



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



In the matter of:)	
)	
SSN:)	ISCR Case No. 07-11188
)	
Applicant for Security Clearance)	

Appearances

For Government: Tom Coale, Esq., Department Counsel
Francisco Mendez, Esq., Department Counsel
For Applicant: *Pro se*

April 15, 2008

Decision

TUIDER, Robert J., Administrative Judge:

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

Statement of the Case

Applicant submitted his Security Clearance Application (e-QIP), on September 6, 2006. On September 28, 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing security concerns under Guideline F 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 7, 2007, and requested a hearing before an Administrative Judge. Department Counsel was prepared to proceed on February 6, 2008, and I received the case assignment on February 14, 2008. DOHA issued a notice of hearing on February 21, 2008, scheduling the hearing for March 13, 2008. The hearing was held as scheduled.

The government offered Government Exhibits (GE) 1 through 6, which were received without objection. The Government also offered a “demonstrative aid,” which was marked Exhibit (Ex.) I without objection. Applicant did not offer any exhibits during his hearing, but did testify on his own behalf.

I held the record open until March 21, 2008 to afford the Applicant the opportunity to submit documents on his behalf. Applicant timely submitted AE A through L without objection, which were forwarded to me by Department Counsel by Memorandum dated March 25, 2008 (Ex. II). DOHA received the transcript of the hearing (Tr.) on March 21, 2008. The record closed on March 25, 2008.

Findings of Fact

Applicant admitted all of the SOR allegations with explanation except for SOR ¶ 1.c. His admissions are incorporated herein as findings of fact. After a thorough review of the evidence, I make the following additional findings of fact:

Applicant is a 35-year-old security officer, who has worked for a Government contractor since December 2007. Tr. 15, 88-89, GE 1. He seeks a security clearance in conjunction with his employment. Tr. 15.

Applicant graduated from high school in June 1990. Tr. 14, 84-85. He served in the U.S. Army from June 1990 to June 1999, and was honorably discharged as a sergeant/pay grade E-5. He served in the U.S. Army Reserve from June 1999 to August 2002. Applicant was married from May 1996 to August 2002. That marriage ended by divorce. Applicant and his ex-wife had twin sons during their marriage, age 14. GE 1, Tr. 85-86.

Applicant’s background investigation addressed his financial situation and included the review of his security clearance application, four credit reports, and an interview conducted by the Office of Personnel Management. GE 1 – 6.

Applicant’s SOR identified 10 separate line items, which included two judgments, one state tax lien, five collection accounts, one past due child support account, and one charged off account for a total of \$13,204. SOR ¶¶ 1.a. – 1.j.

Applicant’s financial problems stem from a costly divorce in 2002, uncovered medical expenses in 2004/2005, and unemployment/underemployment in 2006. He incurred significant medical bills in 2004/2005. His employer did not provide him with health care insurance and he was unable to pay his medical bills

on his limited salary working in security-related positions. Already financially strained following his divorce, he fell behind on his other bills to include child support. GE 6, Tr. 16, 75. He has sought informal financial counseling through an attorney-friend. Tr. 83-84.

To address financial considerations concerns raised, Applicant has paid off five collection accounts (SOR ¶¶ 1.d. through 1.h.), has contacted three creditors and set up payment plans (SOR ¶¶ 1.b., 1.i., and 1.j.), and made a good-faith effort to resolve two judgment debts (SOR ¶¶ 1.a., 1.c.). Also, he submitted documentation that he has made payments on to these two creditors. Tr. 17-68, AE A – I.

SOR ¶ 1.a. is \$1,504 judgment. Applicant has determined this debt has been sold/transferred to a new company. As soon as Applicant determines who the new company is and has contact information, he will make payment arrangements. SOR ¶ 1.c. is a \$1,320 state tax lien from a state Applicant lived in while he was stationed in the Army; however, he was never a legal resident in that state. Applicant has contacted a state tax official and is trying to resolve this lien. Response to SOR, Tr. 17-19, 29-35, 83, AE A. I did not detect any recalcitrance on the part of Applicant in resolving these two debts or any other debts.

Applicant estimates he has a net remainder of “\$200 to \$300” after paying his monthly bills. Tr. 88. To minimize his costs, Applicant lives with a friend rent-free and does not own an automobile. Rather, he takes public transportation to work. His brother loans him his automobile without charge as needed. Two of his three daily meals are provided by his employer. GE 6.

Applicant provided three employer-related reference letters from his Project Security Officer, his former Site Manager, and a Vice President of a former employer. These individuals were uniform in their praise of Applicant and described him as “second to none,” possessing “integrity” and “trustworthiness,” “conducts himself on the job in a highly professional manner,” and “treat[s] clients with the utmost respect and honesty.” All three individuals recommended Applicant for a security clearance.

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 overarching 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 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

Under Guideline F (Financial Considerations),¹ the Government's concern is that an Applicant's

¹ Guideline ¶ 18.

“[[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’s financial problems stem from a costly divorce, uncovered medical bills, and unemployment. He has struggled to remain financially afloat; however, given the unplanned costly life events he has experienced, it has not been easy. To minimize his expenses, he found a friend he could live with rent-free, takes two of his three employer-provided meals at work, and does not own an automobile. For transportation, he uses public transportation and when needed/necessary, he borrows his brother’s automobile. Recognizing he was in over his head, he sought informal financial counseling from an attorney-friend. After he pays all his monthly bills, he has a net remainder of \$200 to \$300.

Applicant’s financial picture has taken a sharp turnaround since he incurred the debts identified in the SOR. His cost saving efforts and steady employment have provided him with the necessary respite needed to place him on the road to financial recovery. He now has the tools to achieve financial stability.

His work-related reference letters are noteworthy. It is clear Applicant’s employers view him as a conscientious, trusted and valued employee. He also makes a concerted effort to provide for his twin sons and remain involved in their upbringing.

¶ 19. Conditions that could raise a security concern and may be disqualifying include:

- (a) inability or unwillingness to satisfy debts;
- (b) indebtedness caused by frivolous or irresponsible spending and the absence of any evidence of willingness or intent to pay the debt or establish a realistic plan to pay the debt.
- (c) a history of not meeting financial obligations;
- (d) deceptive or illegal financial practices such as embezzlement, employee theft, check fraud, income tax evasion, expense account fraud, filing deceptive loan statements, and other intentional financial breaches of trust;

(e) consistent spending beyond one's means, which may be indicated by excessive indebtedness, significant negative cash flow, high debt-to-income ratio, and/or other financial analysis;

(f) financial problems that are linked to drug abuse, alcoholism, gambling problems, or other issues of security concern;

(g) failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same;

(h) unexplained affluence, as shown by a lifestyle or standard of living, increase in net worth, or money transfers that cannot be explained by subject's known legal sources of income; and

(i) compulsive or addictive gambling as indicated by an unsuccessful attempt to stop gambling, "chasing losses" (i.e. increasing the bets or returning another day in an effort to get even), concealment of gambling losses, borrowing money to fund gambling or pay gambling debts, family conflict or other problems caused by gambling.

Of the nine Financial Considerations Disqualifying Conditions (FC DC) listed *supra*, two are applicable: ¶ 19(a): inability or unwillingness to satisfy debts; and FC DC ¶ 19(c): a history of not meeting financial obligations.

¶ 20. Conditions that could mitigate security concerns include:

(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;

(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

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. Clearance is granted.

ROBERT J. TUIDER
Administrative Judge