving a \$600 monthly car loan outstanding. He uses his credit cards more carefully than he did in the past and does not intend to maintain high balances. (Tr. 44).

Several times during the hearing, Applicant acknowledged that he mismanaged his finances over the years and used his charge cards excessively. He candidly admitted that he should have exercised more responsible financial judgment. He recognizes that at this time in his life he needs to concentrate on saving money for retirement. (Tr. 67). He is committed to establishing financial stability. (Tr. 47; 67).

On June 11, 2007, Applicant's employer selected him to participate in its Reward Management Achievement Plan for 2007 that may provide him with a \$4,000 to \$5,000 bonus in March 2008, if he reaches specified goals. Applicant anticipates that he will meet those performance goals, and intends to deposit the bonus income into his savings account. (AX G).

Applicant's supervisor of seven years testified. He enlisted in the U. S. Navy in 1959 and after four years attended the Naval academy for a couple years. He has held a Top Secret security clearance for more than 25 years and works with classified information. He has great confidence in Applicant's abilities and finds him to be very competent and reliable. He indicated that Applicant is responsible for overseeing a \$20 million dollar budget, used to support the U.S. military forces. He does not consider Applicant to be a security risk. (Tr. 73-76).

POLICIES

In an evaluation of an applicant's security suitability, an administrative judge must consider the "Adjudicative Guidelines for Determining Eligibility For Access to Classified Information" (Guidelines). In addition to brief introductory explanations for each guideline, the adjudicative Guidelines are divided into Disqualifying Conditions (DC) and Mitigating Conditions (MC), which are used to determine an applicant's eligibility for access to classified information.

These Guidelines are not inflexible ironclad rules of law. Instead, recognizing the complexities of human behavior, an administrative judge should apply these Guidelines in conjunction with the factors listed in the adjudicative process. Guideline ¶ 2. An administrative judge's over-arching adjudicative goal is a fair, impartial and common sense decision. Because the entire process is a conscientious scrutiny of a number of variables known as the "whole person concept," an administrative judge should consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision. Guideline ¶ 2(c).

Specifically, an administrative judge should consider the nine adjudicative process factors listed at Guideline ¶ 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."

In the decision-making process, facts must be established by "substantial evidence."¹ The Government initially has the burden of producing evidence to establish a case which demonstrates, in accordance with the Directive, that it is not clearly consistent with the national interest to grant or continue an applicant's access to classified information. Once the Government has produced substantial evidence of a disqualifying condition, the burden shifts to Applicant to produce

¹ "Substantial evidence [is] such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the contrary evidence in the record." ISCR Case No. 04-11463 at 2 (App. Bd. Aug. 4, 2006) (citing Directive ¶ E3.1.32.1). "This is something less than the weight of the evidence, and the possibility of drawing two inconsistent conclusions from the evidence does not prevent [a Judge's] finding from being supported by substantial evidence." *Consolo v. Federal Maritime Comm'n*, 383 U.S. 607, 620 (1966). "Substantial evidence" is "more than a scintilla but less than a preponderance." *See v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994).

evidence and prove mitigation. Directive ¶ E3.1.15 provides, “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, and [Applicant] has the ultimate burden of persuasion as to obtaining a favorable clearance decision.” The burden of disproving a mitigating condition never shifts to the Government. *See* ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).²

A person who seeks access to classified information enters into a fiduciary relationship with the government predicated upon trust and confidence. It is a relationship that transcends normal duty hours and endures throughout off-duty hours as well. It is because of this special relationship the government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to classified information. Decisions under this Directive include, by necessity, consideration of the possible risk an 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.

Since the protection of the national security is the paramount consideration, the final decision in each case is arrived at by applying the standard that “[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security.” Guideline ¶ 2(b). 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.

The scope of an administrative judge’s decision is limited. Nothing in this Decision should be construed to suggest that I have based this decision, in whole or in part, on any express or implied determination as to Applicant’s allegiance, loyalty, or patriotism. Section 7 of Executive Order 10865 specifically provides that any adverse industrial security clearance decision shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.”

CONCLUSIONS

Upon consideration of all facts in evidence and application of the appropriate adjudicative factors and legal standards, I conclude the following with respect to the allegations set forth in the SOR:

Guideline F - Financial Considerations

Guideline ¶ 18 articulates the Government concern regarding financial problems. “The 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

²The Administrative Judge [considers] the record evidence as a whole, both favorable and unfavorable, evaluate[s] Applicant’s past and current circumstances in light of pertinent provisions of the Directive, and decide[s] whether Applicant ha[s] met his burden of persuasion under Directive ¶ E3.1.15.” ISCR Case No. 04-10340 at 2 (App. Bd. July 6, 2006).

information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.”

Based on Applicant’s admissions and credit bureau reports, the Government established disqualifications under two Financial Considerations Disqualifying Conditions: “inability or unwillingness to satisfy debts,” and “a history of not meeting financial obligations.” Applicant has been unable to manage his debts from approximately 1991 until approximately March 2006, as evidenced by two bankruptcies, delinquent debts, and numerous other financial obligations. Guideline ¶ 19(a) and ¶ 19(c).

The Government raised a security concern and the burden shifted to Applicant to mitigate or rebut the allegations. Six Financial Considerations Mitigating Conditions can mitigate security concerns arising from financial difficulties under Guideline ¶ 20(a)-(e). After reviewing all of them, I conclude he presented evidence to support application of three of them, but not the others.

¶ 20(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” does not apply because Applicant’s problems have been ongoing from 1991 until 2006, and does cast doubt on his financial judgment up to 2006.

¶ 20(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,” offers limited mitigation in view of Applicant’s divorce and assumption of custody for four children, two with special needs, at the time of his first bankruptcy. However, there is no evidence that he contacted his creditors or sought credit counseling during the time he began accruing debts, which is the type of evidence necessary to establish the second prong of this condition.

¶ 20(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” applies because Applicant obtained some credit counseling prior to the issuance of the SOR, completed the Personal Financial Statement, and subsequently paid off many delinquent debts, indicating his financial issues are under control.

¶ 20(d) “the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts” is applicable because Applicant provided evidence to document the payment of the five delinquent debts alleged in the SOR.

¶ 20(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” does not apply in view of Applicant’s acknowledgment of the debts.

¶ 20(f) “the affluence resulted from a legal source of income” is not applicable.

“Whole Person”- Analysis

I considered the totality of the evidence in view of the “whole person” concept, including Applicant’s middle age, his military service and his marital and family history. I also considered his 30 year work history with the same employer, the fact that he has held a security clearance for more than forty years without evidence of any problems, and his supervisor’s strong support and commendations. I carefully observed his demeanor while testifying, and listened to his candid disclosure about his history of financial problems and assumption of responsibility for them, along with a commitment to funding his retirement. I took into account that he met with a credit counselor and reviewed his budget before the SOR issued, and that his two sons are now contributing to the family budget. Assuming he continues working with that budget and retires all unnecessary debts within the next couple months, I am confident that he has enough income to cover his obligations and will not incur similar financial obligations in the future. Given his acute awareness of the impact that his financial situation has on his employment, I believe he will continue to manage his financial obligations and demonstrate good judgment. Based on those facts, I am confident that he does not pose a security risk.

After weigh the disqualifying and mitigating conditions and all facts and circumstances in the context of the whole person, I concluded Applicant mitigated the security concerns raised by financial considerations. The evidence leaves me with no doubts as to his security elibility and suitability. Accordingly, Guideline F is found for him.

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 as follows:

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| Paragraph1: Guideline F (Financial Considerations) | FOR APPLICANT |
| Subparagraphs 1.a.–1.g: | For Applicant |

DECISION

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 a security clearance. Clearance is granted.

Shari Dam
Administrative Judge