



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



In the matter of:)
)
) ISCR Case No. 07-10500
SSN:)
)
Applicant for Security Clearance)

Appearances

For Government: John B. Glendon, Esq., Department Counsel
For Applicant: *Pro se*

April 3, 2008

Decision

TUIDER, Robert J., Administrative Judge:

Applicant has mitigated security concerns pertaining to Financial Considerations and Personal Conduct. Clearance is granted.

Statement of the Case

Applicant submitted his Security Clearance Application (e-QIP), on October 12, 2006. On November 26, 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing security concerns under Guidelines F and E 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 answered the SOR in writing on January 18, 2008, and requested a hearing before an Administrative Judge. DOHA received the response on January 23, 2008. Department Counsel was prepared to proceed on January 30, 2008, and I

received the case assignment on January 31, 2008. DOHA issued a notice of hearing on February 12, 2008, scheduling the hearing for March 4, 2008. The hearing was held as scheduled.

The government offered Government Exhibits (GE) 1 through 4, which were received without objection. Applicant offered Applicant Exhibits (AE) A through D, which were received without objection, and he testified on his own behalf. I held the record open until March 14, 2008 to afford the Applicant the opportunity to submit additional documents. Applicant timely submitted AE E through K without objection, which were forwarded to me by Department Counsel by letter dated March 14, 2008 (Exhibit I). DOHA received the transcript of the hearing (Tr.) on March 12, 2008. The record closed on March 14, 2008.

Findings of Fact

Applicant denied all SOR allegations, SOR ¶¶ 1.a. through 1.d.; and 2.a. and 2.b. After a thorough review of the evidence, I make the following additional findings of fact:

Applicant is a 41-year-old armed security supervisor, who has been employed by a defense contractor since March 2007. Tr. 18. He graduated from high school in June 1986, and did not pursue higher education. Tr. 17, GE 1. He served in the U.S. Army from January 1988 to December 1999, and was honorably discharged as a sergeant/pay grade E-5. Tr. 47. His military occupational specialty was chemical operations specialist. Tr. 48. He successfully held a secret security clearance while in the Army. Tr. 47-48, GE 1. He seeks a security clearance as a condition of his employment. Tr. 19-20.

Applicant was previously married from March 1989 to September 1991. He has an 18-year-old daughter from his first marriage. Applicant continues to provide voluntary support for his daughter, who is currently attending college. Applicant remarried in July 1998, and he and his wife have a seven-year-old son. Tr. 21-22, 59-60, GE 1.

The SOR alleges four collection/delinquent/charged off accounts owing approximately \$28,478. (SOR ¶¶ 1.a. – 1.d.) The alleged debts are supported by the government's evidence. GE 2, GE 3. Applicant stated the \$73 debt in SOR ¶ 1.a. was for a medical bill his former wife incurred. Applicant paid that bill by telephone when he was interviewed by an Office of Personnel Investigator on January 4, 2007. Tr. 24-27, AE E. With regard to the remaining three debts, Applicant enrolled in a debt management plan in September 2007, and made his first payment in October 2007, one month before his SOR was issued. He is on a 42-month repayment plan and pays \$785 per month to his debt management plan by direct debit. Tr. 27-36, 54-59, AE A-D, F-H, J.

Applicant attributes his financial difficulties to loss of income during a five-month security officer training program he attended in order to gain the necessary qualifications for a career change. Applicant was under the impression that he was going to receive a salary from his prospective employer during his training period;

however, that assumption proved to be incorrect. Applicant determined the training was necessary for him to gain the qualifications to change careers, and while in a non-income status lived off his credit cards and wife's income. Tr. 39-41. This credit card debt formed the basis for SOR ¶¶ 1.b. through 1.d. Applicant's financial situation began to stabilize after he completed his security officer training and began steady employment in September 2006. Tr. 45, 67-68, GE 1.

Applicant's annual salary is \$55,000 and his wife's annual salary is \$75,000, for a total annual salary of \$130,000. Tr. 46. Applicant's monthly budget reflects a net remainder of \$864 after all his monthly bills are paid. GE 4, AE J.

The SOR alleged Applicant falsified his October 2006 security clearance application. GE 1. In response to question 28.a., asking whether in the last seven years he had ever been delinquent over 180 days on any debt(s); and in response to question 28.b., asking whether he was currently over 90 days delinquent on any debt(s), the SOR alleged he failed to list the debts in SOR ¶¶ 1.a. through 1.d. (SOR ¶ 2.a.)

Applicant credibly explained that his failure to list his debts discussed *supra* was due to his mistaken impression that since he was working with a debt management company, and was making payments, that he "would be at a current status." Tr. 52-53. He understands his answer is incorrect and if answering the questions today, he would answer them differently.

Applicant submitted his latest work performance evaluation, which reflects a "Level A" rating, which is the highest of four ratings offered by his employer. AE K.

Policies

The Directive sets forth adjudicative guidelines which must be considered in evaluating an Applicant's eligibility for access to classified information. Foremost are the Disqualifying and Mitigating conditions under each adjudicative guideline applicable to the facts and circumstances of the case. However, the guidelines are not viewed as inflexible ironclad rules of law. The presence or absence of a disqualifying or mitigating condition is not determinative of a conclusion for or against an applicant. Each decision must also reflect a fair and impartial common sense consideration of the factors listed in Section 6.3 of the Directive,¹ and the whole person concept.² Having considered the

¹ Directive, Section 6.3. "Each clearance decision must be a fair and impartial common sense determination based upon consideration of all the relevant and material information and the pertinent criteria and adjudication policy in enclosure 2 . . ."

² Directive ¶ 2(a) ". . . The adjudication process is the careful weighing of a number of variables known as the whole person concept. Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination. . . ." The whole person concept includes the consideration of the nature, extent, and seriousness of the conduct; the circumstances surrounding the conduct, to include knowledgeable participation; the frequency and recency of the conduct; the individual's age and maturity at the time of the conduct; the extent to which participation is voluntary; the presence or absence of rehabilitation and other permanent behavioral changes; the motivation for the conduct; the potential for pressure, coercion, exploitation, or duress; and the likelihood of continuation or recurrence. . . ."

record evidence as a whole, I conclude Guideline F (Financial Considerations), and Guideline E (Personal Conduct) are the applicable relevant adjudicative guidelines.

Burden of Proof

The purpose of a security clearance decision is to resolve whether it is clearly consistent with the national interest to grant or continue an applicant's eligibility for access to classified information.³ The government has the initial burden of proving controverted facts alleged in the SOR. To meet its burden, the government must establish a prima facie case by substantial evidence.⁴ The responsibility then shifts to the applicant to refute, extenuate or mitigate the government's case. Because no one has a right to a security clearance, the applicant carries the ultimate burden of persuasion.⁵

A person who has access to classified information enters into a fiduciary relationship with the government based on trust and confidence. The government, therefore, has a compelling interest to ensure each applicant possesses the requisite judgment, reliability and trustworthiness of one who will protect the national interests as his or her own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an applicant's suitability for access to classified information in favor of protecting national security.⁶

Conclusions

Under Guideline F (Financial Considerations),⁷ the government's concern is that an Applicant's "[f]ailure 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."

Applicant has a history of failing to meet his financial obligations dating back to 2005/6. Since then, he has accumulated four collection/delinquent/charged off accounts owing approximately \$28,478. Financial Considerations Disqualifying Condition (FC DC)

³ See *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

⁴ ISCR Case No. 98-0761 at 2 (App. Bd. Dec. 27, 1999) (Substantial evidence is more than a scintilla, but less than a preponderance of the evidence); ISCR Case No. 02-12199 at 3 (App. Bd. Apr. 3, 2006) (Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the contrary evidence in the record); Directive ¶ E3.1.32.1.

⁵ *Egan*, *supra* n.6, at 528, 531.

⁶ See *Id.*; Directive Enclosure 2, ¶ 2(b).

⁷ Guidelines ¶ 18.

¶ 19(a): *inability or unwillingness to satisfy debts*; and FC DC ¶ 19(c): *a history of not meeting financial obligations*; apply in this case.

Applicant experienced an unexpected five-month loss of income while attending a security officer training program to gain the necessary qualifications for a career change in 2005. The financial toll of this unexpected income loss placed Applicant in a precarious financial situation from which he is still recovering. Unfortunately, his career change and loss of income due to training forced him to live off his credit cards. These facts demonstrate circumstances beyond his control.

Applicant provided documentation demonstrating that he paid one of his debts in full and contacted a debt management company before his SOR was issued, and has established a realistic payment plan. He began making payments by direct debit on his plan in October 2007, and has remained current. His evidence reflects he has the resolve and wherewithal to pay down his debts.

Considering the record evidence as a whole,⁸ I conclude that two of the mitigating conditions apply. Financial Considerations Mitigating Condition (FC MC) Guidelines ¶ 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*; and FC MC ¶ 20(d) *the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*; apply in this case.

He presented evidence showing he dealt responsibly with his financial obligations as demonstrated by contacting a credit counseling service before his SOR was issued and established a payment plan that has remained current. His demonstrated efforts establish he is committed to resolving this matter. His choice to complete this training proved to be a good one and has provided him with a new skill set for a better paying job. Applicant's evidence sustains a finding that he is financially responsible and has taken control of his financial situation. Based on the available evidence, his financial problems are not likely to be a concern in the future.

Under Guideline E (Personal Conduct), conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process. Guidelines ¶ 15.

The government's evidence established that he failed to disclose relevant information in his answers to questions 28.a. and 28.b. of his security clearance application. Considering the record as a whole, I am convinced Applicant inadvertently

⁸ See ISCR Case No. 03- 02374 at 4 (App. Bd. Jan. 26, 2006) (citing ISCR Case No. 02-22173 at 4 (App. Bd. May 26, 2004)). When making a recency analysis for FC MC 1, all debts are considered as a whole.

failed to disclose this information. Numerous factors weighed in my analysis to reach that conclusion, including: Applicant's age, his level of education, his employment history, his demeanor and testimony, the number and value of the debts, and the credibility of his explanation. While he should have exercised greater diligence and care in completing his security clearance application, I do not find his failure to disclose his debts deliberate. Accordingly, no disqualifying conditions are applicable foregoing the necessity of discussing mitigating conditions.

I have carefully weighed all evidence, and I applied the disqualifying and mitigating conditions as listed under the applicable adjudicative guidelines. I applied the whole person concept. I specifically considered Applicant's age, education, his ten years honorable Army service, his past history of successfully holding a security clearance, his maturity, his years working for defense contractors, work performance evaluation, commitment to his family, and his demeanor and conduct during his hearing. Considering the totality of Applicant's circumstances, he demonstrated sufficient judgment and trustworthiness in the handling of his financial affairs. Furthermore, his alleged falsifications were not deliberate. In short, he has mitigated the security concerns raised.

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: Subparagraphs 1.a – 1.d.:	FOR APPLICANT For Applicant
Paragraph 2, Guideline E: Subparagraph 2.a.:	FOR APPLICANT For Applicant

Decision

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 eligibility for a security clearance for Applicant. Clearance is granted.

ROBERT J. TUIDER
Administrative Judge