



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



In the matter of:)	
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SSN: -----)	ISCR Case No. 07-14482
)	
Applicant for Security Clearance)	

Appearances

For Government: Jennifer I. Goldstein, Esquire, Department Counsel

For Applicant: *Pro se*

August 20, 2008

Decision

ROSS, Wilford H., Administrative Judge:

Applicant submitted his Security Clearance Application on November 30, 2006. (Government Exhibit 1.) On December 20, 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline F concerning the 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 filed an Answer to the SOR on January 29, 2008, and requested a hearing before an Administrative Judge. I received the case assignment on March 13, 2008. DOHA issued a notice of hearing on March 28, 2008.

The hearing was convened on May 15, 2008. The Government offered Government Exhibits 1 through 5, which were received without objection. Applicant testified on his own behalf and submitted Applicant's Exhibits A through E, without objection. The Applicant requested that the record remain open for the submission of additional documents. The Applicant submitted Applicant's Exhibit F on May 21, 2008, and it was received without objection. The record closed on May 28, 2008. DOHA received the transcript of the hearing on June 3, 2008. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

Findings of Fact

The Applicant is 65 and single. He is employed by a Defense contractor and seeks to obtain a security clearance in connection with his employment in the Defense industry.

Guideline F, Financial Considerations

The Applicant began working in the Defense industry in October 2002. This is his third career. He served in the United States Armed Forces from 1960 to 1980, retiring as an E-7. He then began a second career in the insurance industry, beginning in 1985. That was going well until 1994, when his employer downsized, forcing him to move to a higher cost area and take a demotion. The subsequent severe drop in income, combined with maintaining two houses and supporting his aging father in another state, forced the Applicant into bankruptcy in 1997. (SOR subparagraph 1.a.) (Transcript at 18-22, 62; Applicant's Exhibit C.)

The Applicant remained with the insurance company until 2000, despite the severe drop in income, in order to qualify for retirement. He retired as soon as he was eligible in 2000. The years 2000 through 2002 were very difficult for the Applicant. He was unemployed the majority of that time, living on his two retirement checks. His yearly taxable income for 2001 totaled \$3,805.00. (Applicant's Exhibit C.) Finally, the Applicant had triple bypass surgery in 2002. (Transcript at 23.)

The Applicant began working for the Defense industry in October 2002. It took him three years to get his income in a position where he felt he could resolve his past due indebtedness. He has been able to consistently pay his current debts since beginning employment. All of the indebtedness dates to the period when he was unemployed, underemployed and had his bypass. In October 2005 the Applicant began working with a debt resolution company. They are helping him with all of the debts in the SOR. The Applicant has been disappointed in how the company has worked for him in the two plus years since he hired them, but his debt situation is improving. (Transcript at 24-25, 55-57; Applicant's Exhibit B.)

Subparagraph 1.b. The Applicant admits that he owes this creditor approximately \$2,000.00 for a credit card bill. He testified that the debt resolution

company is currently in negotiation with this creditor and hopes to resolve this debt within 60 days from the date of the hearing. They are proposing a payment to the creditor of \$1,000.00. (Transcript at 26-27.)

Subparagraph 1.c. The Applicant admits owing this credit card account in the amount of \$9,730.00. The debt resolution company reached an agreement with this creditor. In accordance with the agreement an initial payment of \$4,000.00 was made on May 15,2008. The Applicant's credible testimonial evidence is that he has the ability to continue to make payments of \$350.00 per month required to resolve this debt by November 2008. (Transcript at 27-30; Applicant's Exhibits E and F.)

Subparagraph 1.d. The Applicant admits that he owed a bank \$7,362.00 for a credit card. This debt was settled for lesser amount in July 2007, as confirmed by a IRS Form 1099 supplied to the Applicant, and the Government's most recent credit report. (Transcript at 15, 30; Government Exhibit 5 at 2; Applicant's Exhibit D.)

Subparagraph 1.e. The Applicant admits that he owes \$11,638.00 for another credit card. He is saving money in his 401k. When his funds reach a certain level, \$3,000.00 to \$4,000.00, he borrows it from the account and the debt resolution company will use these funds to resolve the debt on the Applicant's behalf. This debt should be resolved in the next year. (Transcript at 30-31, 59-60.)

The Applicant submitted that his current financial situation is stable. He is able to pay his current debts and work towards resolving his past due indebtedness. His financial difficulties were over a limited time, and he is working to pay those debts that are his in a reasonable and timely manner.

Mitigation

The Applicant submitted letters from a supervisor and a co-worker. They describe the Applicant as a "loyal, trustworthy and dependable friend and co-worker." One of the letters also describes the Applicant's activities as Treasurer of a sporting club. (Applicant's Exhibit A.)

Policies

Security clearance decisions are not made in a vacuum. 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. In addition, the Administrative Judge may also rely on his own common sense, as well as his knowledge of the law, human nature, and the ways of the world, in making a reasoned 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. Security clearance decisions include, by necessity, consideration of the possible risk that 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.

Finally, as emphasized by President Eisenhower in Section 7 of Executive Order 10865, “Any determination under this order . . . shall be a determination 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(c), "a history of not meeting financial obligations" may raise security concerns. There is evidence in the record that the Applicant may have owed approximately \$30,836.00 to the creditors named in the SOR. The evidence is sufficient to raise this potentially disqualifying condition, requiring a closer examination.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Under AG ¶ 20(a), the disqualifying condition may be mitigated where "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." In addition, AG ¶ 20(b) states that it may be mitigating if "the conditions that resulted in the financial problems were largely beyond the person's control (e.g., loss of employment, . . . unexpected medical emergency), and the individual acted responsibly under the circumstances."

The majority of the Applicant's past due indebtedness was incurred between 2000 and 2002 when the Applicant retired, was unemployed while receiving job training and had a triple heart bypass. As described at length above, once the Applicant was employed in the Defense industry, he began working with a debt resolution company to pay off his past due indebtedness and, for almost three years, has been successfully fulfilling it. I find the behavior occurred under such unusual circumstances that it is unlikely to recur, it also occurred because of a medical emergency, and it does not raise concerns about his current reliability, trustworthiness, or good judgment. The evidence raises this potentially mitigating condition.

AG ¶20(c) applies if "there are clear indications that the problem is being resolved or is under control." Evidence that "the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts" is also mitigating under ¶20(d).

The Applicant has successfully paid off one of the debts before the SOR was issued. A substantial down payment has been made toward the resolution of a second debt, and the other two debts are being negotiated in turn. Over \$11,000.00 of debt has

either been paid off or forgiven in the past year. By his own admission, the Applicant has been somewhat disappointed in the conduct of his debt resolution company. However, the fact remains that their use is appropriate and the payment schedule is not excessively long under these particular circumstances. 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) 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. The record shows that the Applicant had two successful careers before his current problems began. He is respected in his current job and his friends and associates entrust him with their own funds.

The Applicant, by his own admission, had debt problems between 2000 and 2002. The reasons are described at length above. His Social Security records (Applicant's Exhibit C) show a drop in income from \$32,838.00 in 1999 to \$3,805.00 in 2001. Rather than avoid his debts, once he obtained steady and well-paying employment in the Defense industry, he began working with a reputable debt resolution company to resolve his debts. He has a plan to pay all of his debts and is fulfilling it. He has behaved reasonably and appropriately in trying to resolve his debts, thereby AG ¶ 2(a)(6) applies. Under the particular circumstances of this case, I find that there is little to no potential for pressure, coercion, exploitation, or duress (AG ¶2(a)(8)), and that the likelihood of recurrence is close to nil (AG ¶2(a)(9)).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.

¹The Applicant plays golf in his leisure time. I have considered the expenses of this hobby in the context of his work to resolve his past due debts and find that they are not an undue or excessive amount under the circumstances.

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 THE APPLICANT

Subparagraphs 1.a through 1.e.: For the Applicant

Conclusion

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

WILFORD H. ROSS
Administrative Judge