



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



In the matter of:)	
)	
)	ISCR Case No. 07-06149
SSN:)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Richard A. Stevens, Esquire, Department Counsel
For Applicant: *Pro Se*

Decision

CURRY, Marc E., Administrative Judge:

On September 24, 2007, the Defense Office of Hearings and Appeals (DOHA) issued 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, 1990), 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 on October 25, 2007, and requested a hearing before an Administrative Judge. I received the case assignment on November 19, 2007. DOHA issued a notice of hearing on November 26, 2007, and I convened the hearing as scheduled on December 13, 2007. During the hearing, I received four Government exhibits, five Applicant exhibits, and the testimony of two Applicant witnesses. DOHA received the hearing transcript (Tr.) on December 12, 2007. Based upon a review of the

case file, pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

Findings of Fact

In his Answer, Applicant denied all of the SOR allegations except subparagraph 1.e.

Applicant is a 37-year-old, married man with six children ranging in age from four to eighteen. The three oldest children live with their mother, his ex-wife. The younger three children with Applicant and their mother, his current wife. He has been married to his current wife since 2003.

Applicant has a high school education, and has taken some college courses. He works as an electronics technician for a defense contractor. His job duties include testing military equipment. (Exhibit 1 at 2). He has been in this line of work for approximately 14 years.

Applicant is highly respected on the job. His supervisor characterizes him as one of the most trustworthy individuals he had ever met. (Tr. 59). Applicant frequently works overtime to complete assigned projects. (Exhibit A).

In 1997, Applicant quit his job, and started a wine wholesale business. (Tr. 39). Shortly thereafter, he sold that business and opened a liquor store. (Tr. 48). His business was unsuccessful, prompting him to dissolve it in 1999. At or about the same time his business was struggling, his first marriage was disintegrating. He and his first wife divorced in 1998.

Applicant returned to his electronics technician job in 2000. Between 2000 and 2002, he experienced a series of layoffs that collectively resulted in three months without income. (Tr.49). By 2007, he had accrued nine delinquencies in the approximate amount of \$10,900.

SOR subparagraph 1.a is a medical bill. He satisfied it in July 2007. (Exhibit 4 at 7). SOR subparagraph 1.b is a late monthly membership fee owed to a health club to which Applicant belonged in 2000. The health club continued to bill him after he informed them he was terminating his membership contract. Later that year, when Applicant discovered this debt on his credit report, he attempted to contact the club to dispute the charge, and discovered that it had gone out of business (Tr. 23). In July 2007, after discovering it was on his credit report, he wrote the credit reporting agency, and informed it of the dispute. (Exhibit 4 at 3).

SOR subparagraphs 1.c and 1.i are duplicates.¹ Applicant researched this debt, and discovered the creditor was an automobile insurance underwriter. (Tr. 24). He then disputed it, and notified, in writing, his credit reporting agency of the dispute. (Exhibit 4 at 3). The dispute has not yet been resolved.

SOR subparagraphs 1.d and 1.e are duplicates.² In approximately 1998, Applicant financed the purchase of a truck. (Tr. 29). It was repossessed in 2001 after his payments grew delinquent. After the truck was resold, the deficiency note was assigned to another creditor. (Tr. 25). Applicant never received notice of assignment, and did not know a deficiency existed until he discovered the debt on his credit report when he attempted to buy another car. (Tr. 31). In July 2007, he wrote the current creditor requesting information validating its status as the current holder of the deficiency note. (Exhibit 4 at 3). He will not pay the creditor until he verifies it is the appropriate payee.

SOR subparagraphs 1.f and 1.g are delinquencies owed to the same creditor. (Tr. 32). Applicant does not recognize the creditor. He has left three phone messages in an effort to identify and resolve the bills, and has not received a response. (Tr. 32, 33).

The creditor listed in SOR subparagraph 1.h is a collection agent for a phone company. (Exhibit 4 at 10). In October 2006, Applicant negotiated a settlement. (Exhibit 4 at 11), and he satisfied it two months later. (Exhibit 4 at 12, Copy of Cancelled Check).

SOR subparagraph 1.j is a delinquent home utility bill, and SOR subparagraph 1.k is a delinquent utility bill from his failed business. (Tr. 38). In July 2007, Applicant entered an agreement to satisfy these debts through electronic monthly payments. (Tr. 41, Exhibit B). By October 2007, he had satisfied both. (Tr. 41).

Applicant owns a home and two automobiles. (Tr. 42). He purchased the home three years ago. He satisfied the car note on one car in 2004 (Tr. 54), and is current on both his mortgage and the remaining car note.

In response to Government interrogatories, Applicant, in July 2007, submitted a budget. (Exhibit 4 at 13). Currently, he has approximately \$200 of monthly, remaining, after-expense income.

Policies

When evaluating an applicant's suitability for a security clearance, the Administrative Judge must consider the revised adjudicative guidelines (AG). In addition

¹Compare the matching account numbers in the November 2005 credit report (Exhibit 2 at 4), the September 2007 credit report (Exhibit 3 at 7), and the December 2007 credit report (Exhibit D at 1 and 2).

²Compare the matching account numbers in the November 2005 credit report (Exhibit 2 at 4) and the September 2007 credit report (Exhibit 3 at 2).

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 overarching 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 an 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 this guideline, “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” (AG ¶ 18). Moreover, “an individual who is financially overextended is at risk of having to engage in illegal acts to generate funds” (*Id.*).

Here, Applicant’s financial problems trigger the applicability of AG ¶ 19(a), “an inability or unwillingness to satisfy debts,” AG ¶ 19(c), “a history of not meeting financial obligations,” and AG ¶19(e), “consistent spending beyond one’s means, which may be indicated by excessive indebtedness, significant negative cash flow, high debt-to-income ratio, and/or other financial analysis.”

Applicant’s divorce and business failure both occurred in the late 1990s. These unfortunate circumstances were followed by a series of layoffs between 2000 and 2002. Collectively, these problems significantly contributed to his subsequent financial indebtedness. Since 2006, he has been resolving his delinquencies by either satisfying them in their entirety, or arranging settlement plans. The only unresolved ones are either those whose respective creditors he has been unable to contact, or those that he has disputed. With respect to the disputed debts, he wrote the credit reporting agency in July 2007, and provided a comprehensive outline of the basis of each dispute

Although the unresolved delinquencies include an automobile deficiency, the largest listed in the SOR, I conclude Applicant’s explanation for not yet satisfying it was reasonable given his credibility displayed at the hearing, the cause of his indebtedness, and the good-faith manner in which he has been attempting to resolve it. 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,” 20(c), “. . . there are clear indications that the problem is under control,” 20(d), “the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts,” and 20(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 evidence of actions to resolve the issue,” apply. Applicant has mitigated the financial considerations security concern.

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.

Applicant's delinquencies were caused by circumstances beyond his control. None were reflective of any extravagant spending. Since 2006, he has been methodically resolving them. His financial management skills appear significantly competent enough for him to successfully incorporate additional debt payments into his budget if the credit reporting agency concludes he must pay the disputed creditors. Evaluating this case in light of the whole person concept, I conclude he has mitigated the financial considerations security concern.

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.k: For Applicant

Conclusion

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

MARC E. CURRY
Administrative Judge