



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



In the matter of:)	
)	
)	ISCR Case No. 07-10831
SSN:)	
)	
Applicant for Security Clearance)	

Appearances

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

March 31, 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 July 17, 2006. On November 27, 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 December 17, 2007, and requested a hearing before an Administrative Judge. DOHA received the response on December 20, 2007. 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 5, 2008, scheduling the hearing for February 28, 2008. The hearing was held as scheduled.

The government offered Government Exhibits (GE) 1 through 6, which were received without objection. Applicant offered Applicant Exhibits (AE) A through C, which were received without objection, and he testified on his own behalf. I held the record open until March 7, 2008 to afford the Applicant the opportunity to submit additional documents. Applicant timely submitted AE D through I without objection, which were forwarded to me by Department Counsel by letter dated March 10, 2008 (Exhibit I). DOHA received the transcript of the hearing (Tr.) on March 7, 2008. The record closed on March 10, 2008.

Findings of Fact

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

Applicant is a 55-year-old test technician, who has been employed by a defense contractor since February 2006. Applicant earned a two-year degree in communications electronics in January 1992. Tr. 62, 65. Applicant was married from November 1985 to July 2003. That marriage ended by divorce. Applicant and his former wife had two children during their marriage, an 18-year-old son and a 16-year-old daughter. Applicant has not remarried.

The SOR alleges two delinquent/charged off credit card accounts owing approximately \$35,706. (SOR ¶¶ 1.a. – 1.b.) The alleged debts are supported by the government's evidence. GE 3, GE 4. At his hearing, he confirmed these two debts have been outstanding since 2005. He presented little evidence of efforts taken to pay or otherwise resolve these debts since they became delinquent. Applicant claimed mitigating circumstances that prevented him from paying his debts, i.e., unemployment/underemployment, business downturn, and the cost of going through a divorce. Tr. 56-57.

Applicant explained before and after his divorce became final, he liquidated his retirement account in order to fund a stay-at-home business as a stock trader from April 2003 to October 2005. He chose this occupation after he lost his job as a service engineer in order to maintain the family home and be near his children. Unfortunately, he did not generate sufficient income as a day trader or as a buyer and holder of stocks. He depleted his retirement funds and was forced to use credit cards for day-to-day expenses. Debt from these credit cards formed the basis for SOR ¶¶ 1.a. and 1.b. During this time, he was paying alimony and child support. Tr. 38-48, 76.

When Applicant liquidated his retirement funds, he was charged with an early withdrawal penalty incurring a tax liability to the Internal Revenue Service, which he paid. Tr. 40-48, AE A through C.

Applicant submitted post-hearing documentation that he contacted these two creditors/assignees and negotiated payment plans. His documentation also reflected that he made good-faith payments to these creditors and established realistic follow-up payment plans. AE D through I. He anticipates receiving a family inheritance and will continue to make payments until he receives his inheritance at which time he will pay off any outstanding balance, if he has not already done so. Applicant's post-hearing budget reflects a net monthly remainder of \$346. AE F.

The SOR alleged Applicant falsified his July 2006 security clearance application. GE 1. In response to question 28a., asking whether in the last seven years he had ever been delinquent over 180 days on any debt(s), he listed the debt in SOR ¶ 1.b., but failed to list the debt in SOR ¶ 1.a. (SOR ¶ 2.a.)

Also, in response to question 28.b., asking whether he was currently over 90 days delinquent on any debt(s), he listed the debt in SOR ¶ 1.b., but failed to list the debt in SOR 1.a. (SOR ¶ 2.b.)

Applicant credibly explained that his failure to list his debt discussed *supra* was due to an oversight. He stated, "I don't remember why I left those off. Again, I was aware that this information was going to be checked on by the government. So I had no reason to – to lie about it." Tr. 56. He did, however, list the debt identified in SOR ¶ 1.a.

Applicant's supervisor testified on his behalf. He stated he worked closely with Applicant and described him as punctual, very detailed, and very organized. He added that Applicant "either met or exceeded expectations. Tr. 24, 29.

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. Since 2005, he has accumulated two delinquent/charged off credit card debts totaling approximately \$35,706. Financial Considerations Disqualifying Condition (FC

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.

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

Post-hearing, Applicant provided documentation demonstrating that he has contacted these two creditors, made down payments, and established realistic payment plans. His evidence reflects he has the resolve and wherewithal to pay down his debts until he has either paid them off or receives a family inheritance, at which time he will pay off these debts in full. Applicant underwent a costly divorce. The financial toll of undergoing a divorce was further exacerbated following the financial losses and debt he incurred while he tried to make a living as a stock trader.

Following the loss of his job as a service engineer, he was faced with some difficult choices and chose to liquidate his retirement account incurring an early liquidation penalty. He chose this option rather than taking a job that would require him to relocate and be geographically separated from his children. Unfortunately, his career as a stock trader was not successful and he was forced to live off his credit cards.

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.

Applicant's testimony establishes these mitigating factors that may be considered as circumstances beyond his control contributing to his inability to pay his debts. After finding himself unemployed in April 2003, he was responsible for spouse and child support. He embarked in a business as a stock trader that failed to live up to his expectations. These facts demonstrate circumstances beyond his control. Applicant's evidence is sufficient to show he has dealt responsibly with his financial obligations.

He presented further evidence showing he dealt responsibly with his financial obligations as demonstrated by paying off his income tax liability following early liquidation of his retirement account. Also, he contacted his creditors, and set up a repayment plan. After paying off his monthly bills, he has a net remainder of \$346. Although it would have been preferable that he had contacted his creditors at an earlier date, his demonstrated efforts establish he is committed to resolving this matter and alleviated collateral security concerns. 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.

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.

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 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, the fact he did disclose a significant debt putting the Government on notice his financial history was flawed, 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 the second debt 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, maturity, his years working for a defense contractor, work performance, testimony of his supervisor, 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:	FOR APPLICANT
Subparagraphs 1.a – 1.b:	For Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraphs 2.a – 2.b:	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