

DATE: November 20, 2007

In re:

SSN: -----

Applicant for Security Clearance

)
)
)
) ISCR Case No. 07-02927
)
)
)
)

**DECISION OF ADMINISTRATIVE JUDGE
ERIN C. HOGAN**

APPEARANCES

FOR GOVERNMENT

Gina L. Marine, Esq., Department Counsel

FOR APPLICANT

Lisa Rogers, Personal Representative

SYNOPSIS

A security concern was raised under financial considerations because of a charged off credit account in the approximate amount of \$41,601. Unbeknownst to Applicant, his wife incurred the charges and did not pay the balance. He initially attempted to teach his wife a lesson by holding her responsible for paying the balance off. Once he understood that this might jeopardize his security clearance he settled with the credit card company and paid off the debt. He is financially responsible and has the means to pay the debt. Applicant mitigated the security concern raised under financial considerations. Clearance is granted.

STATEMENT OF CASE

On June 27, 2007, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) stating they were unable to find that it is clearly consistent with the national interest to grant or continue a security clearance.¹ The SOR, which is in essence the administrative complaint, alleges security concerns under Guideline F, Financial Considerations, of the revised Adjudicative Guidelines (AG) issued on December 29, 2005, and implemented by the Department of Defense effective September 1, 2006.

In a sworn statement, dated July 13, 2007, Applicant responded to the SOR allegations and elected to have a hearing before an administrative judge. The case was assigned to me on September 11, 2007. On September 25, 2007, a notice of hearing was sent scheduling the hearing for October 24, 2007. The hearing was held as scheduled. The government offered three exhibits which were admitted as Government Exhibits (Gov) 1-3 without objection. Applicant offered five exhibits which were marked as Applicant Exhibits (AE) A - E and admitted. AE E was admitted over the Government's objections. The government had no objections to AE A - D. The record was held open until November 7, 2007, in order to allow Applicant to submit additional documents. Applicant timely submitted a 46 page document that was admitted as AE F without objection. The transcript was received on November 6, 2007.

FINDINGS OF FACT

In his SOR response, Applicant denies the allegation in SOR ¶ 1.a. In addition, after a thorough and careful review of the pleadings and exhibits, I make the following findings of fact.

Applicant is a 62-year-old man employed with a Department of Defense contractor who is applying for a renewal of his security clearance. He has worked for the same company since 1980. He has held a security clearance for 27 years with no security incidents. He has two adult children from a prior marriage. He married his current wife in 1986. She has five grown children.²

On March 13, 2006, Applicant completed an Electronic Questionnaire for Investigations Processing (e-QIP) during a routine periodic update of his security clearance.³⁴ He did not list any delinquent accounts on his questionnaire because he had no delinquent accounts. At some point, company employees were notified of a potential security breach of their personal identification and were encouraged to get a recent copy of their credit reports. Applicant obtained a copy of his credit report approximately two weeks prior to being interviewed by the investigator conducting his background investigation.⁵ The \$41,601 charged off credit card account that is alleged in SOR ¶ 1.a

¹This action was taken under Executive Order 10865, dated February 20, 1960, as amended, and DoD Directive 5220.6, dated January 2, 1992, as amended and modified (Directive).

² Tr. at 118-121; Gov 1.

³ Gov 1.

⁴ Gov 1.

⁵ Tr. at 72.

was listed on the credit report.⁶ Applicant was surprised to see this entry because he timely pays his bills. The credit card is in his wife's name. He contacted the credit card company to ask why the entry showed up on his credit report. He was told that he is listed as an authorized user. He admits to making charges on the card on at least 12 occasions but always immediately paid off the charges made.⁷ He and his spouse had an agreement that he would pay his charges and she would pay hers. He assumed that she was making payments on her charges. Unbeknownst to Applicant, his spouse ran up this credit card account. When he confronted his wife about the account, he discovered that she was being sued by the credit card company.⁸

Applicant initially did not attempt to resolve the account because he wanted to teach his wife a lesson. He wanted to hold her responsible for paying the account because she incurred the charges and did not pay the account.⁹ In April 2007, after he discovered that failing to resolve the account would adversely affect his security clearance, he started negotiating with the credit card company.¹⁰ On May 4, 2007, he wired a money transfer in the amount of \$34,507.75 to the credit card company to settle the account.¹¹ On June 4, 2007, the civil suit against his wife was dismissed with prejudice.¹² The account is settled and paid in full.¹³

Applicant took out a home equity loan in order to resolve the account. He pays \$350 per month on this loan and is able to meet the monthly payments.¹⁴ Applicant is conservative in his spending habits. He maintains a debt-free lifestyle. He invested his excess income over the years and has assets worth over \$1 million.¹⁵ A credit report dated October 16, 2007, lists no delinquent accounts. His credit rating is "excellent," the highest category.¹⁶

Applicant's performance evaluations over the last three years indicate that he meets or exceeds expectations.¹⁷ Applicant's daughter testified on his behalf. She stated that her father was

⁶ Tr. at 69-70; Gov 3 at 1.

⁷ Tr. at 79.

⁸ Tr. at 70, 73; gov 2 at 19-27.

⁹ Tr. at 73.

¹⁰ Tr. at 73-74; AE D.

¹¹ AE D at 42; AE F at 44.

¹² AE A.

¹³ AE F at 45.

¹⁴ Tr. at 92-93.

¹⁵ Tr. at 111-113; Gov 2 at 4,5, 16, 48-61.

¹⁶ AE C.

¹⁷ AE B.

very frugal and that his wife's spending habits were the opposite.¹⁸ Another family friend testified about Applicant's wife's spending habits.¹⁹ A co-worker testified that she has worked with Applicant over 13 1/2 years. She states Applicant is very responsible, hard working, reliable and dependable.²⁰

Applicant's wife receives approximately \$1,300 a month from Social Security.²¹ They previously agreed to be responsible for their own bills. Applicant pays most of the household bills.²² In 2006, after discovering the delinquent credit card account, he began assisting his wife with clearing up her credit issues and is attempting to monitor her spending habits. He took over paying her bills for her. He used to never open bills that were mailed to his wife. He now opens all bills that come in the mail.²³ He assisted in resolving another delinquent credit card incurred by his wife which is close to being paid in full.²⁴ He is ashamed and embarrassed about the problems this has caused. It caused great strain on him personally and on his marriage.²⁵

POLICIES

The President has “the authority to . . . control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to occupy a position . . . that will give that person access to such information.”²⁶ In Executive Order 10865, *Safeguarding Classified Information Within Industry* (Feb. 20, 1960), the President set out guidelines and procedures for safeguarding classified information within the executive branch.

To be eligible for a security clearance, an applicant must meet the security guidelines contained in the Directive. The revised Adjudicative Guidelines, approved by the President on December 29, 2005 and implemented by the Department of Defense, effective September 1, 2006, sets forth personnel security guidelines, as well as the disqualifying conditions and mitigating conditions under each guideline. The adjudicative guideline at issue in this case is:

Guideline F - 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

¹⁸ Tr. at 17-23; 63-66.

¹⁹ Tr. at 41-61.

²⁰ Tr. at 32-38.

²¹ Tr. at 94.

²² Tr. at 94-95.

²³ Tr. at 103-104.

²⁴ Tr. at 85-91; Gov 2 at 28-47.

²⁵ Tr. at 124-127.

²⁶ *Department of the Navy v. Egan*, 484 U.S. 518, 527 (1988).

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.²⁷

Conditions that could raise a security concern and may be disqualifying, as well as those which could mitigate security concerns pertaining to this adjudicative guideline, is set forth and discussed in the conclusions below.

“The adjudicative process is an examination of a sufficient period of a person’s life to make an affirmative determination that the person is an acceptable security risk.”²⁸ An administrative judge must apply the “whole person concept,” and consider and carefully weigh the available, reliable information about the person. An administrative judge should consider the following factors: (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.²⁹

Initially, the Government must present evidence to establish controverted facts in the SOR that disqualify or may disqualify the applicant from being eligible for access to classified information.³⁰ Thereafter, the applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate the facts admitted by the applicant or proven by Department Counsel. The applicant has the ultimate burden of persuasion as to obtaining a favorable clearance decision.³¹ “Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the national security.”³²

A person granted access to classified information enters into a special relationship with the government. The government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to classified information. The decision to deny an individual a security clearance is not a determination as to the loyalty of the applicant. It is merely an indication that the applicant has not met the strict guidelines the President has established for issuing a clearance.

CONCLUSIONS

²⁷ Revised AG, dated August 2006, ¶ 18.

²⁸ Revised AG, dated August 2006, ¶ 2(a).

²⁹ *Id.*

³⁰ Directive ¶ E3.1.14.

³¹ Directive ¶ E3.1.15.

³² Revised AG, dated August 2006, ¶ 2(b).

I have carefully considered all the facts in evidence and the legal standards. I make the following conclusions.

Applicant has had a long history of financial stability aside from this one credit debt that was incurred by his wife. Financial Considerations Disqualifying Condition (FC DC) ¶19(a) (*inability or unwillingness to satisfy debts*) initially applies in that he refused to resolve the debt initially because the debt was his wife's and he wanted to her hold responsible for the bill. He had sufficient assets to pay the account but was unwilling to do so.

The concern under Financial Considerations can be mitigated. Applicant's history of financial responsibility and his significant assets contradict the government's assertions of a security concern under financial considerations. Through no fault of his own, the credit card balance was incurred by his wife and was charged off due to her neglect. Financial Considerations Mitigating Condition (FC MC) ¶ 20 (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 doubt on the individual's current reliability, trustworthiness, or good judgment*) applies. Applicant has a long history of financial stability. The credit card account was in his wife's name and she was responsible for paying the account. Unbeknownst to him, his wife made excessive charges on the bill and did not pay resulting in the account being charged off. The credit company eventually filed civil suit against her. Applicant resolved this account once he discovered that the debt was an issue with his security clearance. Considering Applicant's history of financial stability, it is unlikely that a similar circumstance will occur in the future. Applicant has had a security clearance for 27 years without incident. This one anomaly which occurred through no fault of his own does not cast doubt on his reliability, trustworthiness and good judgment.

FC MC ¶ 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 in that Applicant was unaware that his wife was making excessive charges on her credit card account and allowed the account to get delinquent. Once he discovered the account, he acted responsibly under the circumstances. He settled the debt and has taken steps to actively monitor his wife's spending habits.

FC MC ¶ 20(d) (*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*) applies. Applicant resolved the account in May 2007, one month prior to the issuance of his SOR. While he initially wanted to hold his wife accountable for the debt that she incurred, he immediately took steps to resolve the account once he discovered the security significance.

In all adjudications, the protection of our national security is the paramount concern. The objective of the security clearance process is the fair-minded, commonsense assessment of a person's life to make an affirmative determination that the person is eligible for assignment to sensitive duties. Indeed, the adjudicative process is a careful weighing of a number of variables in considering the "whole person" concept. It recognizes that we should view a person by the totality of their acts, omissions, motivations and other variables. Each case must be adjudged on its own merits, taking into consideration all relevant circumstances, and applying sound judgment, mature thinking, and careful analysis.

I have considered all the evidence and the “whole person” in evaluating Applicant’s security worthiness. I considered Applicant's 27 year employment history with a Department of Defense contractor, his 27 year history of possessing a security clearance without incident, his favorable performance reports, and the favorable recommendations of his friends and co-workers. Applicant is financially stable. This one debt was incurred by his wife. His extensive history of financial stability and his favorable financial portfolio indicate that the debt alleged in SOR ¶ 1.a was an anomaly in an otherwise stable financial situation. He now assists his wife with her finances to insure she does not overspend in the future. The security concerns raised under financial considerations are mitigated. Based on the evidence in the record, it is clearly consistent with the national interest to grant Applicant a security clearance. Clearance is granted.

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

DECISION

In light of all of the evidence presented by the record in this case, it is clearly consistent with the national interest to grant Applicant a security clearance. Clearance is granted.

Erin C. Hogan
Administrative Judge