



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



In the matter of:)
)
-----) ISCR Case No. 07-09499
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Daniel F. Crowley, Esquire, Department Counsel
For Applicant: *Pro Se*

June 9, 2008

Decision

LYNCH, Noreen A., Administrative Judge:

Applicant submitted his Security Clearance Application (SF 86), on May 24, 2005. On February 15, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guidelines F and J 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 requested a hearing before an Administrative Judge. I received the case assignment on April 10, 2008. DOHA issued a notice of hearing on April 14, 2008, and I convened the hearing as scheduled on May 7, 2008. The Government offered Exhibits (GE 1-7), which were received without objection. Applicant testified in his own behalf, and submitted Exhibits (AE A-N), without objection. I left the record open until May 27, 2008 for Applicant to submit additional documentation. He did not submit any

documents. The record closed on May 21, 2008. DOHA received the transcript on May 16, 2008. Based upon a review of the record, eligibility for access to classified information is granted.

Findings of Fact

In his Answer to the SOR, dated March 19, 2008, Applicant admitted the factual allegations in ¶¶ 1.a, 1.b, 1.c, and 1.d of the SOR. He also admitted the factual allegations in ¶¶ 2.c-2.h of the SOR but denied the other allegations (2.a and 2.b) because the debts were paid or he had no knowledge of them. He provided additional information to support his request for eligibility for a security clearance.

Applicant is a 57-year-old employee of a defense contractor. He received his GED in 1974. In 1978, he attended a community college. He has worked for his current employer since May 2004 (GE 1). Applicant served in the national guard in 1979 to 1980.

When Applicant was a young man, he had several arrests. In February 1968, he was arrested and charged with statutory rape (GE 4). He was dating a girl who was 13 years old. He was 17 years old. Her parents pressed charges against Applicant (Tr. 46). Applicant believes they appeared in court and were then sent home. He does not recall. He did not learn that the charge was for statutory rape until 2005.

In May 1968, Applicant was arrested and charged with destroying property. Applicant stated that he broke into a drink machine. He was jailed for 90 days. In August 1968, Applicant robbed a man. He had a gun (.22 caliber revolver) at the time. Applicant claims that the gun did not work (Tr. 49). He was found guilty and sentenced to five years and actually imprisoned for 30 months (GE 4).

Applicant married in 1972 and divorced his first wife in 1985. He had three children from his first marriage (Tr. 39). Applicant remarried in 1988. He and his second wife have five children. He paid child support for his three children after the divorce. (Tr 55). He fell behind in his payments of \$125 a week. The current balance is \$3000 as of March 2008. The deduction of \$57.50 is made from his weekly paycheck (Tr 74).

After Applicant left the national guard in 1980, he worked as an electrician. He was steadily employed until 1994. In 1994, Applicant had neck surgery and was unemployed for almost one year. In 1995, Applicant had a stroke. He remained in intensive care for a period of time. After about five months, he returned to his job (Tr. 42). Despite the fact that he had health insurance, Applicant began to experience financial difficulties. He received worker's compensation but the income was not sufficient to pay his child support obligation of \$125 a week and pay for his living expenses. Thus, he fell behind in the child support obligations (GE 6).

In March 2005, Applicant and his sons were hunting. Applicant uses a bow and arrow. His friends use shotguns. He had their guns in his truck. The game warden

advised Applicant that he could not have the guns in his possession because he was a convicted felon. Applicant turned himself in for the firearm charge and he was released on bond after going to court. The charge was dismissed. (GE4; Tr. 51).

Applicant was diagnosed with cancer in 2005. He had surgery and was treated for at least a five-month period. He could not work during the treatment (Tr. 56). In March 2005, Applicant filed for Chapter 7 bankruptcy (GE 4). On June 24, 2005, the bankruptcy was discharged. He had approximately \$51,000 in liabilities.

The SOR alleges seven delinquent debts, including one child support obligation, a bankruptcy, a charged off account and approximately four unpaid medical debts. The total amount of the unpaid medical bills is approximately \$600 (GE 7).

SOR allegation 2.a is for a charged off account in the amount of \$11,584. This account opened in 1999 appears to be the same account that was discharged in the bankruptcy petition under another account name (GE 2). Applicant was adamant that his attorney advised him that all his delinquent accounts, except child support, were included in his March 2005 bankruptcy.

SOR 2.b is a telephone bill for \$97 that Applicant has paid. He did not have documentation at the hearing. He initially disputed the bill because the phone service was not adequate and he cancelled the plan. He sent them a check recently (Tr. 65).

SOR 2.c-2.f are unpaid medical bills from late 2006. They total approximately \$600. Applicant has paid many medical bills. He is not certain if his insurance paid some of the bills. He pays what he can when he receives a bill (Tr. 66).

SOR allegation 2.g is for past due child support (interest only). Applicant has been paying and the amount has been reduced from \$5,109 to \$3,121.79. The amount of approximately \$58 is taken directly from his weekly pay check (AE N). The children are emancipated at this point in time.

SOR allegation 2.h is for the bankruptcy that Applicant filed in 2005. This chapter seven bankruptcy was discharged in June 2005 (GE 2). The liabilities resulted from Applicant's divorce, illnesses and unemployment.

Applicant's current monthly net income is \$4,000. His wife also works. After monthly expenses and child support and current debt payments, he has a net remainder of \$600. Applicant's truck loan and credit card debt are current. He received financial counseling in 2005 when he filed for bankruptcy. He has an established budget now (Tr. 79).

Applicant's current employer recommends Applicant for a security clearance. He reports Applicant plays a vital role in the timely quality and construction of the most advanced combatants in the world (AE G). He has served his department with integrity and possesses excellent mechanic skills. He has provided dedicated supervisory

responsibilities and displayed outstanding supervisory skills and dedication. He tackles every assignment with a “can do” attitude (AE H). Applicant is well respected by his co-workers (AE I). He is a hard worker and is knowledgeable of submarine work. He has acted in the capacity of a make-up foreman on several occasions and has performed well (AE K). He works in a focused, timely, and concise manner. He works any shift or assignment that he is given without hesitation (AE A). He is receptive to management style and is quick to learn new systems. He is an extremely valuable and dedicated employee (AE B, C and D). During his current employment, Applicant has completed many courses and attained proficiency in different operational areas (AE M).

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, 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.

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), Aa history of not meeting financial obligations[@] may raise security concerns. Applicant accumulated delinquent debts on numerous accounts and could not meet his financial obligations from the late 1990's. He filed for bankruptcy in 2005. 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 conditions may be mitigated where Athe 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 worries arose in 1995. He accumulated some delinquent debt due to his medical conditions and unemployment. He also fell behind in his child support obligations. While those circumstances may have precipitated the debt, the inquiry does not end at that point. He did pay the medical bills that he could and had been paying his child support. Because of his dedicated recent efforts to establish financial responsibility, it is unlikely that the financial difficulties will recur or that there is any doubt about his current reliability or good judgment. This potentially mitigating condition applies.

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, his financial problems initially arose from his illness, divorce, and a period of unemployment. Although, he received worker's compensation benefits, those benefits were not adequate for him to maintain payments on his debts. After he became re-employed, he acted responsibly in identifying and resolving these debts. I find this potentially mitigating condition fully applies.

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). This fully applies. 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 received counseling when he filed for bankruptcy in March 2005. This is a legitimate means to resolve financial difficulties. In this case many of the financial problems were caused by his various illnesses and not frivolous spending. I conclude this potentially mitigating condition partially applies to SOR 2.d.

AG ¶ 20(e) applies where the evidence shows "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." In this case, Applicant stated that the alleged debt in allegation 2.a for \$11,000 was included in the bankruptcy petition. The date in the SOR for this debt predates the 2005 bankruptcy discharge. He disputed the account and although he did not have separate documentation, the account appears to be the same one as listed in a schedule of the petition. I conclude this potentially mitigating condition partially applies.

Guideline J, Criminal Conduct

The security concern relating to the guideline for Criminal Conduct is set out in AG ¶ 30:

Criminal activity creates doubt about a person's judgment, reliability, and trustworthiness. By its very nature, it calls into question a person's ability or unwillingness to comply with laws, rules, and regulations.

The guideline notes several conditions that could raise security concerns. Under AG ¶ 31(a), a "single serious crime or multiple lesser offenses" may be potentially disqualifying. Similarly, under AG 31(c) an allegation or admission of criminal conduct, regardless of whether the person was formally charged, formally prosecuted or convicted" may raise security concerns. Applicant has two convictions from the 1960's. The 2005 charge was dismissed. This is sufficient to raise these potentially disqualifying conditions.

AG ¶ 32(a) “so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances that it is unlikely to recur and does not cast doubt on the individual’s reliability, trustworthiness, or good judgment” is a possible mitigating condition.

Applicant’s two convictions occurred about 40 years ago. His recent (2005) incident involved the physical possession of firearms in his truck during a hunting trip. The guns did not belong to him, but he was in actual possession of them in his truck. This mitigating condition applies because of the unusual circumstances of the offenses in the 1960’s, and he will not permit firearms in his truck in the future.

Similarly, AG ¶ 32(c) “there is evidence of successful rehabilitation; including but not limited to the passage of time without recurrence of criminal activity, remorse or restitution, job training or higher education, good employment record, or constructive community involvement” is a possible mitigating condition.

Applicant has not been involved in a serious crime in 40 years. However, the 2005 incident shows poor judgment. The charge was dismissed in court. Applicant was credible in that he did not understand that he could be in possession of the guns because they did not belong to him. He has worked steadily for the past 40 years except for a period of recuperation from surgery or illness. He raised his family and until 1995 was current on his child support. He has highly favorable recommendations from his employer. He has taken many courses to improve his work skills. He regrets his behavior when he was a very young man. This mitigating condition partially applies.

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 and conclude they are sufficient to overcome the government’s case. Applicant was 17 years old when he had trouble with the law. He served his sentence and has not been convicted of any crime in the past 40 years.

Due to illness and unemployment, Applicant had financial difficulties. He fell behind in his child support but is now steadily paying the amount. He has \$57.50 deducted from his weekly pay check. His children are now grown. Applicant filed for Chapter 7 Bankruptcy in March 2005 and his debts were discharged the same year. This is a legal means of resolving debt.

Applicant has taken his work seriously. He has completed many courses during his employment so that he may better perform his job functions. He has worked hard to support his family and children. His employers have recommended him highly. He has had no documented problems with any of his employers. His current employer praises his hard work and professionalism.

Overall, the record evidence leaves me without questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has mitigated the security concerns arising from his financial considerations and criminal conduct.

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 J:	FOR APPLICANT
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Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	For Applicant

Paragraph 2, Guideline F:	FOR APPLICANT
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Subparagraph 2.a:	For Applicant
Subparagraph 2.b:	For Applicant
Subparagraph 2.c:	For Applicant
Subparagraph 2.d:	For Applicant
Subparagraph 2.e:	For Applicant
Subparagraph 2.f:	For Applicant
Subparagraph 2.g:	For Applicant
Subparagraph 2.h:	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.

NOREEN A. LYNCH
Administrative Judge