



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



In the matter of:)	
)	
-----)	ISCR Case No. 07-13028
SSN: -----)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Tom Coale, Esquire, Department Counsel
For Applicant: *Pro Se*

September 16, 2008

Decision

ABLARD, Charles D., Administrative Judge:

Applicant mitigated security concerns regarding Guideline F (Financial Considerations), Guideline E (Personal Conduct), and Guideline J (Criminal Conduct). Eligibility for access to classified information is granted.

Statement of the Case

Applicant submitted his Security Clearance Application (SF 86) (eQIP), on December 23, 2005. On February 29, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns for Applicant under Guidelines F, E, and J. 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 April 16, 2008 and requested a hearing before an Administrative Judge. Department Counsel was prepared to proceed on May 20, 2008. I received the case assignment on May 27, 2008. DOHA issued a notice of hearing on June 3, 2008, for a hearing on June 20, 2008. I convened the hearing on that date.

At the hearing, the government offered four exhibits (Exhs 1-4) that were admitted in evidence without objection. Applicant submitted two exhibits in addition to the one attached to his answer (Exhs. A-C) which were admitted without objection. He testified on his own behalf and three witnesses testified as character witnesses. DOHA received the transcript of the hearing (Tr.) on June 30, 2008. I granted Applicant's request to keep the record open until August 15, 2008, to submit additional evidence. A set of documents (Exhs. D Items 1-14) was received August 18, 2008, and admitted in evidence without objection. I requested a supplemental submission that was received on September 5, 2008, and admitted without objection (Exh. E, one page).

Findings of Fact

Applicant is a 49-year-old employee of a government contractor for the Department of State. He has been employed as a program analyst since 1989. He has held a top secret clearance since he began to work for the Department of State in 1989. The work involves diplomatic security.

In his Answer, Applicant admitted with explanation 14 of the 16 financial allegations in the SOR relating to approximately \$45,000 in delinquent debts. He denied two of the financial allegations (SOR ¶¶ 1.e. and 1.m.). He also denied the two allegations under personal conduct and the single allegation under criminal conduct.

Applicant filed his SF 86 almost three years ago in December 2005 after a divorce from his second wife. All but one of his debts were from credit cards used during that marriage. There was still an outstanding controversy over responsibility for jointly incurred debts. His initial approach was to attempt to have a division of responsibility for the debts with his former wife. He continued on an unproductive course in that effort until the security clearance issues arose.

A major reason Applicant did not take effective action to resolve the marital debt issues because he was pre-occupied with caring for the woman who is now his wife after she received multiple injuries in an equestrian accident in July 2005 when a horse fell on top of her. The accident required her to have extensive hospitalization for over a year to learn to walk again. In addition to causing Applicant to take proper care of other responsibilities, he took extensive leave without pay and borrowed on his 401k to help pay for her nursing care.(Tr. 50-51).

Applicant decided this year to pay his delinquent accounts by withdrawal of sufficient funds from his 401k account with his former employer. The account had over \$100,000 in it before the withdrawal. He communicated by telephone and mail with all

the creditors without much success and this year wrote a formal letter to each one (Exh. B). He provided evidence of the withdrawal of funds from the 401k (Exh. E), and has now resolved all of the debts. He has settled two of debts for slightly less than the claim (SOR ¶¶ 1. k. and 1.l.) and paid all others in full (Exh. D). The one remaining debt (SOR ¶ 1.b.) that amounted to over half of the total delinquent debts alleged in the SOR was dropped by the creditor who notified Applicant and three credit reporting agencies that they were unable to verify the debt and that it should be deleted (Exh. D, Item 2). He learned that he did owe the two debts he denied in his answer and has paid both of them. While he was late in taking care of the debts, they are all now resolved.

When Applicant submitted his SF86 in 2005, he was in the midst of the divorce and knew there were some debts outstanding, but he was not fully aware of the extent of them. He was attempting to divide responsibility for joint accounts with his wife. He inquired of his security officer how to answer Question 28 regarding delinquent debts of 90 and 180 days duration. He was advised he could answer “yes” and describe them as best he could or “no” and then tell the investigator who would interview him about the debts. He opted for the second choice and told the investigator of the debts when he was asked about them. Applicant sought to find the security officer to corroborate his claim relating to her advice, but she had moved to another company and could not be located.

Applicant is highly regarded by his employer (Exh. A) and his supervisors. Three of his colleagues and supervisors testified for him regarding the quality of his work and ethic (Tr. 20-40). His salary is approximately \$4,500 a month and he has approximately \$600 remaining each month after his mortgage payment of \$1,600 and other bills are paid (Tr. 100-101). His wife recently has recovered from her accident and is now employed with a monthly salary of between \$1,600 and \$2,000 (Tr. 119). He has no other financial difficulties. He has three credit cards which he regularly pays. He has one grown son for whom he has no financial responsibility.

Applicant served honorably in the Navy from 1982 until 1989 when he took his present position. He left the service as a 3rd Class Petty Officer. He joined the National Guard in 1993 and left in 1996 as a Specialist 4th class.

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 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 if 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. Applicant accumulated some delinquent debt and was unable to pay some obligations for a period of time. The evidence is sufficient to raise these potentially disqualifying conditions, requiring a closer examination.

The guideline includes examples of conditions that could mitigate security concerns arising from financial difficulties. These include:

Evidence that “the conditions that resulted in the financial problem were largely beyond the person’s control(loss of employment, ...unexpected medical emergency, or divorce), and the individual acted responsibly under the circumstances “, or under AG ¶20 (b), “there are clear indications that the problem is being resolved or is under control” 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.” Applicant’s problems in resolving the debts arose from the divorce and was aggravated by loss of income and pre-occupation by problems in the recovery of his current wife. He has resolved all of the delinquent debts, either by payment, settlement, being dropped by the creditor because the debt could not be verified. He is now on financially sound footing and prepared for future contingencies. Despite delays in resolving the debts, he has now done so. I conclude that the mitigating conditions apply since the matters have been resolved and that he acted responsibly under the circumstances which he encountered.

Guideline E Personal Conduct

The security concern relating to the guideline for Personal Conduct is set out in AG ¶ 15:

Conduct involving questionable judgment, lack of candor, dishonesty, and unwillingness to comply with rules and regulations can raise questions about and an individual’s reliability, trustworthiness and ability to protect classified information (AG ¶ 15).

Conditions that could raise a security concern and be disqualifying include the deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire (AG ¶ 16 (a)). Applicant’s failure to report certain financial delinquencies (SOR ¶¶ 2.a.-n.) at Question 28 a (Delinquent debts of over 180 days), and at Question 28 b (Delinquent debts of over 90 days) on his SF 86, prompted security concerns under Guideline E (Personal Conduct).

The requirement of the guideline is that the omissions be deliberately false. I conclude that they were not in view of the circumstances surrounding the situation that prevailed with Applicant in 2005.

Guideline J, Criminal Conduct

The security concern relating to the guideline for Criminal Conduct is set out in AG ¶ 30:

Criminal activity creates doubt about a person's judgment, reliability, and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules and regulations.

The guideline notes several conditions that could raise security concerns for an applicant. One of them that may be a disqualifying condition (DC) is a single serious crime or multiple lesser offenses (AG ¶ 31 (a)). The allegation relates to 18 U.S.C. 1001 which provides a penalty of a \$10,000 fine and five years of imprisonment for falsification of material facts on a security clearance application. I concluded that the omissions were not deliberate under the circumstances of the case. Thus, Applicant has mitigated the allegation.

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 common sense 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 presented evidence of the circumstances surrounding his delinquent debts, his divorce, the medical problems of his current wife, the submission of this SF 86, and the resolution of the debts. I found he has mitigated the security concerns arising from the financial problems and the omissions on his SF 86. His current financial situation is good and the financial problems are unlikely to be repeated. There is no potential for pressure or exploitation and I believe he has learned from this experience. His work record is steady and continuous for almost 20 years since he left two periods of

active military service. He has strong recommendations from his supervisors for his work, conduct, and reputation.

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.: For Applicant
- Subparagraph 1.b.: For Applicant
- Subparagraph 1.c.: For Applicant
- Subparagraph 1.d.: For Applicant
- Subparagraph 1.e.: For Applicant
- Subparagraph 1.f.: For Applicant
- Subparagraph 1.g.: For Applicant
- Subparagraph 1.h.: For Applicant
- Subparagraph 1.i.: For Applicant
- Subparagraph 1.j.: For Applicant
- Subparagraph 1.k.: For Applicant
- Subparagraph 1.l.: For Applicant
- Subparagraph 1.m.: For Applicant
- Subparagraph 1.n.: For Applicant

Paragraph 2, Guideline E: FOR APPLICANT

- Subparagraph 2.a.: For Applicant
- Subparagraph 2.b.: For Applicant

Paragraph 3, Guideline J: FOR APPLICANT

- Subparagraph 3.a.: 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. Access to classified information is granted.

CHARLES D. ABLARD
Administrative Judge