



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



In the matter of:)	
)	
)	ISCR Case No. 07-02602
SSN:)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Robert E. Coacher, Esquire, Department Counsel
For Applicant: *Pro Se*

January 29, 2008

Decision

HEINY, Claude R., Administrative Judge:

Applicant had eight past due accounts totaling \$4,500 and three bankruptcies. Seven of the debts have been paid and there is an arrangement making monthly payments on the remaining debt. Applicant has successfully mitigated financial considerations concerns. Clearance is granted.

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 a Statement of Reasons (SOR) on August 15, 2007, detailing the security concerns under Guideline F, for financial considerations based on a history of financial problems as evicenced by delinquent debts.

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

On July 18, 2007, Applicant answered the SOR, and requested a hearing before an administrative judge. On October 16, 2007, I was assigned the case. On October 18, 2007, DOHA issued a notice of hearing for a hearing held on November 16, 2007. The government offered Exhibits (Ex.) 1 through 5, which were admitted into evidence. Applicant testified on his own behalf and submitted Exhibits A and B, which were admitted into evidence. On November 28, 2007, DOHA received the transcript (Tr.) of the hearing.

Findings of Fact

In his Answer to the SOR, dated June 25, 2007, Applicant admitted the factual allegations in ¶¶ 1.a through 1.k, with explanations. The admissions are incorporated herein as findings of fact. After a thorough review of the record, case file, pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is a 48-year-old industrial engineer who has worked for a defense contractor since September 1980, and is seeking to maintain a security clearance. Supervisors, coworkers, and friends indicate Applicant has a strong work ethic, a keen sense of teamwork, can be trusted to deliver results, is truthful, trustworthy, organized, dependable, dedicated, honest, selfless, he is willing to help others, and is active in the community and church. (Ex. B) At work he meets or exceeds expectations. (Ex. B)

In November 1994, Applicant filed for Chapter 7 bankruptcy protection. In March 1995, the Discharge of Debtor entry was made and Applicant was released from all dischargeable debts. (Ex. A) During Applicant's first marriage his wife paid the bills. He assumed the debts were being paid until creditors began contacting him at work. The creditors wanted to garnish his pay. At that time, Applicant contacted a debt reduction service to help him with his financial problems. (Tr. 31) However, the creditors would not work with him and wanted to garnish his pay. They were not agreeable to the amounts presented by the debt reduction service. (Tr. 53) Applicant attended budgeting classes and resorted to bankruptcy as a last resort. Since then, Applicant has also taken college course on budgeting. (Tr. 52)

In January 1998, Applicant applied for Chapter 13, wage earner's plan, protection. His separation, divorce, attorney fees, and a child custody case left him with little money. He was required to pay support for his three children. His final decree, ending his 22 year marriage, is dated January 2002. (Ex A, Attachment 1.B, Tr. 44, 50) He wanted to continue paying his bills and have some financial protection at the same time. (Ex. A) The Chapter 13 provided a monthly budget to allow him to pay his creditors and meet his expenses. (Tr. 41) The plan lasted from 1989 through January 2002. (Tr. 53) The plan was fully administered and Applicant received a final decree. The Applicant had complied with the provisions of the confirmed plan and completed all payments to be made there under. (Ex. A) This was a period of financial stability in Applicant's life. (Tr. 42)

In June 2002, Applicant's oldest daughter graduated from high school. He had been paying \$600 per month child support. Child support almost doubled increasing by \$500 per month to \$1,205. (Tr. 43) He attempted to pay his child support and meet his living expenses. He obtained some payday loans to help him with his finances. His gross monthly income was \$4,422 and his deductions including child support was \$2,016. His monthly expenses were \$2,318 and monthly payment on his bills was \$1,957. (Ex. 2) Applicant was over extended and after discussing his finances with his attorney, decided to file for Chapter 7 bankruptcy protection in October 2003. In January 2004, Applicant's debts were discharged. (Ex. A) In June 2005, Applicant paid the last child support. (Ex. B) Applicant never missed any of his child support payments. (Tr. 53)

For tax years 2003 and 2004, Applicant owed the IRS \$4,000. (SOR ¶ 1. d) He has an installment agreement paying the IRS \$150 per month. (Tr. 54) The debt has been reduced to \$2,149. (Ex. A, Attachments 2.A and 2.B, Tr. 39) Taxes were incurred when he was required to file as "married filing a separate return."

The debts listed in SOR ¶¶ 1e - ¶ 1. k were his children's medical bills of which he was unaware. (Tr. 51) He maintained medical insurance for his children through his company. Applicant owed a \$70 debt (SOR ¶ 1.e), which has been paid. (Ex. A, Attachment 3) Applicant owed a \$457 debt (SOR ¶ 1.f), which was included in his October 2003 bankruptcy. The debt was discharged in January 2004. (Ex. A, Attachments 1. C and 4) Applicant owed a \$125 debt (SOR ¶ 1.g), which has been paid. (Ex. A, Attachment 5) Applicant owed a \$70 debt (SOR ¶ 1.e), which has been paid. (Ex. A, Attachment 3) Applicant owed a \$208 debt (SOR ¶ 1. h), which has been paid. (Ex. A, Attachment 6) Applicant owed an \$83.95 debt (SOR ¶ 1. k), which has been paid. (Ex. A, Attachment 8) The SOR did not have a subparagraph 1. i.

Applicant has two companies to help him monitor and control his credit. His credit score has improved from 543 in 2003 to 584 in 2007. (Ex. B) The fair market value of Applicant's home is \$200,000 on which he owes \$180,781. (Ex. B) Since 2003 his salary has increased 46 percent. (Tr. 34) He was paying \$14,000 a year in child support and now pays zero. Applicant's salary has increased from \$57,496 in 2003 to \$84,381 in 2007. Applicant has additional income as an umpire and does work as a printer. (Ex. A, Attachments 6 and 7, Tr. 36)

Applicant remarried in 2003 and was divorced in 2006. (Tr. 50) Applicant presented letters from numerous creditors indicating his accounts are in good standing or have been paid in full. (Ex. B) Applicant included copies of his budgets (Ex. B), is living within his means, and his credit score is improving. (Tr. 33)

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 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. Applicant has had to resort to bankruptcy protection three times and, at one time, owed approximately \$4,500 on eight past due obligations. Seven of Applicant's debts were under \$500 each. Disqualifying Conditions (DC) ¶ 19(a), "inability or unwillingness to satisfy debts" and 19(c), "a history of not meeting financial obligations," apply.

Of concern is Applicant having had to resort to bankruptcy protection three times. In 1994, Applicant's wife was handling the family's finances. He was unaware the bills were not being paid. When Applicant learned of the problem, the creditors were not willing to work with him or accept the proposed payment amounts presented by the debt reduction service. Applicant is no longer married to this woman and now maintains control over his finances.

In January 1998, Applicant's separation, divorce, attorney fees, and child support obligation left him with little money to pay his living expenses and other debts. When his child support almost doubled to \$1,200, he was unable to pay both his child support and living expenses. He obtained some payday loans to help him with his finances, but had to resort to the forced budget plan in a Chapter 13 bankruptcy. In 2004, he again filed for bankruptcy protection when his child support payments added to his financial problems. In June 2005, Applicant's child support obligation ended. His debts were discharged in each of his Chapter 7 bankruptcies. In 2002, having complied with the provisions of the plan, which had lasted four years, and had completed all payments under the plan.

² Revised adjudicative guidelines (AG) ¶ 18.

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 his child support obligations. He never missed making his child support payments, but was unable to pay his living expenses while meeting his support obligation. He no longer has a child support obligation. It is unlikely he will again incur financial problems due to making child support payments. 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 experience both separation and divorce along with the financial burden associated with each.

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” under AG ¶ 20(c), applies. 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 paid seven of the eight debts and has an agreement paying the IRS \$150 per month on the remaining debt. The total amount of unpaid debt is approximately \$2,000. He has attended financial classes, maintains a budget, is living within his means, paying his debts, has received a substantial increase in salary, and no longer has a \$14,000 per year child support obligation.

Neither the sole remaining \$2,000 debt, which he is paying, nor his having to have resorted to bankruptcy protection, raises concerns about his 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.

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 set forth in the SOR were not incurred on luxuries, but were for medical treatment and taxes.

Since the filing of his most current bankruptcy, Applicant has only one outstanding debt on which he makes monthly payments. This debt cannot be a source of improper pressure or duress. Of course, the issue is not simply whether all his debts are paid—it is whether his financial circumstances raise concerns about his fitness to hold a security clearance. (See AG ¶ 2(a)(1).)

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.k: For Applicant

Conclusion

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

CLAUDE R. HEINY II
Administrative Judge