



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



In the matter of:)	
)	
XXXXXXXXXX, XXXXX)	ISCR Case No. 07-13894
SSN: XXX-XX-XXXX)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Emilio Jaksetic, Esq., Department Counsel
For Applicant: *Pro se*

July 3, 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 December 4, 2006. On February 29, 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 12, 2008, and requested a hearing before an Administrative Judge. Department Counsel was prepared to proceed on April 16, 2008, and I received the case assignment on April 23, 2008. DOHA issued a notice of hearing on May 7, 2008, scheduling the hearing for May 29, 2008 at 1:30 PM. On May 23, 2008, DOHA issued an amended notice of hearing changing the scheduled time of the hearing to 11:30 AM on the same day. The hearing was held as scheduled.

The government offered Government Exhibits (GE) 1 through 8, which were received without objection. The government also offered a List of Government Exhibits, Exhibit (Ex.) I. Applicant did not offer any exhibits during his hearing, but did testify on his own behalf.

I held the record open until June 13, 2008 to afford the Applicant the opportunity to submit documents on his behalf. Applicant timely submitted AE A through G without objection, which were forwarded to me by Department Counsel by Memorandum, dated June 12, 2008 (Ex. II). DOHA received the transcript of the hearing (Tr.) on June 5, 2008.

Findings of Fact

Applicant admitted all of the SOR allegations. 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 51 years old and has two jobs. The first is a full-time job as a special police officer at a government facility, which he has held since April 1994. The second is a part-time job as a security officer for a defense contractor, which he has held since July 2006. He seeks a security clearance in conjunction with his part-time job with a defense contractor. GE 1, Tr. 20-22, 55-56.

Applicant graduated from high school in June 1974. GE 1. He described his education beyond high school as "about two years of community college." Tr. 20. He served in the U.S. Army from August 1974 to August 1976 and from March 1978 to August 1992. He opted for an early retirement when offered during a draw-down period, and was honorably discharged as a staff sergeant/pay grade E-6. He is in the inactive ready reserve. GE1, Tr. 45, 47-48.

Applicant was married to his first wife from May 1984 to November 1997. That marriage ended by divorce. He remarried in September 1999 to his second wife. He has no children or dependents other than two adult stepchildren from his second marriage. GE 1, Tr, 85-86.

Applicant's background investigation addressed his financial situation and included the review of his e-QIP, credit reports, Response to Written Interrogatories, and several state and federal tax lien records. GE 1 – 8.

Applicant's SOR identified nine separate line items, which consist of three federal tax liens totaling \$40,507, and six state tax liens totaling \$12,424, for a grand total of \$52,931. SOR ¶¶ 1.a. – 1.i. Applicant stated he did file his tax returns, but did not have the money to pay his taxes. Tr. 49.

Applicant encountered financial problems as a result of a costly divorce in 1997. Being short of cash, he increased the number of his deductions to have more available cash. He explained:

Because at the time I had just [gone] through a divorce and I was having financial problems and I was trying to get as much money there because I was living on my own, had my own apartment. First time I ever lived on my own. I had all kind[s] of financial problems that [came] up and I was trying to, you know – at one time we [were] getting overtime on our job and then [they] cut the overtime out. That's why I have the exemption[s] up real high. I realized it was wrong and I've since then, I've changed back to zero where it was supposed to have been. Tr. 41.

To resolve his debt with the IRS and state tax liens, Applicant retained the services of a nationally recognized tax resolution company in December 2007. This company specializes in reaching settlements and/or assisting clients resolve their tax difficulties. This tax resolution company has yet to meet with respective tax officials. Applicant has been paying \$420 every month to the IRS through payroll deduction from his full-time job since June 2006. Response to SOR, AE E, Tr. 28, 32, 37-40, 50-51. Currently, Applicant is paying off his state tax debt through garnishment since early 2008, in which 25% (\$159) is deducted bi-monthly from his part-time pay check. Before his pay was garnished, he was making payments by money order. Response to SOR, Tr. 34. On June 10, 2008, he took out a loan through his Thrift Savings Plan to pay off the remainder of his state tax lien. AE F. To maintain these payments and get out from his tax debt, Applicant also took on his second job in July 2006. Tr. 25.

Applicant also is seeking financial counseling through his Employee Assistance Program (EAP), an employee benefit offered through his full-time employer. Tr. 26-27, 43-44.

Applicant provided two employer-related reference letters from his full-time job supervisors. Both of these individuals hold the rank of Sergeant. His supervisors were uniform in their praise of Applicant. Included in their comments were “[Applicant] reports on duty each day on time,” “conducts his duties in a professional manner,” “excellent role model for other employees,” “very dependable,” and has “attributes demonstrat[ing] someone with an exceptional character.” AE D, AE G.

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

“[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 acknowledged he made some poor financial decisions. His problems stem primarily from increasing the number of deductions while going through a divorce to increase the amount of his disposable income. When his taxes became due, he did not have the money to pay them, and his problems were compounded when penalties and interest were imposed. He is paying down his tax liabilities through payroll deductions to the IRS and through garnishment to the state tax officials. These payment arrangements were initiated before his SOR was issued in February 2008. He also retained the services of a tax resolution company in December 2007 to guide him through this process, and he has sought budget counseling through his Employee Assistance Program. In the interim, he remains current on his payments to the IRS and state tax officials. To further demonstrate his resolve to pay his tax liabilities, he took on a part-time job in July 2006 and more recently applied for a loan through his Thrift Savings Plan to pay off his state tax liabilities. Applicant demonstrated through his actions and demeanor that he has the resolve and wherewithal to put his financial difficulties behind him.

His reference letters are noteworthy. He is a reliable and conscientious employee, where he is employed in two highly visible federal facilities. His supervisors consider him trustworthy and value him as an employee.

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

- (a) inability or unwillingness to satisfy debts;

¹ Guideline ¶ 18.

(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 documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue; and

(f) the affluence resulted from a legal source of income.

Considering the record evidence as a whole,² I conclude three of the six Financial Considerations Mitigating Conditions (FC MC) 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 (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; and ¶ 20(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts. Since 2006, Applicant has been actively repaying his state and federal tax obligations. It was also in 2006 that he obtained a part-time job so he could pay his past due taxes. This shows he is acting responsibly under the circumstances, has initiated a good-faith effort to repay, and the problem is being resolved.

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

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.

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

