



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



In the matter of:)
)
) ISCR Case No. 06-23026
)
)
Applicant for Security Clearance)

Appearances

For Government: Fahryn Hoffman, Esquire, Department Counsel
For Applicant: Richard D. Dvorak, Esquire

March 14, 2008

Decision

HEINY, Claude R., Administrative Judge:

It was alleged Applicant had eight accounts placed for collection or past due totaling in excess of \$26,000. He paid four of the debts and is not responsible for the other four debts. Applicant has successfully mitigated financial considerations and personal conduct concerns. Clearance is granted.

On April 4, 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline F, Financial Considerations 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 answered the SOR, and requested a hearing before an Administrative Judge. On December 11, 2007, DOHA issued a notice of hearing for a hearing held on January 14, 2008. On December 18, 2007, I was assigned the case, the case having

previously been assigned to a different judge. The government offered Exhibits (Ex.) 1 through 4, which were admitted into evidence. Applicant testified on his own behalf and submitted Exhibits A through J, which were admitted into evidence.

The record was kept open to submit additional matters. Additional documents were received on February 1, 2008, which Department Counsel (DC) did not object to, and was admitted as Ex. K. DC did object as untimely the admission of material sent on February 19, 2008. I find the material to be relevant and material and admit it as Ex. L. On January 30, 2008, DOHA received the transcript (Tr.) of the hearing.

Findings of Fact

In his Answer to the SOR, dated May 1, 2007, Applicant denied responsibility for the debts listed in SOR ¶¶ 1.b and 1.g and admitted responsibility for the debts listed in SOR ¶¶ 1.a, 1.c, 1.d, 1.e, 1.f and 1.h of the SOR, with explanations. He also provided additional information to support his request for eligibility for a security clearance.

Applicant is a 55-year-old audio visual technician who has worked for a defense contractor since July 1996, and is seeking to maintain a security clearance. Coworkers and supervisors indicate Applicant never spent lavishly and has displayed outstanding talents. (Ex G and H) Applicant received an honorable discharge after serving twenty years in the Army. In June 1995, he retired at the grade of E-5. (Tr. 20)

A number of times when Applicant was overseas for duty or work, he gave his wife financial powers of attorney (POA). She abused the POAs. She purchased vehicles for their children even when some of them did not have driver's licenses. (Tr. 29) She used the POA to make changes preventing him access to his retirement account and checking account. (Tr. 29) He and his wife were unable to meet their financial obligations with their five children. When he discovered her overspending, he filed for bankruptcy protection and began divorce proceedings. In December 1996, Applicant commenced the Chapter 7 bankruptcy. (Ex. 4) In March 2002, Applicant and his wife divorced. (Ex. A) All child support related to the divorce ended in 2003. (Tr. 51)

The divorce decree granted his ex-wife possession of the 1994 van and he kept the 1995 pickup. The decree required his ex-wife to hold Applicant harmless for any liability on the vehicle and was to sell or refinance the vehicle within six months to remove the husband from any further liability. (Ex A. p.6) He was to do the same on the truck. The van was purchased in October 1997 for \$14,317 with monthly payments of \$390. (Ex. 3) Timely payments were made on the van for at least two years before an involuntary repossession occurred. (Ex. 3) Applicant was unaware the vehicle had been repossessed until he learned of it from the investigator during an interview. (Tr. 72)

The credit reports list two auto accounts opened at the same time with monthly payments of \$390 and \$391. The two accounts are with the same company although one account lists the company solely by its initials (SOR ¶ 1.g) and the other account gave a full name (SOR ¶ 1.b). Theses two accounts are obligations on the same vehicle. The credit reports (Ex. 3, 4) indicate the last activity on the accounts occurred in 2001.

In September 2007, Applicant completed a monthly income and expense statement. (Ex. B) Applicant still owns his 1995 truck. (Tr. 31) His income, year to date, was approximately \$47,000. As of December 21, 2007, his yearly income was \$51,000. (Ex. C) His monthly income, not including overtime, was \$3,600 and his monthly expenses approximately \$3,000. (Ex. B) His monthly income, with overtime, exceeds his monthly expenses by \$1,275. (Tr. 35) Applicant has \$19,000 in a company savings plan retirement program. (Ex. D) He has \$6,600 in his checking accounts, \$1,000 in savings, \$1,200 in one bank, and \$7,200 in another bank. (Tr. 108, 109)

In late January 2007, Applicant received an interrogatory asking about ten accounts, seven of which were medical debts. Applicant sent five creditors letters stating he was unfamiliar with the past due accounts listed in his credit report (Ex. E) asking for information verifying the debts. The two auto accounts were included in the letters asking for verification. (Ex. 2)

In January 2007, Applicant paid the \$163 owed on the medical bill listed in SOR ¶ 1.c. (Ex. F) In April 2007, he paid the \$502 owed on the medical debt listed in SOR ¶ 1.e. (Ex. F) In January 2007 and April 2007, Applicant paid other debts not listed in the SOR. Following the hearing, Applicant paid the \$421 medical debt listed in SOR ¶ 1.a. (Ex K)

In late January 2008, Applicant again contacted the telephone company attempting to get information concerning the \$374 phone debt. (SOR ¶ 1.f) Applicant asserts he paid this debt in full in 2001 and was informed the debt had been paid in full. (Ex. K)

As retired military, Applicant and his minor children would be entitled to medical care through Tricare or treatment at military facilities. (Tr. 138) He would not be liable if his ex-wife took any of the grandchildren to receive medical attention. In checking with a collection agency holding two hospital obligations, he was informed the \$6,465 hospital debt (SOR ¶ 1.h) was not his debt, but was his ex-wife's obligation. The collection agency agreed to have both hospital bills (SOR ¶ 1.d and 1.h) deleted from his credit bureau account because the creditor could not verify Applicant was the responsible party. (Ex. L)

A summary of the debts follows:

SOR	Creditor	Amount	Current Status
1.a	Medical debt.	\$421	Paid. (Ex. K)
1.b	1994 Chevrolet van debt. Same debt as 1.g.	\$12,023	Denies owing the debt on his ex-wife's car. Divorce decree (Ex. A) required her to hold Applicant harmless of this debt.
1.c	Medical bill.	\$163	Paid. (Ex. F)
1.d	Hospital bill.	\$918	Collection agency agreed to have the account deleted from his credit

			report because they were unable to verify Applicant was responsible for this debt. (Ex. L)
1.e	Medical bill.	\$502	Paid. (Ex. F)
1.f	Telephone bill.	\$374	Paid. (Ex. K)
1.g	Automobile repossession. Same debt as 1.b.	\$5,711	Denies owing the debt on his ex-wife's car. Divorce decree (Ex. A) required her to hold Applicant harmless of this debt.
1.h	Hospital bill.	\$6,465	Collection agency agreed to have the account deleted from his credit report because they were unable to verify Applicant was responsible for this debt. (Ex. L)
	Total of past due debt listed in SOR.	\$26,577.00	

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(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, 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.

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

Under Guideline F (financial considerations) a security concern typically exists due to significant unpaid debts. 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.¹

An individual who is financially overextended is at risk of having to engage in illegal or unethical acts to generate funds to meet financial obligations. Additionally, an individual who is financially irresponsible may also be irresponsible, unconcerned, negligent, or careless in properly handling and safeguarding classified information. Behaving responsibly or irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life.

A person's relationship with his creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to repay debts under agreed upon terms. Absent evidence of strong extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a position of risk that is inconsistent with the holding of a security clearance. An applicant is not required to be debt free, but is required to manage his finances so as to meet his financial obligations.

The record evidence supports a conclusion Applicant has a history of financial problems. The SOR alleges Applicant owed approximately \$26,000 on eight accounts placed for collection or past due obligations. Disqualifying Conditions (DC) ¶ 19(a), “inability or unwillingness to satisfy debts” and 19(c), “a history of not meeting financial obligations,” apply.

¹ Revised adjudicative guidelines (AG) ¶ 18.

The guideline provides conditions that could mitigate security concerns arising from financial difficulties. Under AG ¶ 20(c), 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. 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 paid four of the debts (SOR ¶¶ 1.a, 1.c, 1.e, and 1.f.) The credit collection agency holding the two largest medical bills (SOR 1.d, \$918 and SOR ¶ 1.h, \$6,465) agreed to delete the accounts from Applicant’s credit report because the collection agency was unable to verify Applicant was the responsible party. Since the creditor is no longer actively seeking to collect the debt; Applicant is not at risk of having to engage in illegal or unethical acts to generate funds to meet this debt.

The remaining two debts are with the same company, were opened on the same date, and the monthly payments were \$390 and \$391, which indicates the two accounts are one and the same obligation. The debt arises from the repossession of his ex-wife’s van. He was unaware of the repossession until asked about it during the security investigation. The divorce decree clearly states his ex-wife is entitled to possession of the van and agreed to hold Applicant harmless for any liability therefore. She was required to sell or refinance the vehicle within six months to remove the husband from any liability therefore. She did not do this and an obligation was incurred following repossession of the vehicle.

Applicant was initially jointly liable on this debt. The divorce decree does not limit the original creditor’s ability to hold Applicant liable on the debt. If the creditor pursued the matter, Applicant could be found liable on the debt and could in turn bring an action against his ex-wife for satisfaction. The last action taken by the creditor, on either of the debts, occurred in 2001. There is no evidence the obligation is barred by the Statute of Limitations, but there is also no evidence the creditor is actively seeking collection from Applicant. It is unlikely Applicant is at risk of having to engage in illegal or unethical acts to generate funds to meet this debt.

Under AG ¶ 20(a), the disqualifying condition 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.” The obligation arose following his divorce and his wife’s failure to honor the divorce decree. These are circumstances that are unlikely to recur. Failure to pay an obligation where no one is actively seeking to collect the debt does not raise concerns about Applicant’s current reliability, trustworthiness, or good judgment.

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 commonsense judgment based upon careful consideration of the guidelines and the whole person concept.

The debts incurred were not the type that indicates poor self-control, lack of judgment, or unwillingness to abide by rules and regulations. Money was not spent frivolously. The debts were not incurred on luxuries, but more than half were for medical treatment. His ex-wife's failure to honor the divorce decree fails to show extravagance on Applicant's part or living beyond his means.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. The SOR listed eight debts of which Applicant paid four and the creditor agreed to delete two others from Applicant's creditor report when the creditor was unable to verify Applicant was the responsible party.

The only unaddressed obligation is the van debt. The last action on the vehicle repossession debt occurred in 2001, more than six years ago. It is unlikely this obligation could be a source of improper pressure or duress. Of course, the issue is not simply whether all the debts are paid—it is whether his financial circumstances raise concerns about his fitness to hold a security clearance. (See AG ¶ 2(a) (1)) While some debts remain unpaid, their nature is insufficient to raise security concerns. (See AG ¶ 2(a) (1).) Neither the size of the debt, \$12,000, nor the non payment of his ex-wife's obligation makes Applicant a security risk.

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.

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 – 1.i: 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.

CLAUDE R. HEINY II
Administrative Judge