



In the matter of:)
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) ISCR Case No. 07-10601
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)
 Applicant for Security Clearance)

For Government: Braden M. Murphy, Esq., Department Counsel
 For Applicant: *Pro Se*

April 17, 2008

Decision

DAM, Shari, Administrative Judge:

Based upon a review of the case file, pleadings, and exhibits, eligibility for access to classified information is granted.

On January 8, 2007, Applicant submitted his Security Clearance Application (e-QIP). On December 3, 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR), detailing the security concerns under Guideline F (Financial Considerations), to 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 December 19, 2007, and requested a hearing before an administrative judge. On February 14, 2008, DOHA assigned the

case to me. A Notice of Hearing issued on February 29, 2008, and the case was heard on March 19, 2008, as scheduled. Department Counsel offered Exhibits (GE) 1 through 4 into evidence without objection. Applicant testified and offered Exhibits (AE) A through F into evidence without objection. At the conclusions of the hearing, I left the record open until March 28, 2008, to give Applicant an opportunity to submit additional information. On that day, Applicant submitted three exhibits that were marked as AE G, H and I, and were admitted into the record without objection by the Government. DOHA received the hearing transcript on March 28, 2008.

Findings of Fact

In his Answer to the SOR, Applicant admitted all factual allegations contained in ¶¶ 1.a through 1.m, 1.o through 1.v, 1.x through 1.cc, and 1.ee of the SOR. He denied those contained in ¶¶ 1.n, 1.w, 1.dd, and 1.ii of the SOR. He provided additional information to support his request for eligibility for a security clearance.

Applicant is 45 years old and married. He and his wife have two adult children and three grandchildren. In 1974, he graduated from college with a bachelor's degree in finance. In 1982, he earned a master's degree in public administration with an emphasis in government finance. He was commissioned in the U.S. Air Force in 1974. He held a top-secret clearance from the time he entered military service until he left with an honorable discharge in 1986. (Tr. 71). After leaving the Air Force, he began working for a federal defense contractor in August 1986 that provided financial services to the armed forces. As he no longer needed a top-secret clearance, it converted into a secret clearance. (Tr. 72). There is no evidence that he was involved in any security clearance violations during the thirty or more years he held a clearance.

Applicant's wife began experiencing serious medical problems in 1991 when her heart valves were replaced. In 1997, she had two transient ischemic attacks (mini-strokes). In February 2000, she suffered a brain hemorrhage and in July 2000, she experienced an acute respiratory disease. Subsequent to those medical problems, Applicant began having financial difficulties, as he was working away from home and maintaining two households. In July 2004, his wife had a debilitating stroke. (AE A; GE 4 at 14; Tr. 34-36; 66-67). He then took 16 weeks of leave pursuant to the Family Medical Leave Act (FMLA) to care for his wife. After extinguishing that benefit, Applicant left his employer to continue caring for his wife from March 2005 through September 2006. Because he did not have funds to pay his monthly expenses during that period of unemployment, he withdrew monies from his 401(k) plan to cover the costs. (Tr. 21; GE 4 at 14). Based on his retirement funds and his wife's lack of payments into social security, she is not eligible for disability. (Tr. 47; 67).

After returning to work in October 2006, Applicant's employer assigned him to short-term projects that did not require a security clearance. (Tr. 30; AE C). (During that month, his wife broke her hip, resulting in additional medical bills.) He completed his last assignment in November 2007 and in January 2008. His employer terminated him, pending the issuance of a security clearance. Over the past 36 months, (approximately

between August, 2004 to November 2007) he has been unemployed at least 20 months. (Tr. 22).

The SOR alleges security concerns based on financial considerations, involving approximately \$49,363 of delinquent debt, plus \$18,000 of medical bills.¹ Applicant negotiated some of the debt with creditors. (Tr. 26-27; AE E). He acknowledges that he owes approximately \$16,087 in credit card debt and other expenses, in addition to \$18,000 in medical bills. He currently owes about \$15,000 in income taxes, most of which resulted from the early withdrawal of retirement funds.² (Tr. 24). All of that debt remains outstanding, except for the taxes, on which he is making monthly payments. (AE D and E; Tr. 31; 61).

Although Applicant has not sought credit counseling, in October 2007 he submitted a detailed spreadsheet, itemizing all of his debts and expenses for the prior six months.³ (GE 4 at 16-17). He was not incurring any additional expenses at the time he established the spreadsheet and estimated his income to debt ratio to be 16%, based on his previous salary. He also noted that 40% of his income is spent on his wife's medical care. Given his calculations, he projected that he would be able to pay all of his debts by the end of 2012, if he continued earning the same salary he was earning at the time he drafted the budget.

On March 27, 2008, Applicant submitted a revised budget, along with a debt repayment plan, projecting that he would be able to pay off all of his bills, including his wife's additional medical bills, by 2013, should he resume his prior job and salary in the near future. (AE G). His estimated expenses are about \$4,600 per month, plus an additional \$1,000 for medical insurance that is not presently covered by an employer. His previous monthly net income was about \$4,600 and essentially covered ordinary expenses and his debt reduction plan. He is not incurring additional expenses and does not use credit cards. (Tr. 58). He acknowledged that it is difficult to negotiate settlements with some creditors without a steady income. (Tr. 28-32).

Currently, Applicant continues to withdraw monies monthly from his 401(k) to pay his expenses while pursuing employment. Although he would like to maintain his position with his federal employer, he recently began looking for work in the private sector, as he is anxious to return to work. (Tr. 65-66). He understands that delinquent debt may raise security clearance issues; however, in this instance, he attributes his financial problems to his wife's medical expenses and a lack of employment over a long period of time while caring for her. He emphasized that he never experienced financial problems until 2000. (Tr. 67).

¹Many of the medical bills included in the aggregate \$18,000 amount listed in SOR ¶1.ii are also listed separately in various subparagraphs of the SOR. Hence, there appears to be a duplication of the debts. (Tr. 29).

²The SOR alleged that he owed about \$16,500 in unpaid taxes, but he has since made payments on that amount. (AE D & F).

³Applicant has a financial degree and background in "cost estimating as well as business process analysis, economic analysis, and cost benefits." (Tr. 64). He routinely establishes and oversees budgets for clients, including the federal government.

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(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 to obtain a favorable security decision. 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."

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.

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), "a history of not meeting financial obligations" may raise security concerns. Applicant accumulated a significant amount of delinquent debt attributable to his wife's medical complications that he has been unable to manage since 2000 due to long periods of unemployment. The evidence is sufficient to raise these potentially disqualifying conditions, requiring a closer examination.

After the Government produced substantial evidence of those disqualifications, the burden shifted to Applicant to produce evidence and prove a mitigating condition. The guideline includes six conditions that could mitigate security concerns arising from financial difficulties. Under AG ¶ 20(a), the disqualifying condition may be mitigated when "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." Applicant's financial worries arose around 2000 and continue into 2007. Because the problems are ongoing for various reasons, this condition cannot apply.

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." Applicant's his debts accumulated as a result of his wife's serious medical conditions that began in 1991 and worsened in 2000 and 2004. Those circumstances were outside of his control. He presented some evidence indicating that he attempted to manage his debts by withdrawing monies from his retirement funds. I find this potentially mitigating condition has partial application in this case.

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). Similarly, AG ¶ 20(d) applies where the

evidence shows “the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.” Although Applicant did not present evidence that he obtained formal credit counseling, he established two detailed budgets, exhibiting his extensive knowledge of budget analysis, which project resolution of the problems within four years of obtaining employment. He provided evidence that he reduced some of the debt through negotiation with his creditors and established a monthly repayment plan for his taxes. I conclude these mitigating conditions should be given some consideration.

Applicant disputed a couple debts, but did not provide documentation to substantiate his claim, as required under AG ¶ 20(e). There is no evidence to support the application of AG ¶ 20(f).

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). They include the following: (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 include an overall commonsense 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 is a 45-year-old man, who honorably served his country for twelve years in the military service, during which time he held a Top-Secret clearance. After leaving military service, he began employment with a federal contractor and continued successfully supporting the armed forces, while maintaining a Secret security clearance for another twenty years.

In 2000, Applicant’s wife began experiencing serious medical problems, which placed a significant strain on the household budget. In July 2004, her problems intensified and ultimately resulted in an extended period of unemployment for him, while he cared for her and relied on 401(k) contributions for financial support. Subsequently, he has continued to pursue employment within the government and in the private sector. He credibly acknowledged his debts and expressed a desire to resolve them. Prior to this series of misfortunes, he had not experienced financial difficulties. Given his sophisticated knowledge and experience in financial management, and his current budget in which he is resolving his tax debt with limited income, I do not believe similar financial problems will recur while he seeks employment or after he obtains full-time employment. The Appeal Board noted in ISCR Case No. 06-12930, “that an applicant is

not required to show that she has completely paid off her indebtedness, only that she has established a reasonable plan to resolve her debts and has taken 'significant actions to implement that plan.' ISCR Case No.04-09684 at 2-3 (App. Bd. Jul.6, 2006).” In this case, Applicant has taken steps to pursue employment. Once he obtains a job, he will be able to pay the delinquent debts in accordance with his detailed budget and projected time line for resolving his financial obligations.

Overall, the record evidence leaves me without questions or doubts as to Applicant’s eligibility and suitability for a security clearance. Applicant is an intelligent hardworking individual, who has experienced a series of unanticipated difficulties that have seriously affected his financial life. There is no evidence in his background to indicate that his financial problems may create a security risk. For all these reasons, I conclude Applicant mitigated the security concerns arising under 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
Subparagraphs 1.a through 1.ii:	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

SHARI DAM
Administrative Judge