



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



In the matter of:)	
)	
-----)	ISCR Case No. 06-13325
SSN: -----)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Alison O'Connell, Esquire, Department Counsel
For Applicant: *Pro Se*

February 29, 2008

Decision

LYNCH, Noreen A., Administrative Judge:

Applicant submitted his Security Clearance Application (SF 86), on February 4, 2005. On October 22, 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guidelines F and E 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 for SORs issued after September 1, 2006.

Applicant acknowledged receipt of the SOR on October 29, 2007, and elected to have his case decided on the record in lieu of a hearing. Department Counsel submitted the Government's written case on January 8, 2008. Applicant received a complete file of relevant material (FORM) on January 15, 2008, and was provided the opportunity to file

objections and submit material to refute, extenuate, or mitigate the Government's case.¹ Applicant submitted additional information on February 13, 2008. The case was assigned to me on February 21, 2008. Based upon a review of the case file, eligibility for access to classified information is granted.

Findings of Fact

In his Answer to the SOR, dated November 19, 2007, Applicant admitted the factual allegations in ¶¶ 1.a-1.h, of the SOR, with explanations. He also admitted the factual allegations in ¶ 2.a- 2.b of the SOR but denied any intentional falsification.² He provided additional information to support his request for eligibility for a security clearance.³

Applicant is a 46-year-old employee of a defense contractor. He attended college and is currently enrolled in a graduate program. He is married with two children. He has worked for his current employer since June 2004.⁴

Applicant served in the military from 1981 until 2002. He retired from the U.S. Air Force in November 2002. In that same year, Applicant petitioned for divorce from his first wife in August 2002. During his marriage he worked for at least three additional employers so that he could pay his bills. His first wife could not maintain stable employment. She opened various credit card accounts in her name without his knowledge. He supported his family and paid as many debts as possible. However, he was the sole source of income for the family of four.⁵

After the separation, Applicant voluntarily provided financial support for his younger son who was living with his wife. In addition to the legal expenses from the divorce and the loss of income, he incurred additional expenses. He moved to off base housing and had more expensive living expenses. He gained employment after his retirement, but his income decreased from \$47,992 to \$40,927. He was not able to pay all his obligations.⁶ Moreover, his ex-wife was entitled to a percentage (42%) of his retirement income.

Applicant's new employment in 2004 necessitated a move to a state with higher living costs. He was paid \$5,000 in alimony and \$758 for child support monthly as a

¹The Government submitted twelve items in support of its contentions.

²Item 3 (Applicant's answer to SOR).

³Applicant's Response to FORM with attachments.

⁴Item 4 (Security Clearance Questionnaire, dated February 4, 2005).

⁵Applicant's Sworn Response to Form, dated February 13, 2008).

⁶Item 6 (Applicant's Response to DOHA Interrogatories).

result of the final divorce decree in 2005.⁷ Thus, the other delinquent accounts could not be addressed immediately. In addition, he was taxed at a single rate and his monthly net income was less than \$3,000.⁸

Applicant remarried in 2006.⁹ His second wife was in graduate school and not employed. From December 2006 until September 2007, Applicant was the sole earner. This resulted in his negative net monthly remainder reflected in the first personal financial statement he submitted.

The SOR alleges seven delinquent debts (\$10,160). The total amount of debt that Applicant owes is approximately \$6,918.¹⁰ Applicant asserts that the account in allegation ¶ 1.a for \$570 was transferred to an active credit card. This is the same debt alleged in ¶ 1.f. For several allegations, including allegations ¶¶ 1.b, and 1.d, Applicant provided proof that he paid the accounts.¹¹ The SOR allegation in ¶ 1.c for \$5,271 is a charged off account.¹² Allegation ¶ 1.e for \$1,313 is the same as allegation 1.b. Applicant states the debt in ¶ 1.g for \$1,947 is a charged off account for his wife's car. However, through a divorce decree, his ex-wife is responsible for the debt. Thus, Applicant believes he has four delinquent debts.

The current status of Applicant four delinquent debts is as follows: Two debts are paid in full (1.b and 1.d). Two debts are in a payment plan (1.a and 1.c). Applicant produced detailed documentation showing his payments and his established repayment plans.¹³

Applicant's current monthly net income (including his retirement pay) is \$4,952. His wife's net monthly income is \$1,714.00 for a total of \$6,667.00. After monthly expenses of \$4,639.40, and debt payments of \$468, he has a net remainder of \$1,559.70.¹⁴ His wife gained employment in September 2007. Applicant provided a detailed annotation explaining the differences from his earlier personal financial statement that indicated his negative cash flow.

⁷Attachment - with Applicant's Response to FORM.

⁸Although not an allegation in the SOR, Applicant noted that he is also paying a monthly amount to the IRS for 2006 tax debt. He documented his payment plan.

⁹Item 4 (Applicant's Answer to SOR).

¹⁰Item 5 (Credit Bureau Report for Applicant, dated May 31, 2007).

¹¹The amount listed on the SOR for 1.e is \$1,313. However, it was settled by Applicant for the lower amount.

¹²*Id.*

¹³Attachment 1-12 with Response to FORM.

¹⁴Attachment to Response to Form.

On his February 23, 2005, security clearance questionnaire, Applicant answered “no” to Section 38. Your Financial Delinquencies. The response indicated he was not more than 180 days delinquent on any debt. He stated he was confused by the question. He admits answering them incorrectly but he had no intent to deliberately conceal information. He thought the questions referred to active debt and monthly accounts. He did answer “yes” to Section 39 and listed his school grant obligation. However, his student loan is deferred according to his credit report.

Applicant’s current employer praised him for his positive attitude, integrity, high moral foundation and high degree of customer support. He is very respected by customers and his team.¹⁵

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, 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, 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. . . .” The Applicant has the ultimate burden of persuasion as to obtaining a favorable security decision.

¹⁵Attachment - Letter of Reference, dated February 13, 2008.

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 notes several conditions that could raise security concerns. Under AG & 19(a), an inability or unwillingness to satisfy debts¹⁶ is potentially disqualifying. Similarly under AG & 19(c), a history of not meeting financial obligations¹⁶ may raise security concerns. Applicant accumulated delinquent debt and was unable to pay some obligations for a period of time. His credit reports confirm that he has not paid the accounts. The activity for the delinquent debts ranges from 2002 until the present. The evidence is sufficient to raise these potentially disqualifying conditions, requiring a closer examination.¹⁶

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Under AG ¶ 20(a), the disqualifying condition

¹⁶In Applicant's March 2007 personal financial statement his monthly net income was - \$147.96. This might arguably raise 19(e), (consistent spending beyond one's means, which may be indicated by excessive indebtedness, significant negative cash flow, high-debt-to-income ratio, and/or other financial analysis). However, this was one isolated statement, Applicant has provided a 2008 statement showing a positive net.

may be mitigated where 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. Applicant's financial worries arose in 2002. He accumulated some delinquent debt due to his retirement, separation and divorce. While those circumstances may have precipitated the debt, the inquiry does not end at that point. He acted responsibly by providing for his children. He paid whatever debt he could. He has shown determination and character after his separation and divorce. His conduct over the last six months with his creditors remove security concerns or doubts about his current reliability, trustworthiness, and good judgment. The circumstances are not likely to recur as he is remarried and has stable employment. This potentially mitigating condition applies.

Under AG & 20(b), it may be mitigating where 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. As noted above, all of his financial problems arose from his separation, divorce, retirement and lower salary. He was the sole provider for his family. He acted responsibly in identifying and resolving these debts. I find this potentially mitigating condition is a factor for consideration in this case.

Evidence that 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 is potentially mitigating under AG & 20(c). Similarly, AG & 20(d) applies where the evidence shows the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts. Applicant has not received counseling according to the record, but he has been active in resolving his delinquent debts, either by payment or settlement. He is now financially sound and prepared for future contingencies. I conclude these potentially mitigating conditions apply.

AG ¶ 20(e) applies where the evidence shows "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." In this case, Applicant produced documentation in the divorce decree that supported his claim that his ex-wife took responsibility for the debt alleged in SOR 1.g in the amount of \$1,947. However, this is still legally his debt. I conclude this potentially mitigating condition partially applies.

Guideline E, Personal Conduct

The security concern relating to the guideline for Personal Conduct is set out in AG ¶ 15:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an

individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to cooperate with the security clearance process.

The guideline notes several conditions that could raise security concerns. Under AG ¶ 16(a), "deliberate omission, concealment, or falsification of relevant facts from any personnel questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities" is potentially disqualifying.

In this case, Applicant did not consider them delinquent at that point in time but rather active debt and monthly accounts. To support this contention, the student loan debt in deferment was listed in answer to question 39. He did not intentionally falsify his security clearance application.

Under 16(a), the government established that he omitted a material fact from his answer to Section 38. He denied that he deliberately or knowingly falsified an answer to his security clearance questionnaire and that he answered to the best of his knowledge. When a falsification allegation is controverted, the government has the burden of proving it. Proof of an omission, standing alone, does not establish or prove an Applicant's intent or state of mind when the omission occurred. An administrative judge must consider the record evidence as a whole to determine whether there is direct or circumstantial evidence regarding an Applicant's state of mind at the time the omission occurred. The government has not established that Applicant deliberately falsified his answer to Questions 38 and 39.

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 served in the military for almost 21 years, and retired in 2001. Applicant married and supported his family during that time. When these problems first began, Applicant was going through a separation

and divorce in 2002. He accumulated debt due to circumstances largely beyond his control, including sporadic employment and low income after his retirement from the military. As a result, he has focused his attention on providing a stable domestic environment for his family. He presented substantial extenuating and mitigating evidence. His financial difficulties resulted from a contentious divorce. He is paying all delinquent debts using a payment plan. The absence of any evidence of any prior violation of his employer's rules or requirements, his candid admissions concerning his debts, and his promise to continue his future financial progress weigh in his favor. The likelihood of recurrence is low. He is making payments. His wife is working. Most important, their overall financial situation has improved with the increase in family income. He has taken affirmative action to pay or resolve most of the delinquent debt's raising concerns about his good judgment. Of course, the issue is not simply whether all his debts are paid but is whether his financial circumstances raise concerns about his fitness to hold a security clearance. Applicant has met his burden of proof in this case to overcome the government's case.

Overall, the record evidence leaves me without questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has 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
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraph 2.a:	For Applicant
Subparagraph 2.b:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

NOREEN A. LYNCH
Administrative Judge