



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



In the matter of:)
)
XXXXXXXXXXXX, XXXXX) ISCR Case No. 07-13407
SSN: XXX-XX-XXXX)
)
Applicant for Security Clearance)

Appearances

For Government: Julie R. Edmunds, Esq., Department Counsel
For Applicant: *Pro se*

August 26, 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 Electronic Questionnaire for Investigations Processing (e-QIP), on September 29, 2006. On February 22, 2008, 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 March 24, 2008, and requested a hearing before an Administrative Judge. Department Counsel was prepared to proceed on April 25, 2008, and I received the case assignment on May 8, 2008. DOHA issued a notice of hearing on May 8, 2008, scheduling the hearing for June 5, 2008. On June 4, 2008, DOHA issued an amended notice of hearing changing the hearing date to June 24, 2008. The hearing was held as scheduled.

The Government offered Government Exhibits (GE) 1 through 3, which were received without objection. The Applicant offered Applicant's Exhibits (AE) A through J, which were received without objection, and testified on his own behalf.

I held the record open until July 11, 2008 to afford the Applicant the opportunity to submit additional documents on his behalf. Applicant timely submitted AE K through N without objection, which were forwarded to me by Department Counsel by Memorandum, dated July 14, 2008 (Exhibit (Ex.) I). DOHA received the transcript of the hearing (Tr.) on July 2, 2008.

Findings of Fact

Applicant denied ¶ 1, and admitted ¶ 1.a. His admission is incorporated herein as findings of fact. After a thorough review of the evidence, I make the following additional findings of fact:

Applicant is a 52-year-old quality assurance director, who has been employed by his defense contractor employer since May 2001. He is a first time applicant for a security clearance. GE 1, Tr. 15, 20-21.

Applicant attended college and was awarded a bachelor of arts degree in economics. After completing college, he attended graduate school and was awarded a master's degree in labor relations and collective bargaining. GE 1, Tr. 17-21. Applicant has been married to his wife since August 1975. Applicant and his wife have two adult children from that marriage. GE 1, Tr. 15-17.

Applicant's background investigation addressed his financial situation and included the review of his e-QIP, December Response to Written Interrogatories, and October 2006 credit report. GE 1 – 3.

The SOR identified one line item, which consists of a single credit card collection account in the approximate amount of \$53,000. (SOR ¶ 1.a.)

The original debt was incurred in the 1998 – 1999 timeframe when Applicant and his wife owned a wholesale candy business. Tr. 41. They owned this business from May 1996 to July 2000, and the business ultimately failed. Applicant stated at the time he need to maintain his cash flow and "was basically borrowing from Peter to pay Paul." GE 1, Tr. 39. When the debt initially became past due in August 2001, it was \$18,465. GE 2, p. 66. The debt owner has changed at least two times adding to

Applicant's difficulty in resolving it. Tr. 41-42. As a result of interest and penalties, the current debt owner claims the debt has increased to \$53,000. Tr. 42-45.

Applicant has made significant efforts to settle or otherwise resolve this debt. Applicant testified he initiated numerous telephone inquiries to resolve this debt. Additionally, Applicant and his wife applied for a loan to pay off this debt in full, which was initially approved in August 2005 and later denied in November 2005. AE I, Tr. 37-38. In November 2006, Applicant contacted the law firm representing the current debt holder, and offered to settle the debt for \$3,600. Applicant based his settlement offer on the fact he believed the debt holder had purchased the debt for approximately \$1,800. The attorney informed Applicant the debt holder claimed Applicant owed \$46,000. The debt holder made a firm counter offer of \$26,500, an amount Applicant did not have and an amount Applicant did not believe was fair and reasonable. GE 2 Tr. 30-37, 59-66.

Although the statute of limitations has run under applicable state law for the creditor to legally collect this debt, Applicant desires to reach a fair and reasonable settlement. Tr. 46-49, 66-69. Post-hearing, Applicant submitted documentation that he has retained an attorney for the sole purpose of resolving this debt. Applicant's attorney has initiated contact with the creditor and as of this writing, the matter is still pending. AE L.

Applicant submitted documentation of other debts, recent and past, reflecting his accounts are current and in good standing, and that his finances are in good order. AE A, AE D – AE H, AE J. Applicant's Facility Security Officer (FSO) submitted a reference letter indicating he has had a 15-year personal and professional relationship with Applicant and his family. The FSO stated Applicant "is presently entrusted with ensuring that the product really does protect our Government's secrets and the lives of its Service Men and Women. And, [Applicant] is entrusted with sharing information with other companies without releasing sensitive information." He trusts Applicant fully and recommended him for a clearance. AE M. Applicant's most recent employee evaluation rates Applicant as "Significantly exceeds expectations" in all categories. AE N. Applicant's December 2007 Personal Financial Statement reflects a net monthly remainder of \$2,190. GE 2.

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 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:

Failure or inability to live within one’s means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or

¹ Guideline ¶ 18.

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 sole debt and only allegation in SOR is a credit card bill that originally was \$18,465 in 2001 that has increased to \$53,000 as a result of interest and penalties. The Government established its case through Applicant's admission and evidence submitted. Of the nine Financial Considerations Disqualifying Conditions, two are applicable: ¶ 19(a): "inability or unwillingness to satisfy debts;" and ¶ 19(c): "a history of not meeting financial obligations."

Applicant encountered financial difficulty when his wholesale candy business failed in 2000. This disappointment was further compounded by lingering business-related debts which apart from this debt have all been paid or resolved. Applicant has made noteworthy efforts to resolve this debt. During his hearing, he expressed frustration over the fact that his debt had increased to the extent it did and the difficulty he had in contacting a creditor representative and negotiating a fair and reasonable settlement. His efforts to resolve this debt in 2006 did not prove to be successful.

To address the ongoing Government concerns, Applicant has taken the significant step of incurring the cost of retaining an attorney for the sole purpose of resolving this debt. It is unknown as of this writing whether Applicant's efforts have netted a satisfactory resolution.

Considering the record evidence as a whole,² I conclude three of the six Financial Considerations Mitigating Conditions are applicable or partially applicable: ¶ 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;" ¶ 20(d) "the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts;" and ¶ 20(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 documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue."

I am convinced by Applicant's testimony and documented efforts that he is acting responsibly under the circumstances, and has initiated a good-faith effort to pay or resolve this debt. Apart from this debt, Applicant's financial house is in order, and he is a valued and trusted employee, who is making a contribution to the nation's defense effort.

² 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.

To conclude, Applicant presented sufficient evidence to explain, extenuate, or mitigate the financial considerations security concerns. Applicant met his ultimate burden of persuasion to obtain a favorable clearance decision. In reaching this conclusion, the whole person concept was given due consideration and that analysis does support a favorable decision.

I take this position based on the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), my “careful consideration of the whole person factors”³ and supporting evidence, my application of the pertinent factors under the Adjudicative Process, and my interpretation of my responsibilities under the Guidelines. Applicant has mitigated or overcome the government’s case. For the reasons stated, I conclude he is eligible for access to classified information.

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

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

³ See ISCR Case No. 04-06242 at 2 (App. Bd. June 28, 2006).