



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



In the matter of:)	
)	
)	ISCR Case No. 07-02331
SSN:)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Daniel F. Crowley, Esquire, Department Counsel
For Applicant: Pro se

April 7, 2008

Decision

HENRY, Mary E., Administrative Judge:

Based upon a review of the case file, pleadings, exhibits, and testimony, I concluded that Applicant's eligibility for access to classified information must be granted.

Applicant submitted his Security Clearance Application (SF 86), on April 4, 2004. On September 18, 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing security concerns under Guideline F 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 September 18, 2007. He answered the SOR in writing on November 10, 2007, and requested a hearing before

an Administrative Judge. DOHA received the request in November 2007. Department Counsel was prepared to proceed on January 30, 2008, and I received the case assignment on January 31, 2008. DOHA issued a notice of hearing on February 12, 2008, and amended notice of hearing on March 4, 2008. I convened the hearing on March 5, 2008, the rescheduled date. The government offered eight exhibits (GE) 1 through 8, which were received and admitted into evidence without objection. Applicant and one witness testified on his behalf. He submitted six exhibits (AE) A through F, which were received and admitted into evidence without objection. DOHA received the transcript of the hearing (Tr.) on March 14, 2008. I held the record open until March 19, 2008, to submit additional matters. On March 19, 2008, he submitted four exhibits, which are marked as AE G-J, and admitted into evidence without objection. The record closed on March 19, 2008.

Procedural and Evidentiary Rulings

Notice

At the hearing, Applicant indicated he received notice of a change in the hearing date by telephone on March 3, 2008. (Tr. 8-9.) I advised Applicant of his right under ¶ E3.1.8 of the Directive to 15 days notice before the hearing. Applicant affirmatively waived his right to 15 days notice. (Tr. 9.)

Findings of Fact

In his Answer to the SOR, dated November 10, 2007, Applicant admitted the factual allegations in ¶¶ 1.a, and 1.b, of the SOR, with explanations. He denied the remaining factual allegations in the SOR. He also provided additional information to support his request for eligibility for a security clearance.¹ At the hearing, the government agreed that SOR allegations 1.d and 1.g are the same debt. (Tr. 27.)

Applicant, who is 45 years old, works for a Department of Defense contractor as a project engineer in information technology (IT) work. He started his job with his current employer in 1999. Two managers from his employer recommended him for a clearance. Both describe him as trustworthy, honest, highly competent, and a man of integrity. He has a very good work ethic and is respected by his co-workers.²

Applicant is married. He has two sons, ages 25 and 14. He graduated college with a Bachelor of Science degree in nuclear engineering and physics. Following his college graduation, he worked for another federal agency. In 1993, the federal agency laid him off in a reduction-in-force (RIF). From this time until he obtain his current employment in 1999, he worked contract jobs. He did not work steadily; rather, he

¹Applicant's response to SOR, dated November 10, 2007.

²GE 1 (Applicant's Security Clearance Application (SF-86), dated April 19, 2004) at 1-2; AE A (letter, dated March 3, 2008); AE B (Undated letter); Tr. 26, 48-49.

experienced periods of unemployment during this time. He was unable to find steady employment as a nuclear engineer. His wife worked, but did not earn income sufficient to meet all the family financial needs. During this period of time, he incurred unpaid federal tax debt. He lacked the funds for several years to pay his tax bill. He also incurred unpaid debts for living expenses.³

In 1997, Applicant filed a petition for Chapter 13 bankruptcy. The bankruptcy court dismissed his petition when he did not make the payments developed under his repayment plan. He stated that the monthly payments were too high because of the volume of debt. (Tr. 34.)

In 2000, on the advice of his attorney, Applicant filed for bankruptcy under Chapter 7. The bankruptcy court discharged all his debts, which he believed included his back federal taxes and state debt. He now knows he was incorrect in his belief. (Tr. 35-36.)

Applicant's current gross monthly salary is \$5,950 and his net monthly income is \$3,696. His monthly expenses total \$3,070, leaving excess monthly income of \$626. He currently meets his family's financial needs on a monthly basis.⁴

Applicant contacted the Internal Revenue Service (IRS) when he learned that the IRS intended to levy his salary to recover the back taxes. He developed a repayment plan with the IRS, contingent upon his filing his 2005 and 2006 tax returns. He filed the returns as required and began making a monthly payment of \$380 in January 2008. He has made three payments through March 2008, as required. He estimates it will take him five years to repay his federal tax debt, which includes the taxes he owed from the 2005 and 2006 tax years. He states that he did not file his later taxes because he owed a total of \$2,000 and did not have the money to pay these taxes. His monthly IRS payment is included as part of his monthly expenses. He recently changed his federal tax withholding from 4 to 2 to eliminate future federal tax issues.⁵

Applicant incurred a state debt when he was overpaid unemployment benefits over 20 years ago. He repaid some of this debt. In 1993, the State filed a personal lien for this debt. At the hearing, Applicant testified that he had contacted the State about repayment of this debt, which he incorrectly believed related to unpaid state taxes. Since the hearing, he reached an agreement with the State and paid the lien in full.⁶

³GE 4 (Notice of federal tax lien); GE 5 (Credit report, dated September 28, 2004) at 4, 7; GE 6 (Credit Report, dated September 6, 2006) at 4; Tr. 26, 28-33.

⁴AH G (Copy of pay stubs); AE H (Personal financial statement); Tr. 51.

⁵AE E (IRS documents and two payments); AE H, *supra* note 4, at 1; AE J (March IRS payment); Tr. 37-41.

⁶AE I (Documents related to State tax lien and payment receipt); Tr. 27-28, 50.

The SOR lists two other unpaid debts. Applicant paid the credit card debt identified in allegation 1.e through a settlement in April 2003. He also paid the debt identified in allegation 1.f in July 2004. He has no other debts. His most recent credit report reflects that he is current in his bills. Applicant received no formal credit counseling, but friends and family provided guidance on how to improve his financial status. Applicant ignored his tax issues out of fear of working with the tax agencies. He found it easy to work with the agencies on resolving his tax issues. He feels good about his current financial situation.⁷

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

⁷GE 5, *supra* note 3, at 6, 7, 8; GE 5, *supra* note 3, at 5, 6, 8; AE C (Letter, dated March 4, 2008); AE D (Letter, dated April 2, 2003 and credit report page); Tr. 43, 50-52.

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 debts” is potentially disqualifying. Similarly under AG ¶ 19(c), “a history of not meeting financial obligations” may raise security concerns. Applicant failed to pay a state debt and federal income taxes in the past. These debts remained unpaid for a long period of time. He also filed for bankruptcy in 1997 and 2000. The evidence is sufficient to raise these potentially disqualifying conditions, requiring a closer examination.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. 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 worries arose between about 1993 and 2000. Since his bankruptcy discharge in 2000, he has not accumulated new, excessive unpaid debt. In fact, he has generally managed his monthly income and expenses for the past seven years. It is unlikely his living expense debt problems of the 1990s will recur. His debt problems related to his living expenses do not raise concerns about his current reliability, trustworthiness, or good judgment. The evidence raises this potentially mitigating condition.

Under AG 20(b), an Applicant may mitigate the government's security concerns 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." Applicant's financial problems arose when he lost his federal job and could not find employment in his career field. He worked as a contractor for periods of time, but not steadily. His wife also worked, but at a significantly lower salary. Applicant resolved his credit debt problems through bankruptcy in 2000. Since this time, he has managed his income and expenses, stayed away from excessive credit card use, and generally lived within his financial means. His only major negative is his admitted failure to file tax returns in 2005 and 2006. 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). Applicant did not obtain credit counseling, so this mitigation condition is not applicable.

AG ¶ 20(d) applies where the evidence shows "the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts." Applicant contacted the IRS and developed a repayment plan for his unpaid taxes, which he believed to have been discharged in bankruptcy. He also contact the state and recently paid his debt. With the resolution of his outstanding state debt and the ability to easily comply with the repayment terms on his tax debt, he is financially sound and prepared for future contingencies. I conclude these potentially mitigating conditions apply. The mitigating conditions in AG ¶¶ 20(e and 20 (f) do not apply.

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.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant's financial problems began when the federal government laid him off from his job in 1993. Although he worked between 1993 and 1999, he did not work steadily. He obtained contract work which usually lasted for a period of time, such as six months. When the job ended, he experienced a time of lost income while he looked for and obtained other employment. (See AG ¶ (a)(2).) In 1999, he began working for his current employer and has worked steadily for more than eight years.

Applicant resolved his mounting debt problems created by his employment issues in the 1990s by filing for Chapter 7 bankruptcy in 2000. Following the discharge of his debts, he managed his finances in a more prudent manner. He has not and does not live excessively. His decision not to file his income tax returns in 2005 and 2006 because he did not have the money to pay his full tax bill each year reflected poor judgment on his part. However, he has resolved the problem created by this decision. He forced himself to put aside his fear of communicating to and working with the IRS. He recently developed a plan with the IRS, which includes repayment of all his old unpaid taxes and his more recent unpaid taxes. He has made the required payments since reaching this agreement and reduced the number of dependents claimed for withholding his tax dollars. He also resolved his state debt problem. Applicant has undergone significant behavioral changes in his attitude towards financial management. He realizes that tax debt cannot be discharged in bankruptcy and feels very good about his ability to live within his financial means. (See AG ¶¶ 2(a)(1), (3), (6).) His debts are problems in the past. He has accepted responsibility for his tax debts and is paying this debt. His taxes cannot be a source of coercion, exploitation, duress, or pressure. There is little likelihood that his debt problems will reoccur. His finances do not raise a concern about his fitness to hold a security clearance. (See AG ¶¶ 2(a)(8), (9).)

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:

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

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.

MARY E. HENRY
Administrative Judge