



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



In the matter of:)
)
) ISCR Case No. 07-03694
)
Applicant for Security Clearance)

Appearances

For Government: Melvin Howry, Esquire, Department Counsel
For Applicant: Alan V. Edmunds, Esq.

January 16, 2008

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant has mitigated the government’s security concerns under Guideline F, Financial Considerations. Applicant’s eligibility for a security clearance is granted.

On May 23, 2007, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) detailing the security concerns under Guideline F. 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 answered the SOR in writing on June 10, 2007, and requested a hearing before an Administrative Judge. DOHA received the request on November 7, 2007, and assigned it to another administrative judge. It was reassigned to me on November 16, 2007. DOHA issued a notice of hearing on November 20, 2007, and I

convened the hearing as scheduled on December 12, 2007. Department Counsel and Applicant's attorney stipulated to the admissibility of the government's Exhibits (GE) 1 through 7, and Applicant's Exhibits (AE) A-W. Applicant testified and called two witnesses. I granted Applicant's request to keep the record open until December 27, 2007, to submit additional matters. On December 18th and 26th, 2007, he submitted AE X-AA, without objection. The record closed accordingly. DOHA received the transcript of the hearing (Tr.) on December 19, 2007.

Findings of Fact

Applicant's admissions to the allegations in the SOR are incorporated herein. In addition, after a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is 36 years old and has worked for a federal contractor as a data collector for approximately two years. Applicant grew up in an unstable environment and when he was approximately seven years old his parents separated. He was raised primarily by his father who changed jobs and moved frequently. After Applicant graduated from high school, he moved with his father to a new state and was employed for about three and a half years. He admitted that his family life while growing up was unsupportive and lacking in encouragement. Applicant believed he grew up without learning a sense of responsibility. He changed jobs to try new things. Prior to his federal contractor employment, he was unemployed for approximately six months and supported himself by using his savings and living with his girlfriend. In the past five years he has been unemployment 2-3 times for up to a period of four months. During much of this time, and even when he was employed, he did not have medical insurance and made poor financial decisions which contributed to his indebtedness.¹

The following chart lists Applicant's debts and their current status:

DEBT	NATURE & AMOUNT	STATUS	RECORD
SOR 1.a	Medical-consolidated by collection agency with SOR 1.h, total \$2,333.	Payment plan started 12/14/07; \$100/month.	Tr. 44-45; AE F, AE Y page 1-2.
SOR 1.b	Credit Card; duplicate with SOR 1.g.	Paid April 19, 2007.	Tr. 49-53; Answer to SOR; AE L.
SOR 1.c	Credit Card, Collection Account, total \$12,751.	Paid settlement Oct. 19, 2007, \$4,800.	Tr. 47-59; AE G.
SOR 1.d	Collection Account, total \$12,768.	Believe debt to be a duplicate of SOR 1.c, but no proof.	Tr. 59-61, 80-82.
SOR 1.e	Collection Account, total \$22.	Unknown account. Attempted to contact by letter to	Tr. 61-62; AE Y page 5.

¹ Tr.74-76, 89-94.

		verify account, no address on credit report.	
SOR 1.f	Collection Account, total \$2,253.	Paid settlement April 10, 2007, \$400.	Tr. 62-66; AE N, AE Y page 3; GE 7.
SOR 1. g	Duplicate SOR 1.b.	See SOR 1.b	See SOR 1.b
SOR 1. h	Duplicate-consolidated with SOR 1.a.	See SOR 1.a	See SOR 1.a
SOR 1.i	Collection Account, total \$1,265.	Paid settlement April 10, 2007.	Tr. 69-70; AE M, AE Y page 3.
SOR 1.j	Collection Account, total \$1,262, same as SOR 1.i	Paid.	Tr. 71-72; AE Z, AE AA, GE 7.
SOR 1.k	Collection Account, total \$91.	Unknown creditor, sent letter requesting information 12/18/2007.	Tr. 72; AE Y page 6.
SOR 1.l	Charged off account total \$1,089. Same as SOR 1.j.	Paid.	Tr. 73; AE Z, AE AA.

Applicant has made changes in his life, has a stable job, is addressing his delinquent debts, and is acting responsibly. He is systematically paying his delinquent debts, negotiating settlements, and living within his means. He meets his monthly expenses and is attempting to save money to continue to satisfy all of his delinquent debts. He is not married and has no children. He has no car payments. He intends on using his tax refund to decrease the amount of his debts. He has never contemplated filing bankruptcy because he believes he is in a position to satisfy all of his remaining delinquent debts. He has set goals for himself and hopes to save money for the future, buy a house, get married, and start a family.

Two witnesses testified that they have known Applicant for 15 years and believe him to be an honest and trustworthy individual. They do not believe he would succumb to coercion or pressure from a third party.²

Applicant provided character letters from coworkers who attest to his devotion to his job and his commitment to the mission he is assigned. He is considered a professional who is dedicated and can be trusted to complete the task without supervision. He is often assigned the difficult jobs under extreme conditions and performs at the highest level. He willingly helps coworkers who may be overwhelmed. He is considered knowledgeable and dependable and quickly learns the task at hand.

² Tr. 26-37.

Applicant has been recognized by his superiors for his outstanding performance and is considered a valuable asset to the organization.³

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.

³ AE A, B, C, D, E, W.

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

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. Compulsive gambling is a concern as it may lead to financial crimes including espionage. Affluence that cannot be explained by known sources of income is also a security concern. It may indicate proceeds from financially profitable criminal acts.

I have considered all of the disqualifying conditions under AG ¶ 19 for financial considerations that could raise a security concern and have especially considered AG ¶ 19(a) (inability or unwillingness to satisfy debts) and (c) (a history of not meeting financial obligations). Applicant had debts that remained unpaid for a substantial period of time that he only recently began to pay. Due to his unemployment, under employment and lack of medical insurance, he has been unable to pay many of these debts. I find both AG ¶ 19 (a) and (c) apply.

AG ¶ 20 provides conditions that could mitigate financial considerations security concerns. I have considered all the mitigating conditions and especially considered (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), (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), (c) (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), (d) (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts), and (e) (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 had numerous debts that were in collection status or charged off. He recently settled and paid many of his delinquent debts, but others remain that he is working on paying or attempting to resolve. I find (a) does not apply because his behavior was not infrequent and he is still resolving his financial problems, and

therefore they are recent. Some conditions that contributed to Applicant's financial difficulties were beyond his control. He was unemployed for periods of time and did not have medical insurance. However, Applicant also admitted that he made poor financial decisions that also contributed to his problems. I find (b) partially applies. No evidence was presented that Applicant has received or is receiving counseling for his financial problems. Therefore, I find (c) does not apply. Applicant has made a sustained, deliberate, good-faith effort to resolve and pay his delinquent debts and has made substantial progress. He has paid some delinquent debts, negotiated, settled and paid others, and written letters to resolve and determine the legitimacy of others. I find both (d) and (e) 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 was a young man who was provided very little direction in his life. He had low paying jobs, no medical insurance, and made some poor financial decisions. He has forged a new positive direction in his life. He has put forth a sustained and substantial effort to pay his delinquent debts and has made significant progress. He is considered a valuable trusted coworker, who is admired by those with whom he works. He made some mistakes as a young man, but has learned from them and is actively taking corrective action. He is a productive and valuable employee. Although he had financial problems, he has resolved many of his debts and is committed to paying all of remaining outstanding debts. He estimates he has approximately \$5,000 in remaining debts. Applicant's actions convince me that he is not a security risk.

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 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
Subparagraphs 1.a-1.l:	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.

CAROL G. RICCIARDELLO
Administrative Judge