



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



In the matter of:)	
)	
)	ISCR Case No. 13-01220
)	
Applicant for Security Clearance)	

Appearances

For Government: Gina Marine, Esq., Department Counsel
For Applicant: *Pro se*

05/15/2014

Decision

O'BRIEN, Rita C., Administrative Judge:

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

Statement of the Case

On December 6, 2013, the Department of Defense (DOD) issued to Applicant a Statement of Reasons (SOR) citing security concerns under Guideline F (financial considerations) of the Adjudicative Guidelines (AG).¹ In his Answer to the SOR, Applicant admitted the eight allegations. He requested a hearing before an administrative judge of the Defense Office of Hearings and Appeals (DOHA). On March 28, 2014, DOHA issued a Notice of Hearing, and I convened the hearing on April 23,

¹ Adjudication of the case is controlled by Executive Order 10865, as amended; DOD Directive 5220.6 (Directive), as amended; and the Adjudicative Guidelines, which supersede the guidelines listed in Enclosure 2 to the Directive. They apply to all adjudications or trustworthiness determinations in which an SOR was issued on or after September 1, 2006.

2014. I admitted four exhibits offered by the Government (GE 1-4). I granted Applicant's request to submit additional documents after the hearing. I timely received four documents, which I admitted as AE A-D. I marked Department Counsel's discovery letter to Applicant as Hearing Exhibit (HE) I, and her Exhibit List as HE II. Department Counsel's memorandum, noting no objection to Applicant's post-hearing submission, is marked as HE III. DOHA received the transcript on May 1, 2014. The record closed on May 9, 2014.

Findings of Fact

Applicant's admissions to the SOR allegations are incorporated as findings of fact. After a thorough review of the pleadings and the record evidence, I make the following additional findings of fact.

Applicant is a 40-year-old high school graduate. He married in 2004, and had two children. After his divorce, he married his current wife in 2007. They have seven children, all from previous marriages. The children range in age from 12 to 21. He has been contributing to their support since December 2006. As of the hearing date, all of them were living with Applicant. His wife receives sporadic child support of \$800 per month. Since 2011, Applicant has been employed full-time as a foreman by a defense contracting company. This is his first application for a security clearance. (GE 1, 2; Tr. 27-29, 54-55)

In 2007, Applicant had been working for the same employer for eight years. He was earning \$21.50 per hour plus overtime hours, or from \$55,000 to \$60,000 annually. Applicant's wife was employed full-time as a dentist, earning \$70,000 annually. Their joint annual income was approximately \$128,000. However, in April 2007, he was laid off. He was unemployed for about five months. The same year, his wife also lost her job, and was unemployed for several months. Both Applicant and his wife received unemployment compensation while they were unemployed. During the unemployment, Applicant looked for work as a handyman to earn income, but it was insufficient to meet their needs. Applicant lives in a high-cost area of the country. They did not use credit cards. He estimates that their joint income decreased to less than one of their previous salaries. As a result, they started to fall behind in debt payments. (GE 1, 2; Tr. 14-19)

Applicant was hired in September 2007 at a wage of \$15 per hour. It was not full-time, and he received no overtime hours. He estimated he earned about \$40,000 to \$45,000 annual.² In fall 2008, he accepted a job at about \$20 per hour. He remained in that position until December 2010. In January 2011, he accepted his current position, at \$25 per hour, or almost \$60,000 annually. In about early 2008, Applicant's wife found part-time employment, and earned about \$40,000 annually. In January 2011, she had an accident which broke her back. Following her hospitalization, she was prohibited

² Applicant may have over-estimated his annual earnings. An hourly rate of \$15, in a full-time position of 2087 hours, would provide annual earnings of \$31,305 rather than \$40,000 to \$45,000. Similarly, \$20 per hour equates to \$41,740 annually, and \$25 per hour yields \$52,175 annually.

from working for eight months. She then decided to remain at home to care for the children. She began a full-time position in September 2013. (Tr. 20-27, 55-59)

Applicant's wife handles their finances, and their monthly expenses are paid automatically from her account. They have about \$1,400 in savings. They no longer own real estate. Their monthly rent is \$700, and they have no car payments, because Applicant is allowed to use his company's car. He testified that he is able to meet their regular monthly expenses, but does not have significant additional funds. Applicant's credit report shows relatively few accounts. Other than the debts listed in the SOR, it lists 12 accounts that have been paid and closed, with zero balances. Three open accounts are in "pays as agreed" status. (GE 3; Tr. 41, 46-49)

During his periods of unemployment and underemployment, Applicant kept up with his mortgage payments, until eventually he was he was unable to do so. When he became delinquent, the lender threatened foreclosure. In April 2010, when he was four months delinquent, Applicant filed a Chapter 13 bankruptcy petition in an effort to keep his home. The bankruptcy petition listed assets of \$134,083 and liabilities of \$252,830. The liabilities consisted primarily of his home, valued at \$249,122. Applicant was required to pay \$625 per month for five years under the bankruptcy plan. He was unable to meet the payments and the petition was dismissed in November 2010. Applicant testified he has paid the debts listed in the bankruptcy petition, other than the mortgage. (GE 2-4; Tr. 30-31, 41-42)

Applicant's August 2013 credit report shows he was \$79,252 past due on his mortgage in 2012.³ The lender foreclosed in March 2014, and sold the property. Applicant is unaware of the sale price. He has received one communication from the lender since then, requesting a payment of approximately \$1,200 for property insurance. Applicant paid the bill. If a balance remains, he intends to pay it, but the lender has not notified him of any other balance owed. (GE 2-4; Tr. 30-36, 41-42)

Other than the foreclosed mortgage, the SOR lists the following debts, which total \$1,688.

MEDICAL DEBTS: (allegations 1.c – 1.g) – The SOR alleges five medical debts, totaling \$1,568, which stem from emergency room visits, primarily for Applicant. At the time of these medical expenses, he did not have health insurance. As of April 2014, Applicant was expecting federal and state tax refunds totaling \$7,500. He plans to use the refunds to pay any remaining balances on these debts. (GE 2; Tr. 36-41)

- **1.c – UNRESOLVED.** Applicant has contacted the collection agency that holds this \$306 debt. However, as of the hearing date, the debt was not paid. He planned to pay the debt from his tax refunds. (Tr. 36, 40)

³ Department Counsel noted at the hearing that Applicant's credit report shows he was past due \$79,252 on the mortgage, not the \$201,000 alleged at SOR ¶ 1.b. (GE 3; Tr. 7-8)

- **1.d, 1.e – PAYMENT PLAN.** Applicant believes that these two medical debts of \$413 each for treatment for his daughter are duplicates. He believes the same debt was held by two different collection agencies. Applicant did not provide documentation supporting his contention that they are the same debt, and the credit report shows two different account numbers. The evidence does not support Applicant's contention that they are duplicates. He has established a plan to pay \$413 in three installments. He had made one \$120 payment as of the hearing date. Following the hearing, he provided evidence of his second payment of \$140 on May 5, 2014. (GE 3; AE A, B; Tr. 37-39)
- **1.f – PAID.** Applicant contacted the collection agency and arranged payment of this debt of \$286. He has paid it in full, and provided a statement showing the payment. (AE A ,B; Tr. 40-41)
- **1.g – PAID.** When Applicant originally attempted to pay this \$150 debt, he had difficulty locating the agency that currently held it. He has located the creditor and paid the debt in full. He provided a payment confirmation statement. (AE A, D; Tr. 40-41)

MISCELLANEOUS: 1.h – PAID. This \$120 debt relates to a traffic fine. Applicant provided documentation showing he made three payments of \$40 each, and the debt is paid in full. (AE A, C; Tr. 40-41)

Policies

Each security clearance decision must be a fair, commonsense determination based on all available relevant and material information, and consideration of the pertinent criteria and adjudication policy in the AG.⁴ Decisions must also reflect consideration of the “whole-person” factors listed in ¶ 2(a) of the guidelines. The presence or absence of a disqualifying or mitigating condition does not determine a conclusion for or against an applicant. However, specific applicable guidelines are followed when 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 adjudicative factors addressed under Guideline F.

A security clearance decision is intended only to resolve the questions of whether it is clearly consistent with the national interest⁵ for an applicant to either receive or continue to have access to classified information. The Government bears the initial burden of producing admissible information on which it based the decision to deny or

⁴ Directive. 6.3.

⁵ See *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

revoke a security clearance for an applicant. Additionally, the Government must 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 a heavy burden of persuasion.⁶ 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 requisite judgment, reliability, and trustworthiness to protect the national interest as her 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.⁷

Analysis

Guideline F (Financial Considerations)

AG ¶18 expresses the security concern pertaining to 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. . .

Since 2007, Applicant has accrued delinquent debts. The SOR lists a mortgage delinquency, five medical debts, and a traffic fine. Applicant's debts relate to the normal expenses of supporting a family, and do not stem from frivolous spending, drug or alcohol abuse, gambling, or other security-significant negative conduct. The record supports application of the following disqualifying conditions under AG ¶19:

- (a) inability or unwillingness to satisfy debts; and

- (c) a history of not meeting financial obligations.

The financial considerations guideline also contains factors that can mitigate security concerns. I have considered the mitigating factors under AG ¶ 20, especially the following:

- (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

⁶ See *Egan*, 484 U.S. at 528, 531.

⁷ See *Egan*; Adjudicative Guidelines, ¶ 2(b).

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

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant's debts are recent, as some remain unresolved. However, his debts do not stem from negative conduct, but from his efforts to support a family of nine on a modest income. Given that he has paid or is paying on the SOR debts, and both he and his wife are currently employed full-time, I find that such debts are unlikely to recur. Applicant's financial situation does not cast doubt on his reliability, trustworthiness, or judgment. AG ¶ 20(a) applies in part.

AG ¶ 20(b) concerns situations where applicants' debts become delinquent because of conditions that are beyond their control. A number of factors negatively affected Applicant's ability to meet his financial obligations. In 2007, he was laid off from his long-term job. The same year, his wife lost her job. When Applicant did find work, he was underemployed, and his wife's employment was part-time. They lost more than \$50,000 in annual income, when it decreased to approximately \$71,000 in 2008. In 2009 and 2010, they were earning about \$80,000. Applicant's wife's accident in 2011 was also beyond their control. She could not work for most of 2011. They relied on his salary alone until September 2013. Despite this series of events, Applicant has acted responsibly under the circumstances: he sought odd jobs and handyman work to supplement their income when he was unemployed. He sought and accepted higher-paying jobs as they became available. They did not use credit cards. They live in a low-rent apartment, paying only \$700 per month. They have no car payments. Applicant's credit report shows he has paid and closed numerous accounts, and has only three open accounts, which are in current status. AG ¶ 20(b) applies.

Applicant has taken steps to resolve his financial situation. In 2010, he made an effort to deal with the foreclosure threat through a Chapter 13 wage-earner plan, but was unable to afford the payments. After the foreclosure, when the lender requested payment of a \$1,200 insurance bill on the home, Applicant paid it. The lender has not informed him of any further balance owed on the foreclosed property. Applicant has set up a payment plan for one medical debt, and provided evidence that he has made two of the three payments on it. He has paid three of the other debts. He plans to use his tax refunds to pay the remaining medical debts. AG ¶ 20(d) applies.

Whole Person Analysis

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. An 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.

AG ¶ 2(c) requires that the ultimate determination of whether to grant a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole person concept. Under the cited guideline, I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case.

Applicant was candid about his financial problems, and his testimony was credible and sincere. Despite a series of events that negatively affected his ability to pay his debts, he has, for the most part, succeeded in supporting a large family in an expensive area of the country. When his family's home was threatened with foreclosure, he attempted to save it by filing for bankruptcy, but could not afford the payments. He has paid the only bill presented by his lender. He has not been informed that he owes any further balance on the mortgage loan. He has paid several of the small debts. I conclude he will continue to work responsibly to resolve remaining debts.

Overall, the evidence satisfies doubts raised about Applicant's suitability for a security clearance. For all these reasons, I conclude Applicant has mitigated the security concerns raised by the financial considerations guideline.

Formal Findings

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

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the interests of national security to allow Applicant access to classified information. Applicant's request for a security clearance is granted.

RITA C. O'BRIEN
Administrative Judge