



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



In the matter of:)	
)	
)	ISCR Case No. 07-00403
)	
Applicant for Security Clearance)	

Appearances

For Government: Fahryn Hoffman, Department Counsel
For Applicant: *Pro Se*

August 11, 2008

Decision

HEINY, Claude R., Administrative Judge:

Applicant had 12 past due accounts totaling approximately \$32,000. Applicant has been making payments on the two largest, disputes one debt, has reached repayment agreements on four additional debts, and intends to pay all his obligations. Applicant has successfully mitigated financial considerations and personal conduct concerns. Clearance is granted.

Statement of Case

Applicant contests the Defense Department's intent to deny or revoke his eligibility for an industrial security clearance. Acting under the relevant Executive Order and DoD Directive,¹ the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) on October 26, 2007, detailing security

¹ 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) approved by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

concerns under Guideline F, financial considerations, and Guideline E, personal conduct.

On January 8, 2008, Applicant answered the SOR, and requested a hearing before an administrative judge. On January 31, 2008, I was assigned the case. On April 11, 2008, DOHA issued a notice of hearing scheduling the hearing to be held on April 21, 2008. For good cause, a continuance was granted. On June 6, 2008, DOHA issued a notice of hearing scheduling the hearing held on June 27, 2008. The government offered Exhibits (Ex.) 1 through 5, which were admitted into evidence. Applicant testified on his own behalf and submitted Exhibits A through D, which were admitted into evidence. The record was kept open to allow Applicant to submit additional matters. On July 17, 2008, additional documents were received. Department Counsel did not object to the material, which was admitted into evidence as Ex. E. On July 18, 2008, the transcript (Tr.) was received.

Findings of Fact

In his Answer to the SOR, Applicant denied the factual allegations in ¶ 1.e and ¶ 2.a of the SOR and was without sufficient information to either admit or deny the allegation in ¶ 1.c. He admitted the remaining allegations.

Applicant is a 57-year-old truck driver who has worked for a defense contractor since October 1992 and is seeking to obtain a security clearance. Applicant and his wife are long haul truckers. In March 2008, a favorable security clearance determination was made as to Applicant's wife (ISCR Case Number 07-01646). Applicant recently purchased a new truck, a 2008 Peterbilt on which is owed \$145,000. Applicant pays \$3,000 monthly for the truck tractor payment and \$700 for the trailer.

In March 2008, Applicant sold his previous truck, a 1998 Peterbilt, for \$31,000. Approximately \$13,000 of the proceeds was paid to move the sleeper portion of the cab from the old truck to the new truck. Applicant was off the road for six weeks while the new truck was prepared. (Ex. A) An additional \$16,000 was applied to the truck payment on their new truck.

From 1994 to 2000, Applicant's wife was unemployed and receiving Social Security disability due to migraine headaches and Crohn's disease. She was unable to assist Applicant with the driving. In May 2008, she was released by her doctor to return to driving their truck. Applicant's new truck is so configured to allow her to resume truck driving. Previously, her doctor provided her with a limited supply of migraine medication. When traveling and her medication ran out, she got migraine headaches that resulted in emergency room visits, with associated medical fees. Now that her doctor has agreed to provide her with a full month's prescription she anticipates emergency room visits will be eliminated when they are on the road.

In March 2003, his wife experienced a slip and fall in a store breaking her knee cap resulting in numerous surgeries and treatments. She has had over 77 treatments. Medicare paid 80% of the medical bills. The creditor listed in ¶ 1.h is collecting for 26

medical debts totaling approximately \$6,500. Payments on this debt have been made on his debts for more than 18 months. (Ex. D) Monthly payments are reviewed every six months. Monthly payments started at \$250, were raised to \$400, and then to \$800. In July 2008, the monthly payments were reevaluated and lowered to \$450.

A summary of Applicant's debts follows:

	Creditor	Amount	Current Status
a	Federal tax lien.	\$19,377	Applicant was paying \$500 per month and has now engaged a company to negotiate a settlement with the IRS. (Ex. E)
b	Medical bill.	\$236	Applicant has agreed to pay \$50 per month. (Ex. E)
c	Collection agency.	\$431	Collection agency list the amount owed as \$250. Applicant sent five post dated checks which will be cashed at \$50 per month. (Ex. E)
d	Collection agency.	\$1,727	Collection offered to settle the debt for \$1,170, which Applicant accepted and will pay \$195 per month. (Ex. E)
e	Computer purchased through the telephone company.	\$1,425	Applicant disputes this debt as the computer was defective and returned to the company.
f	Collection agency.	\$124	Collection agency has agreed to accept five monthly payments on this debt. (Ex. E)
g	Hospital debt.	\$485	Applicant has agreed to make monthly payments on the debt. (Ex. E)
h	Collection agency.	\$6,476	Applicant is making \$250 monthly payments.
i	Collection agency.	\$391	Applicant contacted collection agency and learned it no longer had the debt. (Ex. E)
j	Collection agency.	\$474	Applicant contacted creditor and is waiting a response. (Ex. 4)
k	Collection agency.	\$543	Same collection agency as j.
l	Collection agency	\$221	The telephone number listed in the credit report is a nonworking number. Applicant is attempting to locate the creditor. (Ex. E)
		\$31,910	Total debt listed in SOR

The court date for his wife's lawsuit was set for August 2008 with mediation in the matter started on January 2008. (Ex. A) The lawsuit has now been reset for June 2009.

Applicant and his wife owed the IRS approximately \$19,000 (SOR ¶ 1.a) for tax years 2001, 2002, and 2003. Since November 2005, they have been paying the IRS \$500 per month to address this debt. Until recently the amount was automatically

deducted as a voluntary levy. The amount is now paid directly by Applicant. Applicant has been paying the IRS monthly for two and a half years. Applicant has recently employed a law firm (Ex. E) who is attempting to negotiate a settlement of the remaining IRS debt. Applicant is current on his state tax. (Ex. C)

Applicant disputes the debt listed in SOR ¶ 1.e (\$1,425) for the 1999 purchase of a computer through a telephone company. When the computer arrived it was defective. A service representative came to Applicant's home and attempted to fix the hard drive on the machine. He was unable to fix the computer and suggested Applicant return it to the company, which was done. Since returning the computer, Applicant has disputed the debt. (Ex. A)

Applicant contacted the creditor listed in SOR ¶ 1.d (\$1,727). The creditor offered to settle the matter for \$1,077, which Applicant accepted. (Ex. B and E)

Applicant previously contacted the hospital about the debt listed in SOR ¶ 1.g (\$485). The hospital agreed to send Applicant a statement as to the balance but failed to do so. Applicant again contacted the hospital and has agreed to pay the debt in monthly statements. (Ex. E)

Applicant denied deliberately failing to list his debts that had ever been more than 180 days delinquent, or were currently more than 90 days delinquent. When completing his SF 86, Applicant knew he had bills, but was unaware any were delinquent. Question 35 asked if he had been subject to a wage garnishment during the previous seven years. He answered "no" because the action to repay his tax obligation was a voluntary wage assignment and not a wage garnishment.

Applicant's income fluctuates depending on the cargo carried, the number trips made, the number of miles traveled, and how many people are driving. When both Applicant and his wife are driving, they receive approximately 20% more per mile driven.

As long-haul, over the road truck drivers there are periods of time when Applicant and his wife are away from home for extended periods. Additionally, they live in a trailer park and should any mail fail to list the lot number, the mail is not delivered, but returned to the post office. Applicant stresses the importance of the lot number to his creditors, but is aware mail has been returned because the lot number is missing.

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.²

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 holding 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. Applicant owed approximately \$32,000 to 12 creditors. Disqualifying Conditions (DC) ¶ 19(a) "inability or unwillingness to satisfy debts" and 19(c) "a history of not meeting financial obligations," apply.

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." Applicant's financial problems were contributed to by numerous surgeries and medical treatment related to Applicant's wife's migraine headaches and her slip and fall that destroyed her knee cap.

Applicant's wife has only recently been medically cleared to return to driving, which will result in a 20% increase in their mileage amount received. His wife's doctor has also agreed to provide his wife with a full month's prescription of migraine medicine which will result in fewer emergency room visits. AG ¶ 20(a) applies.

AG ¶ 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," applies. Applicant's wife experienced unexpected medical emergencies with both migraine headaches and her knee injury with the associated financial burden. Applicant and his wife have paid what they were able to on their debts. AG ¶ 20(b) applies.

AG ¶ 20(d) applies where the evidence shows "the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts."³ Applicant has paid a

² Revised adjudicative guidelines (AG) ¶ 18.

³In ISCR Case No. 07-06482 (App. Bd. May 22, 2008) the Appeal Board explained how financial responsibility under Guideline F can be demonstrated:

number of the medical bills. Applicant has been making monthly payments on his two largest debts (SOR ¶ 1.a, \$19,000 and SOR ¶ 1.h, \$6,476), which represents more than 80% of his total debt obligation. He has been paying one creditor for more than 18 months and paying the IRS for more than two and a half years.

Applicant has agreed to make monthly payments on four additional debts (SOR ¶ 1.b, \$236; SOR ¶ 1.d, \$1,727; ¶ 1.f, \$124; and, SOR ¶ 1.g, \$485). Applicant is waiting for a response from the collection agency that has two debts (SOR ¶ 1.j, \$474 and SOR ¶ 1.k, \$543) Applicant has contacted the two remaining creditors. The collection agency for debt SOR ¶ 1.i, \$391 no longer has the debt. The credit report telephone number for the creditor listed in SOR ¶ 1.l, \$221 is not working. Applicant is attempting to locate the creditors for these two debts.

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.” Applicant disputes he owes the debt listed in SOR ¶ 1.e (\$1,425). Applicant purchased a computer that was defective. When the computer could not be fixed, Applicant followed the repair person’s suggestion and returned the defective computer to the company.

Should his wife receive a settlement on her slip and fall case, the remaining bills could easily be paid. Even without settlement Applicant has arranged payments with other creditors in the past and his long history of payments indicates his creditors will be paid. The remaining debts do not raise concerns about his current reliability, trustworthiness, or good judgment.

Guideline E, Personal Conduct

The allegations under Guideline E, personal conduct, are refuted. The Government has shown Applicant's answers to questions 35, 38 and 39 were incorrect, but this does not prove the Applicant deliberately failed to disclose information about his

In evaluating Guideline F cases, the Board has previously noted that the concept of “‘meaningful track record’ necessarily includes evidence of actual debt reduction through payment of debts.” *See, e.g.,* ISCR Case No. 05-01920 at 5 (App. Bd. Mar. 1, 2007). However, an applicant is not required, as a matter of law, to establish that he has paid off each and every debt listed in the SOR. *See, e.g.,* ISCR Case No. 02-25499 at 2 (App. Bd. Jun. 5, 2006). All that is required is that an applicant demonstrate that he has “. . . established a plan to resolve his financial problems and taken significant actions to implement that plan.” *See, e.g.,* ISCR Case No. 04-09684 at 2 (App. Bd. Jul. 6, 2006). The Judge can reasonably consider the entirety of an applicant’s financial situation and his actions in evaluating the extent to which that applicant’s plan for the reduction of his outstanding indebtedness is credible and realistic. *See* Directive ¶ E2.2 (a) (“Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination.”) There is no requirement that a plan provide for payments on all outstanding debts simultaneously. Rather, a reasonable plan (and concomitant conduct) may provide for the payment of such debts one at a time. *See, e.g.,* ISCR Case No. 06-25584 at 4 (App. Bd. Apr. 4, 2008). Likewise, there is no requirement that the first debts actually paid in furtherance of a reasonable debt plan be the ones listed in the SOR.

finances. The Applicant has denied intentional falsification. In July 2004, when completing his SF 86, Applicant did not list any debts as having ever been more than 180 days delinquent or being currently more than 90 days delinquent. At the time he completed his SF 86, he knew he had debts, but did not believe any of them were delinquent. He did not list a wage garnishment in response to question 35 because his payment to the IRS was a voluntary wage assignment and not a garnishment.

Deliberate omission, concealment, or falsification of a material fact in any written document or oral statement to the Government when applying for a security clearance is a security concern. But every inaccurate statement is not a falsification. A falsification must be deliberate and material. It is deliberate if it is done knowingly and willfully. An omission concerning delinquent debt is not deliberate if the person did not know of their existence or failed to remember them. The Applicant was unaware his accounts were delinquent when completing his SF 86. Applicant's job took him away from home for long periods of time, thereby limiting his access to his mail. Additionally, if his mail failed to list his lot number, the mail was not delivered.

Applicant's explanation of his negative answers on his SF 86 was plausible. After hearing his testimony, observing his demeanor, and evaluating all the evidence of record, I found his testimony credible on the falsification issue. I am satisfied he did not intentionally falsify his SF 86.

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) 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 the facts and circumstances surrounding this case. 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 set forth in the SOR were not incurred on luxuries. The majority were for medical treatment and taxes.

Applicant is making monthly payments on the two largest debts and reached a repayment agreement on four others. These debts cannot be a source of improper pressure or duress. Applicant is addressing his debts. He is attempting to locate the creditors of the remaining two debts. The issue is not simply whether all his debts are being paid—it is whether his financial circumstances raise concerns about his fitness to hold a security clearance. (See AG ¶ 2(a) (1)) Applicant is paying his bills. The length of time he has been making payments gives me confidence he will continue to make payment until his obligations are paid.

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

Paragraph 2, Guideline F: FOR APPLICANT

 Subparagraph 2.a- 2.c: 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