



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



In the matter of:)	
)	
)	ISCR Case No. 07-04822
SSN:)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Candace Le'i, Esquire, Department Counsel
For Applicant: Pro Se

May 19, 2008

Decision

HENRY, Mary E., Administrative Judge:

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

Applicant submitted his Security Clearance Application (SF 86), on November 17, 2006. On December 13, 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the 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 December 23, 2007. He answered the SOR in writing on January 22, 2008, and requested a hearing before an

administrative judge. DOHA received the request on January 31, 2008. Department Counsel was prepared to proceed on February 14, 2008, and I received the case assignment on February 19, 2008. DOHA issued a notice of hearing on March 24, 2008, and I convened the hearing as scheduled on April 30, 2008. The government offered six exhibits (GE) 1 through 6, which were received and admitted into evidence without objection. Applicant testified on his own behalf. He submitted four exhibits (AE) A through D, which were received and admitted into evidence without objection. DOHA received the transcript of the hearing (Tr.) on May 9, 2008. I held the record open until May 14, 2008 for Applicant to submit additional matters. On May 12, 2008, he submitted one additional document, which has been marked and received as AE E, without objection. The record closed on May 14, 2008.

Findings of Fact

In his Answer to the SOR, dated January 22, 2008, Applicant admitted the factual allegations in ¶¶ 1.a-1.d of the SOR. He completed his security clearance application on November 17, 2006.¹

Applicant, who is 51 years old, works as an instructor for a Department of Defense contractor, a position he started in June 2006. Applicant enlisted in the United States Navy in 1975 and received an honorable discharge in 1989 after more than 13 years of service. He held a top secret clearance while in the Navy without any violations. Since 1989, he has worked for Department of Defense contractors and has held a secret clearance without incident.²

Applicant married his first wife in 1977. She died in 1998 as a result of brain cancer. He has one son, now age 27, from this relationship. Applicant married his present wife in 2003.³

Physicians diagnosed Applicant's first wife with diabetes and schizophrenic paranoia. Her medical problems created financial problems throughout their marriage, particularly when his Navy duty assignments took him to sea. When he returned from sea duty, he found the utilities shut off and the bills unpaid. He would pay the bills upon his return. When his wife died, he incurred significant medical bills, after insurance payments. He paid these bills.⁴

Around the time his wife died, his job required him to move from State A to State B, if he wanted to continue working. He owned a trailer in State A, which he tried to sell.

¹Response to SOR, dated January 22, 2008, at 1-2; GE 1 (Applicant's security clearance application, dated November 17, 2008) at 32.

²GE 1, *supra* note 1, at 7-10, 20-21; Tr. 20-21.

³GE 1, *supra* note 1, at 11-14; Tr. 21.

⁴Tr. 22, 43.

He found a prospective buyer, but she did not qualify for a mortgage. He made arrangements for her to pay her monthly rent on the trailer directly to the mortgagor. If she did so in a timely manner for a year, the mortgagor would qualify her for a mortgage. His renter got behind in the payments on several occasions, but would then catch up on her payments. However, in 2001 after she again failed to make the monthly payments, the mortgagor initiated foreclosure procedures and notified Applicant of its actions. Applicant lacked the financial resources to pay the overdue mortgage payments and advised the mortgagor to proceed with foreclosure. He heard nothing further from the mortgagor.⁵

Three years later, In 2004, a new creditor contacted Applicant about the unpaid debt remaining from the foreclosure. He told the creditor that he could not pay the debt as he was losing his job. Applicant's employer laid him off in December 2004. During his period of unemployment, he paid his bills with his unemployment and money from his 401k. When these funds were exhausted, he defaulted on his financial obligations. His wife did work part-time. In September 2005, he obtained a job paying \$8 an hour. With his low paying job and his wife's part-time job, they were able to meet minimal monthly living expenses. After obtaining his current employment, he slowly began to repay debts.⁶

Applicant's gross monthly income totals \$4,167 and his net monthly income totals \$2,800. His current monthly expenses include \$450 for an equity loan on his home, \$465 for utilities, \$250 for food, \$180 for automobile expenses, \$100 for clothing, and \$200 for miscellaneous items totaling approximately \$1,650. He owns two cars, without any debt. He has a company credit card, but no personal credit cards.⁷

For the last year, Applicant has paid old debt, much of which is not listed in the SOR. He also pays \$125 a month on the debt alleged in ¶ 1.a of the SOR. He began his payments on this debt in May 2007. His current balance is \$1,729.⁸

Applicant's largest debt in the SOR related to the unpaid balance on the trailer mortgage after the foreclosure sale. The current creditor, the third owner of the debt, contacted him in March 2008 and offered to settle his debt for \$10,000. To accept this offer, he contacted his current mortgagor and obtained an equity loan on his home. He

⁵Tr. 22-23.

⁶Tr. 24-25.

⁷GE 3 (Interrogatories and Applicant's answers, dated July 6, 2007) at 3-5; Tr. 37, 39-40, 53-55.

⁸GE 2 (Interrogatories and Applicant's answers, dated June 5, 2007) at 2-3, 6, 10-14; AE A (Letter, dated April 28, 2008); Tr. 26.

paid the settlement offer, which settled his debt in full. He also paid the two remaining small credit card debts of \$259 and \$417. Applicant has no other unpaid debts.⁹

Applicant acknowledges that he is a poor manager of money. Thus, his wife now handles the family finances. He currently has no outstanding, unpaid debts. He can pay his current monthly expense. He likes his current financial status and intends to remain debt free.¹⁰

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

⁹GE 2, *supra* note 8, at 14; GE 6 (Credit report, dated October 18, 2007) at 2; AE B (Letter, dated April 21, 2008); AE D (Credit profile, dated April 2, 2008); AE E (Letter, dated May 9, 2008); Tr. 27-34, 42.

¹⁰Tr. 43, 54-57.

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

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 accumulated delinquent debt after his first wife died and after he lost his job. Although he paid his debts for a period of time, he ultimately defaulted on his financial obligations. His unpaid debt existed for several years. 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 problems were a constant problem during his first marriage, when he was on sea duty. After his first wife died, he incurred more debts related to her medical bills and his job changes or loss. As continuous employment is not guaranteed, there is a possibility he will be unemployed in the future. This mitigating condition does not apply.

Under AG ¶ 20(b), it may be mitigating 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.” As noted above, Applicant’s more recent financial problems began 10 years ago when his first wife became seriously ill and eventually died, leaving him with unpaid medical bills. At the same time, his job required him to move to another state. When he could not sell his trailer, he rented to an individual who agreed to make the rental payments directly to his mortgagor. When she failed to meet the payments, he allowed the property to go to foreclosure as he was losing his job and did not have funds to pay the outstanding debt. I find this potentially mitigating condition applies 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). 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 did not receive financial counseling. However, he has resolved all of his delinquent debts, either by payment or settlement, except one. He continues to make the monthly payment on the one remaining debt, under the payment plan he developed. He is now financially sound and prepared for future contingencies. I conclude these potentially mitigating conditions 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 common sense 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 had financial problems for many years during his first marriage. He managed his debts until after his first wife died and his job required him to move to another state. In 2004, he lost his job. He attempted

to continue paying his monthly expenses, including credit card debt. When he exhausted his monetary funds, he defaulted on his debts. Nine months after losing his job, he accepted a low paying job, the first job he could find. The income from this job enabled him to pay some household expenses, but did not provide him with any additional resources to pay old debt. He obtained his current position in June 2006, and started to resolve some old debt. For the last year, he has worked with creditors to resolve his debts, and has successfully done so. Applicant has changed his attitude towards the use of credit cards and his wife now manages the family finances because he does not manage money well. Most significantly, he has taken affirmative action to pay or resolve all his delinquent debts, including those debts which raise security concerns. (See AG ¶ 2(a)(6).) As his debt is paid or under a payment plan, it 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. Applicant had a difficult financial situation for 18 months. When his income improved, he slowly worked on paying his debts. Besides the one old debt he is paying monthly, he has only one debt, an equity loan on his house. His lives within his financial means and does not live excessively. His old debts do not raise security concerns. (See AG ¶ 2(a)(1)-(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

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