



**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. 07-08657

Appearances

For Government: Paul M. DeLaney, Esquire, and James Duffy, Esquire

Department Counsel

For Applicant: Gregory Moohn, Personal Representative

February 21, 2008

Decision

BRAEMAN, Kathryn M., Administrative Judge:

History of the Case

The Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to the Applicant on October 19, 2007. The SOR detailed reasons why the Government could not make the preliminary positive finding that it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant.¹ The SOR alleged specific concerns over Financial Considerations (Guideline F) in paragraph 1 based on the revised Adjudicative Guidelines² issued on December 29, 2005, and implemented by the Department of Defense, to be effective September 1, 2006. As discussed below, clearance is granted.

¹ This procedure is required by Executive Order 10865, as amended, and Department of Defense Directive 5220.6, dated January 2, 1992 (Directive), as amended and revised.

² A copy of the revised Adjudicative Guidelines was sent with his Statement of Reasons (SOR).

Applicant responded to these SOR allegations in a notarized Answer of November 6, 2007, where he admitted all nine of the allegations and requested a hearing.

Department Counsel submitted a Ready to Proceed notice on November 29, 2007. Subsequently the case was assigned to me on December 6, 2007. A Notice of Hearing issued on December 18, 2007, set the matter for January 8, 2008.

At the hearing Department Counsel offered four documents (Exhibits 1-4) that were admitted into evidence without objection. Applicant offered 17 documents (Exhibits A-Q) that were admitted into evidence without objection and testified himself. At his request, and as the Department Counsel did not object, we left the record open until January 22, 2008, in order for him to submit supplemental information. Department counsel was granted three days to review the submissions. (TR 138, 151) Applicant timely submitted eight pages of records (Exhibit R); Department Counsel reviewed the documents and stated on January 18, 2008, that he had no objection to them being admitted into evidence; and the record closed. The transcript (TR) was received on January 17, 2008.

Findings of Fact

After a complete and thorough review of the evidence in the record, and upon due consideration of that evidence, I make the following Findings of Fact:

Applicant, 47 years old, has worked as a security officer for a defense contractor in State #1 from December 2004 to present. Applicant completed a Security Clearance Application (SF 86) to obtain a security clearance; he began the process in 2004 and completed the form in September 2006. Previously he worked for various companies as a truck driver. In 2001 Applicant joined his wife's new company, but it was not successful; it closed in 2003. (Exhibit 1; TR 58-63, 65, 77-78; 108-109; Exhibit E) In 2004 his wife accepted a job in State #1; Applicant left their home in State #2 and joined her. (TR 65-66; Exhibit E) Applicant needs a security clearance as he is an officer in his union. (Exhibit K; TR 71; 79)

Applicant served in the U.S. military from May 1977 to May 1986 and received awards; he attained the rank of staff sergeant (E6) in six years. He then served in the Army Reserves for one year. (Exhibit 1; Exhibits E, G; TR 55-56, 69-70)

Applicant married in 1981 and has three children, a son born in 1981, and twins born in 1985. (Exhibit 1; TR 77-78) Applicant earned his high school General Educational Development (GED) certificate in August 1982 (Exhibit H; TR 70-71)

Finances

Applicant did not check his credit reports before he completed his SF 86. (Exhibit E; TR 66-67; 105-109) He only disclosed on his SF 86 that he had a lien placed

against his property in 2000 by the IRS; and in April 2004 he had a judgment of \$10,000 placed against him by a state. He did not disclose any judgments or delinquent debts. (Exhibit 1) However, he later learned he did not have a tax lien on his property. (TR 133-136) The security investigation included a credit report which listed his delinquent debts and judgments. (Exhibit 3)

In response to a Financial Interrogatory sent to him questioning him on the current status of judgments, liens and debts, Applicant provided details in October 2007 of the status of each of these debts and which ones had been satisfied. He reported that he, his spouse and his daughter earned joint monthly net income of over \$8,000, had monthly expense of approximately \$5,000, and made debt payments of almost \$2,000. He thus had a net remainder of approximately \$1,000 per month. He owns a house assessed at \$109,000 in State #2 where they used to live. He paid off debts totaling almost \$10,000 in the past year. (Exhibit 2; Exhibit N; TR 72) His wife had a business in State #2 which closed in 2003 where there was an outstanding promissory note to a computer store, but they have paid that debt. (Exhibit D; TR 53-54)

In addition to the medical expenses from his wife's injury, Applicant attributed his recent financial problems in large part to his efforts to help his family who are a high priority for him. From June 2006 to September 2007 he sent over \$8,000 to one son, who was discharged from the military, as he is maintaining the family house they own in State #2. (Exhibit C; TR 53) In January 2006 his daughter moved in and in September 2006 his granddaughter was born; the daughter and her child remained with him until January 2008. Earlier his household bills included expenses for his daughter, her vehicles, and daycare. A single parent, his daughter had not received child support from the child's father. (Exhibit 2) Recently, his daughter married the child's father and has moved to State #3. Applicant spent \$2,000 for his daughter's wedding. (TR 67; Exhibit E)

Thus, in January 2008 he reported that he and his spouse earned monthly net income of over \$7,500, had monthly expenses of approximately \$3,300, and made debt payments of over \$1,800. He thus has a net remainder of approximately \$2,332 per month. He retains his house assessed at \$109,000 in State #2 plus other assets of \$6,800. (Those assets include a Timeshare obtained in 2005 which he is now trying to sell it to reduce his liabilities.) He has made several changes to reduce their expenses and plans to move to a smaller apartment to reduce their rent. For example, Applicant drives a 1990 vehicle with 272,000 miles on it. He no longer will have expenses for his daughter and her child as they no longer live with him. (Exhibit O; TR 72-74; 110-115; 119-120; 135-136)

While Applicant and his wife each had a pay increase of 6.25% in September 2007, in October 2007 his wife was in a car accident and their car was totaled. They replaced it with a less expensive used car. They have used the settlement monies of \$3,900 to resolve some of their debts. (Exhibit 2; Exhibit E; TR 66-67; 116-117)

Applicant has made progress in resolving these ongoing, delinquent debts as follows:

- He owes \$440 for a judgment to Creditor #1, a school, from 2005 for book fees for his children. However, he did not receive the notice as he had left State #2. He first learned of the debt in his investigative interview in December 2006. While he originally disputed this debt, now he has made arrangements to make payments on this debt and has mailed the first payment. (SOR ¶ 1.a.) (Answer; Exhibits 2, 3, 4; Exhibit R; TR 36-37; 80-84)
- He owes \$449 for a judgment to Creditor #1, a school, from 2003 for book fees. While he originally disputed this debt, now he has made arrangements to make payments on this debt and has mailed the first payment. (SOR ¶ 1.b.) (Answer; Exhibits 2, 3, 4; Exhibit R; TR 38-39; 84-87)
- He owes \$10,123 for a judgment to Creditor #2, a medical center, due to his wife's medical emergency which resulted from a horse riding accident in April 2003. While he initially believed he did have insurance because of his seasonal work, later he learned he did not have insurance and also learned that he was to be laid off from his job. Thus, he had limited resources to resolve this debt. Recently, he made arrangements to make payments on this debt of \$200 per month and has made the first payment. Due to interest at over 9%, the debt is now over \$14,000 which he intends to resolve. (SOR ¶ 1.c.) (Answer; Exhibits 2, 3, 4; Exhibits B, R; TR 40-41; 63-64; 87-92)
- He owes \$4,552 for a judgment to Creditor #2, a hospital, where he first took his wife after her April 2003 accident. The debt is now over \$6,000 because of interest. Recently, he has made arrangements to make \$200 monthly payments on this debt and has mailed the first payment. When he can, he will make higher monthly payments to resolve this debt. (SOR ¶ 1.d.) (Answer; Exhibits 2, 3, 4; Exhibit B, R; TR 42-43; 63-64; 92-93)
- He owed \$804 for a judgment to Creditor #3, a court. He first learned of the debt in his investigative interview in December 2006. He previously paid this debt in 2001, but the attorney for the hospital failed to file the satisfaction of judgment with the court. He recently contacted the court and the attorney's office who will now file the paperwork to resolve this matter. (SOR ¶ 1.e.) (Answer; Exhibits 2, 3, 4; Exhibit A; TR 43-44; 93-97)
- He owes \$262 for a judgment to Creditor #4, a dentist, for treatment of his oldest son in 2002. Initially he made payments; however, he stopped making payments in 2003 when they had financial difficulties. He subsequently contacted the Creditor in September 2007 and has paid the

debt in full in 2008. (SOR ¶ 1.f.) (Answer; Exhibits 2, 3, 4; Exhibit J; TR 44-45; 97-103)

- While he owes \$75 to Creditor #5 for a beeper because of an early termination fee, he cannot resolve this debt as the company is out of business. Thus, he cannot find the company to whom the debt is owed. (SOR ¶ 1.g.) (Answer; Exhibits 2, 3, 4; TR 46-47)
- He owes \$222 to Creditor #6 for a charge to a store in 1995-96. The company who collects for this credit card sold the debt to another company who could not identify the account, so he has been unable to resolve this debt. (SOR ¶ 1.h.) (Answer; Exhibits 2, 3, 4; TR 47-49; 103)
- He is 30 days past due in paying his mortgage for the house in State #2 and owes \$831 to Creditor #7. He has had the mortgage since 1996. His two sons now live in the house, but do not pay rent. He says he is in good standing despite the late payment and being one month behind. (SOR ¶ 1.i.) (Answer; Exhibits 2, 3, 4; TR 49-52; 104-105; 124-125) The mortgage company confirmed that he was in good standing with them. (Exhibit R)

Applicant has no credit cards. (TR 127) He has established a budget but has not had any credit counselor to assist him. Because none of his debts are related to credit card issues, he decided that consumer credit counseling agencies could not help him. It is his intent to resolve all of his debts. (TR 127-130)

References

A union officer attested to Applicant's professional leadership demeanor and integrity. He reported that Applicant's work at all times exceeded requirements. He is honest, hardworking, and able to keep commitments. (TR 71; Exhibit K)

The building manager where he has worked for two years stated that she has known him for almost three years and that he is organized, efficient, and extremely competent. He has excellent rapport with his peers. She highly recommended him. (Exhibit M; TR 72)

Applicant's two supervisors for 18 months evaluated favorably him. (Exhibits P, Q)

Policies

Enclosure 2 of the Directive sets forth adjudicative guidelines to consider in evaluating an individual's security eligibility which are divided into conditions that could raise a security concern and may be disqualifying and conditions that could mitigate security concerns. In deciding whether to grant or continue an individual's access to classified information, the mere presence or absence of any adjudication policy

condition is not decisive. Based on a consideration of the evidence as a whole in evaluating this case, I weighed the relevant Revised Adjudication Guidelines, and determined the following security concern was relevant to my determination:

Guideline F: Financial Considerations

The security concern caused by financial problems is:

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. 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 ¶ 18.

The responsibility for producing evidence initially falls on the Government to demonstrate that it is not clearly consistent with the national interest to grant or continue applicant's access to classified information. Then the applicant may present evidence to refute, explain, extenuate, or mitigate in order to overcome the doubts raised by the Government, and to demonstrate persuasively that it is clearly consistent with the national interest to grant or continue the clearance. Under the provisions of Executive Order 10865, as amended, and the Directive, a decision to grant or continue an applicant's security clearance may be made only after an affirmative finding that to do so is clearly consistent with the national interest. In reaching the fair and impartial overall common sense determination, the Administrative Judge may draw only those inferences and conclusions that have a reasonable and logical basis in the evidence of record.

Section 7 of Executive Order 10865 specifically provides industrial security clearance 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." The decision to deny an individual a security clearance is not a decision on the allegiance, loyalty, and patriotism of an applicant.³ An adverse decision reflects that an applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a security clearance.

³Executive Order No. 10865 § 7.

Analysis

Financial Considerations

The government provided substantial evidence of Applicant's financial problems reflecting medical and other debts totaling approximately \$18,000. Consequently, Financial Considerations Disqualifying Condition, AG ¶ 19(a), "inability or unwillingness to satisfy debts," and AG ¶ 19(c), "a history of not meeting financial obligations," apply. His financial problems are sufficiently significant to raise security concerns.

With the government's case initially established, the burden shifted to Applicant to present evidence of refutation, extenuation, or mitigation to overcome the case against him.

Five Financial Considerations Mitigating Conditions under AG ¶¶ 20(a)-(e) are potentially applicable:

- (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.

AG ¶ 20(a) partially applies because several of his financial problems "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." His largest debts grew out of his wife's accident and consequent hospital expenses at a time where he neither had insurance nor a permanent job. Recently, he has addressed his debts and has begun to make payments to resolve all his debts. He does not receive full credit under

AG ¶ 20(a) because not all of his debts grew out of special circumstances and because of his slowness in addressing the alleged debts.

AG ¶ 20(b) provides that security concerns may be mitigated when, “the conditions that resulted in the behavior 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.” Applicant and his wife resolved a large unresolved debt from his wife’s business failure due to a business downturn in the post 9-11 climate. Also, Applicant’s wife’s medical debts of over \$15,000 fall within this consideration of “largely beyond” his control. As his wife has income equivalent to his, one could logically attribute those debts solely to her and not hold him personally responsible for this substantial debt. On the other hand, Applicant has made an arrangement with these health care providers to resolve these medical debts from her accident from their joint income. Also, Applicant has helped his son when he left the military service and his daughter who had a child to support as a single parent. Now Applicant has demonstrated that he has reduced his expenses. Also with his daughter married and moving to join her husband, he has more resources available to use to settle these debts. He receives partial credit under AG ¶ 20(b) as not all debts were from conditions beyond his control.

AG ¶ 20(c) applies. Although Applicant did not seek financial counseling, there are clear indications that the problem is being resolved or is under control as he has developed a plan to resolve his debts. One SOR debt was paid, but the judgment was not released by the creditor; he has now resolved that issue. He has negotiated payment plans with all the creditors he has been able to identify and contact. While Applicant recently began to resolve these debts, he now has substantial additional resources. He has also made substantial efforts to reduce his expenses. Thus, I conclude that he has responsibly demonstrated the problem is under control.

AG ¶ 20(d) applies because he recently “initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.” AG ¶ 20(e) does not apply as Applicant did not “dispute the legitimacy of the past-due debt which is the cause of the problem.”

Whole Person Analysis

Applicant’s financial difficulties have almost entirely grown out of his exemplary efforts to help his family through difficult circumstances. Both Applicant and his wife are full time workers, who have a budget and a plan to resolve their debts despite all of the difficult circumstances they have faced. Applicant has taken significant steps to move ahead on the road to financial recovery. For example, he agreed to make monthly payments to resolve \$15,000 of the \$18,000 in debt that resulted from his wife’s 2003 accident. Having considered both the record and Applicant in light of the “whole person” concept, I conclude he is a sincere person who made substantial efforts to reform his financial practices. There is little potential for pressure, coercion, exploitation, or duress because of his stable employment. His supervisors and the

building manager assess him as reliable and trustworthy; and they all attest to the quality of his current work

In conclusion, financial issues no longer remain a security concern. After weighing the disqualifying and mitigating conditions, and all the facts and circumstances in the context of the whole person, I conclude he has mitigated the security concerns pertaining to financial considerations. I rule For Applicant in subparagraphs 1.a through 1.i as he paid or developed and implemented a plan to resolve his judgments and other debts.

After reviewing the allegations of the SOR in the context of the Adjudicative Guidelines in Enclosure 2 and the factors set forth under the Adjudicative Process section, I make the following formal findings:

Formal Findings

Paragraph 1. Guideline F:	FOR APPLICANT
Subparagraphs 1.a. through 1.i.:	For Applicant

Conclusion

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

Kathryn Moen Braeman
Administrative Judge