



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



In the matter of:)	
)	
-----)	ISCR Case No. 07-12453
SSN: -----)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Pamela C. Benson, Esquire, Department Counsel
For Applicant: *Pro Se*

January 23, 2009

Decision

HOWE, Philip S., Administrative Judge:

On May 18, 2006, Applicant submitted his Security Clearance Application (SF 86). On February 12, 2008, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing the security concerns under Guideline F. 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 acknowledged receipt of the SOR on February 27, 2008. He answered the SOR in writing on April 9, 2008, and requested a hearing before an administrative judge. DOHA received the request on April 12, 2008. Department Counsel was prepared to proceed on May 6, 2008, and I received the case assignment on August 27, 2008. DOHA issued a Notice of Hearing on October 20, 2008, and I convened the

hearing as scheduled on November 6, 2008. The Government offered Exhibits 1 through 6, which were received without objection. Applicant testified and submitted Exhibits A through Y, without objection. DOHA received the transcript of the hearing (Tr.) on November 18, 2008. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

Findings of Fact

In his Answer to the SOR, dated June 25, 2008, Applicant admitted the factual allegations in ¶¶ 1.a to 1.d, 1.f, and 1.h to 1.m. of the SOR, with explanations. He denied the factual allegations in ¶¶ 1.e and 1.g of the SOR. He also provided additional information to support his request for eligibility for a security clearance.

Applicant is 51 years old, and works for a defense contractor in the graphic design business. He has been employed there since May 1, 2006. He was divorced in 2001. He has no children. He lost three jobs between 2001 and 2006 because his employers closed their operations and laid him and other workers off when the closings occurred. As a result of those lay-offs, he began accruing a significant amount of debts. (Tr. 48-54; Exhibits 1, R and Y)

Applicant does not have any credit cards. He has not incurred any additional long-term or delinquent debt since 2007. He had a clearance when he served in the Navy, and had an interim security clearance until January 18, 2008, with his present job. Since becoming employed, he has worked to repay his delinquent debts resulting from his divorce and periods of unemployment. (Tr. 29, 33, 34, 58, 59; Exhibit 1)

Based on credit bureau reports (CRB), dated June 27, 2006, September 6, 2007, January 14, 2008, and June 25, 2008, the SOR alleged 13 delinquent debts, totaling \$25,430. Applicant contends four debts are really two debts due to duplication of collectors, leaving 11 delinquent debts. The status of those debts is listed below:

A credit card debt owed to a bank through a collector. It is listed in the SOR under Paragraphs 1. a and 1.b. The amount owed is listed as \$4,269 and \$3,184, respectively. Applicant is settling the debt for \$2,207.75 by paying \$736 in three payments on October 24, October 31, and November 14, 2008. He made the first two payments. (Tr. 24-26; Exhibits 2-6, A; Answer)

1. A telephone bill for \$246 was owed (Para. 1.c). The debt was paid in full on April 7, 2008. (Tr. 27; Exhibits 2-6, B)
2. A medical debt of \$253 was paid in full on April 7, 2008 (Para. 1.d). (Tr. 27; Exhibits 2-6, C)
3. Another medical debt for \$130 was paid in full on April 8, 2008 (Para. 1.e). (Tr. 28; Exhibits 2-6, D)

4. Applicant paid off this credit card debt of \$1,911 in a settlement arrangement of \$764.86 (Para. 1.f). The last payment was on May 1, 2008. (Tr. 30; Exhibits 2-6, E)
5. A line of credit loan from a credit union in the amount of \$3,470 is being paid by Applicant (Para. 1.g). In his 2001 divorce decree, his former wife was declared responsible for that debt, and was to hold Applicant harmless from it. She later filed bankruptcy, and he was the co-signer on the loan, so he has been paying the loan. He is paying on the installment basis every month since November 2008. His payment is \$100 monthly. He paid \$400.05 on October 28, 2008 to start the repayment process. (Tr. 30, 31; Exhibits 2-6, F, P, Q)
6. Applicant owed a tanning salon a debt of \$119.64 (Para. 1.h). He repaid this debt on March 3, 2008. (Tr. 32; Exhibits 2-6, G)
7. A cable bill for \$258 was paid in full on March 5, 2008 (Para. 1.i). (Tr. 33; Exhibits 2-6, H)
8. A credit card debt of \$611 was paid in full on October 22, 2008 (Para. 1.j). (Tr. 33; Exhibits 2-6, I)
9. Another telephone bill owed to a service provider in the amount of \$88 was paid in full on April 8, 2008 (Para. 1.k). (Tr. 34; Exhibits 2-6, J)
11. An auto loan debt in the amount of \$10,828 for a van repossession - remains unpaid (Para 1.l). Applicant attempted to arrange a repayment plan, but the collection company would not negotiate with him. He complained to the collection agent's manager, and Applicant continues to attempt to negotiate a repayment plan. He has contemplated trying to borrow \$5 or \$6 thousand dollars to make a lump sum payment to resolve the debt. (Tr. 35-38; Exhibits 2-6, K)
12. A telephone bill for \$87 (Para. 1.m) is the same debt owed in Para. 1.k, and that debt has been repaid. (Tr. 40; Exhibits 2-6, L)

In summary, Appellant has paid or resolved seven debts, three accounts are being paid, and one remains unresolved though not from lack of some effort by Applicant to arrange a repayment plan. (Tr. 24-40)

Appellant submitted information containing two other past due accounts not listed on the SOR: a collector for a medical account in the amount of \$5,395.88 on which Applicant is paying \$100 monthly; and an insurance bill debt for \$202 which he paid in full on October 31, 2008.¹ (Tr. 40, 41; Exhibits M, N)

¹I will not consider these debts for disqualifying purposes, but will consider them when analyzing the whole person and his total financial situation.

Appellant submitted a letter from his employer concerning the commencement of his employment. He also submitted four customer evaluations for his services at various trade shows. His work was rated "superior." (Exhibits R to W)

During his personal appearance, Appellant was honest about his delinquent obligations caused by his divorce and successive periods of unemployment. He presented his case in an organized and mature manner. He conveyed a comprehension of the importance of responsible personal and financial conduct.

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, and 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), “a history of not meeting financial obligations” may raise security concerns. Beginning in 2001, Applicant began accumulating some delinquent debt that he was unable to pay for a period of time. The evidence is sufficient to raise these potentially disqualifying conditions.

The guideline also includes three examples of conditions that could mitigate security concerns arising from financial difficulties. 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, the financial problems arose from three periods of unemployment between 2001 and 2006, which were conditions beyond his control. His wife is legally responsible for one of the debts, but she has not paid it, so Applicant, as the loan co-signer, is making repayments. He acted responsibly in identifying and resolving these debts. I find this potentially mitigating condition is a factor for consideration in this case.

Second, 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). There is clear evidence Applicant is

resolving his financial problems on his own initiative. Since March 2008, he has repaid seven debts in full, is currently repaying three debts on installment repayment plans, and has one unresolved debt because the creditor would not negotiate a repayment plan. Applicant continues to try to resolve this debt, including trying to borrow a sufficient amount of money to make a lump sum settlement with this recalcitrant creditor.

Third, AG ¶ 20(d) applies where the evidence shows “the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.” Applicant resolved all but one of the delinquent debts, either by payment or settlement. He is now financially sound and prepared for future contingencies. I conclude these potentially mitigating conditions apply.

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) the 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 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 suffered a divorce after 23 years of marriage, and then three successive layoffs from employers. These events prevented him from repaying these debts. When employed by his current employer, he had steady employment and could accumulate sufficient funds to repay the delinquent debts. Most significantly, he has taken affirmative action to pay or resolve all but one of the delinquent debts raising security concerns. (See AG ¶ 2(a)(6).) Of course, the issue is not simply whether all his debts are paid—it is whether his financial circumstances raise concerns about his fitness to hold a security clearance. Applicant repaid 10 debts in full or is paying through a repayment plan, has repaid one debt not listed in the SOR, and, is using an installment payment plan to repay another unlisted SOR debt. He took a mature and responsible approach by disclosing the other two debts at the hearing that he is also repaying. While one debt remains unpaid, it is insufficient to raise security concerns because Applicant is actively engaged in negotiating a settlement and repayment of that debt. (See AG ¶ 2(a)(1).)

Overall, the record evidence leaves me without questions or doubts as to Applicant’s eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising from his 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
- Subparagraph 1.a 1.m: For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the interests of national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

PHILIP S. HOWE
Administrative Judge