



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



In the matter of:

SSN: -----

Applicant for Security Clearance

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ISCR Case No. 07-07421

Appearances

For Government: Melvin A. Howry, Esquire, Department Counsel
For Applicant: *Pro Se*

March 24, 2008

Decision

WHITE, David M., Administrative Judge:

Applicant submitted his Security Clearance Application (SF 86), on February 17, 2005. On October 11, 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 (DoD) for SORs issued after September 1, 2006.

Applicant acknowledged receipt of the SOR on October 19, 2007. He answered the SOR in writing on November 8, 2007, and requested a hearing before an Administrative Judge. DOHA received the request on November 21, 2007. Department Counsel was prepared to proceed on January 18, 2008, and the case was assigned to me on January 25, 2008.

DOHA issued a notice of hearing on February 4, 2008, and I convened the hearing as scheduled on February 20, 2008. The government offered exhibits (GE) 1 through 6, which were admitted without objection. Applicant testified on his own behalf, and submitted exhibits (AE) A through C, which were admitted without objection. I granted Applicant's request to keep the record open until March 5, 2008, to submit additional matters. DOHA received the transcript of the hearing (Tr.) on February 29, 2008. On February 29 and March 5, 2008, Applicant submitted AE D and AE E, without objection, and the record was closed. Based upon thorough review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

Findings of Fact

In his Answer to the SOR, dated November 8, 2007, (hereinafter "Answer") Applicant admitted the truth of all the factual allegations in SOR ¶¶ 1.a through 1.j, with explanations. Applicant's admissions and explanations are incorporated in the following findings of fact.

Applicant is a 46-year-old Chief Technology Officer, and one of three founders, of a defense contractor that provides sophisticated surveillance equipment. Both of his partners hold Top Secret clearances. Applicant has never previously applied for a clearance, but now needs one to support military requirements for their product in various theaters of active operations. He worked as a chief technologist for a major high-technology company from January 1993 until May 2002, when he was laid off as part of the major contraction in the technology markets (tech crash). For the remainder of that year, he worked for a small technology company that failed. In 2003, he founded his present company with a retired civilian DoD employee and his son. Applicant and the son had worked together from 1995 or 1996 until the lay offs. Their new company was formally incorporated in June 2006. (GE 4 at 7-11.) The company has been successful, with revenue roughly doubling each year. (Tr. at 53.)

Applicant and his wife were divorced in 1998, after 16 years of marriage. He acquired all of their debts, and was awarded custody of their then 11-year-old son. In 1999, he purchased his present home for \$323,000. He had a perfect credit rating and substantial income. He entered into some highly leveraged technology investments, and lost all his money when the market crashed. When he lost his job in 2002, he stopped paying his unsecured debts, and did all he could to remain current on his secured debts so he could retain his home and car. The credit bureau reports (CBR) in the record show that each of the nine delinquent debts, listed in SOR ¶¶ 1.b through 1.j, became delinquent between October 2002 and June 2003. The April 2000 judgment debt in SOR ¶ 1.a arose from a legal dispute over his purchase of a mobile home for his mother in another state. (Tr. at 70.)

Applicant's present salary is over \$200,000 per year. His home is now worth around \$600,000, with about \$310,000 in remaining mortgage loans. He also owns his mother's residence, valued at over \$270,000. During their company's start-up period,

each of the partners agreed to deposit one-third of his post-tax salary back into a company-held account to provide sufficient liquidity to meet the cash-flow requirements of producing and selling their equipment-intensive products. The combination of these funds and undistributed company profits grew Applicant's share of this company-held account to approximately \$200,000. (Tr. at 52-55, 62-63.)

Applicant admitted owing each of the delinquent unsecured debts listed in the SOR, totaling just over \$232,000, at the time. (Answer.) As his income recovered with company growth, he brought each of his secured debts current and began retiring his unsecured debts. He never intended to shirk them or avoid them through bankruptcy, which he considers a dishonorable way to deal with legitimate debts. (Tr. at 91-93.) When he realized that the presence of these debts could raise concerns about his eligibility for a security clearance he took several steps to begin resolving them more quickly. He paid the \$32,596 debt listed in SOR ¶ 1.g from his personal savings. (GE 5 at 3; Tr. at 19, 35, 83.) He also arranged with his partners to withdraw \$75,000 of his funds from the company-held cash-flow account to further pay down the debts. (Tr. at 35, 54, 62-63.)

Because he had to spend extended periods overseas in support of military operations using his company's equipment, he retained an attorney to investigate and negotiate resolution of his remaining debts in November 2007. He set aside the \$75,000 from the company fund and \$25,000 from his savings for paying the attorney's negotiated pay offs. (AE B; Tr. at 35, 67-69.) After investigating the circumstances, the attorney advised Applicant that, due to the age of the debts, he should wait for the Statute of Limitations to expire rather than repay them. (AE D at 4.) His state's Statute of Limitations is six years on contract debts and liabilities, including revolving accounts, and ten years on judgments. Applicant was not satisfied with this approach, and promptly paid off the two debts listed in SOR ¶¶ 1.h and 1.i. (AE D at 2; AE E.)

Accordingly, only \$93,347 of the originally alleged \$232,000 remains unresolved. Applicant intends to resolve those debts as funds become available. His current monthly surplus of income over expenses is over \$4,500, so he has the means to do so comfortably in less than two years. He does not consider risking his company's short-term cash flow solvency by further withdrawing his invested funds to be a wise option. Nor does he want to incur further mortgage debt by withdrawing his substantial equity in his or his mother's home for this purpose. Nevertheless, the presence of these assets makes his total net worth about \$600,000. (AE D.)

Both of Applicant's partners testified to their complete confidence in his integrity, responsibility and dedication to serving the national defense efforts through his substantial and unique technical ability. The senior of the two spent his entire first career developing defense systems and has held a clearance for many years. Applicant's dedication is further evidenced by his frequent deployments into areas of active military operations to support and improve the enhanced tactical capabilities his equipment provides to military forces. Applicant's demeanor was serious, credible, and he demonstrated both understanding of, and intent to honorably resolve, his finances.

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(a) and 2(c), the entire process is a conscientious scrutiny of applicable guidelines in the context 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 "Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the 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 the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision." Section 7 of Executive Order 10865 provides that "Any determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned."

A person applying for access to classified information seeks to enter 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.

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.

AG ¶ 19 describes conditions that could raise a security concern and may be disqualifying. Of these nine different disqualifying conditions, the Government asserted that two were raised by Applicant's financial circumstances (Tr. at 123.): "(a) inability or unwillingness to satisfy debts;" and "(c) a history of not meeting financial obligations."

The evidence shows that Applicant is quite willing to satisfy his remaining debts, and is approaching their resolution in a reasonable manner that minimizes risk to his ongoing successful business. He could use present assets to repay those debts if he had to, but it would be financially less wise than paying them off over the next year or two. Although, he was unable to meet his debts during the period from October 2002 to June 2003, he has not incurred further delinquent debt since then and has resolved 60% of the debt he incurred. Security concerns are raised under both AG ¶¶ 19(a) and 19(c), but concerns under the former are much less significant than they were several years ago.

AG ¶ 20 provides conditions that could mitigate security concerns. Four pertinent conditions are:

(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;

Applicant's delinquent debts all arose during a nine-month period of financial setbacks created by adverse investments and job losses during the tech crash. This occurred shortly after his 16-year marriage ended in divorce and he assumed all the family debt. His company is now in very good financial condition and he earns a salary in excess of \$200,000 in addition to earning a share of profits. He has brought all his secured debt current and resolved the majority of his unsecured debt. While around \$90,000 remains to be repaid, he has the means and intention to do so, contrary to the advice of his attorney to wait a year for them to become uncollectible. He refused to seek bankruptcy protection, intending to honorably fulfill his obligations as he became able to do so. This established substantial mitigation under AG ¶¶ 20(a), (b), (c) and (d).

Applicant's debts did not arise from any lack of judgment, poor self-control, or unwillingness to abide by rules and regulations. With a salary over \$200,000 and net worth over \$600,000, he is not financially overextended. Combined with his demonstrated integrity and good character, his finances create extremely small, if any, risk of illegal activity to generate funds.

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's conduct of potential concern involves delinquent debts that were incurred due to circumstances beyond his control. He invested significant skill, resources and hard work to start a company that permitted him to resume lucrative employment, and has regained the means to resolve these issues. He is a mature and established individual who is responsible and making

wise recent financial choices. There is no potential for pressure, coercion, exploitation or duress since his financial situation is fully known to his business partners. The financial and technical success of his company and their products, and the absence of new delinquent debt for five years, make continuation or recurrence quite unlikely.

On balance, Applicant presented sufficient evidence to fully mitigate reliability and trustworthiness security concerns arising from his former inability to satisfy debts and history of not meeting financial obligations. He established his integrity, good character, and ability to protect classified information. "An applicant is not required to show that [he] has completely paid off [his] indebtedness, only that [he] has established a reasonable plan to resolve [his] debts and has 'taken significant actions to implement that plan.'" ISCR Case No. 06-12930 at 2 (App. Bd. Mar. 17, 2008) (quoting ISCR Case No. 04-09684 at 2-3 (App. Bd. Jul. 6, 2006)). Overall, the record evidence leaves neither questions nor doubts as to Applicant's present eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has fully 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
Subparagraph 1.e:	For Applicant
Subparagraph 1.f:	For Applicant
Subparagraph 1.g:	For Applicant
Subparagraph 1.h:	For Applicant
Subparagraph 1.i:	For Applicant
Subparagraph 1.j:	For Applicant

Conclusion

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

DAVID M. WHITE
Administrative Judge