



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



In the matter of:)	
)	
)	ISCR Case No. 07-15001
SSN:)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Candace Le'i, Esquire, Department Counsel
For Applicant: Pro Se

May 30, 2008

Decision

HENRY, Mary E., Administrative Judge:

Based upon a review of the case file, pleadings, exhibits, and testimony, I conclude that Applicant's eligibility for access to classified information must be granted.

Applicant submitted his Security Clearance Application (SF 86), on April 26, 2007. On February 8, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the 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 acknowledged receipt of the SOR on February 20, 2008. He answered the SOR in writing on March 6, 2008, and requested a hearing before an administrative

judge. DOHA received the request on March 10, 2008. Department Counsel was prepared to proceed on March 20, 2008, and I received the case assignment on March 20, 2008. DOHA issued a notice of hearing on March 24, 2008, and I convened the hearing as scheduled on May 1, 2008. The government offered four exhibits, (GE) 1 through 4, which were received and admitted into evidence without objection. Applicant and one witness testified on his behalf. He submitted 17 exhibits, (AE) A through Q, which were received and admitted into evidence without objection. DOHA received the transcript of the hearing (Tr.) on May 9, 2008. The record closed on May 1, 2008.

Findings of Fact

In his Answer to the SOR, dated March 6, 2008, Applicant admitted the factual allegations in ¶ 1.b of the SOR, with explanation. He denied the remaining factual allegations of the SOR. He also provided additional information to support his request for eligibility for a security clearance.¹

Applicant graduated from high school, then enlisted in the United States Air Force. Four years later, he received an honorable discharge. Following his discharge, he worked as a plumber for several years. He also received an associates degree in architectural drafting. For the last 10 years, he has worked as an architectural draftsman. He began work for his current employer, a federal contractor, in August 1998.²

Applicant met his wife while serving in the military. They married in 1994. They have three sons, ages 16, 9 and 3. The oldest son is Applicant's stepson.³

Following the birth of their second son, Applicant's wife quit her job at a credit union to remain home and care for their new son. She accepted employment with a newspaper, which permitted her to work from home, primarily doing telephone solicitation. Shortly after the birth of their second son, Applicant's wife became very depressed, sleeping most of the day rather than working. Doctors diagnosed her with post partum depression and started treating her with prozac, an anti-depressant. Because of her illness, she did not work regularly, causing a decline in family income. She managed the family finances. When their income was not sufficient to meet ordinary household expenses, she began using credit cards to pay for food, utilities and other everyday expenses. She hide the financial problems from Applicant.⁴

In November 2001, a serious car incident occurred in front of their home. A trash truck ran over one of its employee's. Applicant's wife ran out to help the injured man,

¹Response to the Statement of Reasons (SOR).

²GE 1 (Applicant's security clearance application) at 6, 11-19; Tr. 63-66.

³GE 1, *supra* note 2, at 20-27; Tr. 59.

⁴Response to SOR - Wife's statement; AE N (documents on wife's medical condition); Tr. 31-34, 47.

and called for medical help for a broken leg. While waiting for medical help, she discovered that the injured man had been disemboweled. He died in the arms of Applicant's wife. Shortly after this incident, Applicant's wife felt tremendous guilt about her initial call for medical help. Her guilt caused serious depression, to the point she considered suicide. She eventually sought medical help. Doctors diagnosed her with complex post traumatic stress disorder (PTSD) stemming from her witnessing her mother's suicide and borderline personality disorder. She began treatment, which included therapy and medication. Applicant knew about the post partum depression and her emotional difficulty with witnessing the death of the trash man. She kept her more recent diagnoses from him. She continued to manage the family finances and their financial problems continued. She still did not tell her husband about the problems. In February 2008, doctors diagnosed her with attention deficit disorder.⁵

Applicant's financial problems increased over a period of time because his wife continued to use credit cards to pay regular expenses. By 2004, the mortgage holder on their house started foreclosure proceedings because they had missed their monthly payments. Applicant obtained a loan on his 401K account and paid the overdue payments. He repays this loan through regular payroll deductions. He currently owes less than \$1,000 on this debt.⁶

The family finances continued to decline. One creditor filed a civil action against Applicant and obtained a judgment against him. Applicant did not know about the court action as his wife signed for the papers, then hide the information from him. Because she worked at home, she intercepted overdue notices and other negative information about their financial problems. She disconnected the telephone in the evening, telling her husband she was preventing newspaper customers from interrupting their dinner and evening time. Applicant learned about the court judgment when the creditor garnished his salary in 2006.⁷

In 2006, the mortgagor started a second foreclosure procedure on their home as the mortgage payments were overdue again. Applicant and his wife negotiated a repayment plan with the mortgagor in early 2006. The parties agreed to a \$500 increase in the monthly payment for two years. Applicant and his wife agreed to a timely payment or the mortgagor would foreclose on their property. They complied with the terms of this agreement. They made their final payment in early 2008.⁸

With the foreclosure and garnishment, Applicant assumed primary responsibility for the family finances in 2006. He and his wife considered bankruptcy, but he decided to repay the creditors, as he considered the debts his responsibility. Financial

⁵Attachments to response to SOR; AE N, *supra* note 4; Tr. 35-38, 48-50.

⁶Attachments to response to SOR; AE I (401K documents); Tr. 38-39, 66.

⁷Attachments to response to SOR; AE Q (Credit report, dated April 30, 2008); Tr. 39, 42-43, 45-47, 66-67.

⁸Attachments to response to SOR: AE Q, *supra* note 7; Tr.42-43, 67.

counselors declined to provide any assistance telling them their debt was too high. More recently, a financial counseling service agreed to help, but Applicant no longer needs their assistance.⁹

The SOR lists four other unpaid debts. Applicant negotiated a settlement for each account listed in SOR ¶¶ 1.b to 1.d and paid the negotiated settlements amount over the last two years. Applicant used tax return money and sold excess leave back to his employer twice to repay these debts. For the debt in ¶ 1.e, Applicant paid this debt through garnishment. It is paid in full. All the debts listed in the SOR have been paid. Applicant is current on all his monthly bills. He has a business credit card, but no personal credit cards.¹⁰

Applicant's wife now works full time. She recently received a significant salary increase. She now earns approximately \$32,500 a year. Applicant earns approximately \$43,000 a year. Household net monthly income totals approximately \$5,200 a month, including \$600 in child support from the father of their oldest son. Household monthly expenses total \$4,000, leaving approximately \$1,200 a month for unexpected expenses. Their tax returns for the years 2003 through 2007 reflect a \$20,000 increase in household income.¹¹

Applicant's employer rates his performance as excellent. Recommendations written by his project leader and a co-worker reflect that Applicant is reliable and hardworking. He has received regular salary increases and performance awards. He is respected by his co-workers. Applicant is a den leader for a local boy scout troop. His wife's medical condition is under control.¹²

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

⁹Tr. 41, 53-55, 72.

¹⁰SOR at 1-2; Attachments to response to SOR; AE A to AE F (Verification of debt payments); Tr. 66-75.

¹¹AE G - AE J (Documents showing debts current); AE K (Budget and pay statements); AE K (Tax returns from 2003-2007); Tr. 40, 56, 80-85, 89.

¹²AE M (Performance evaluations, awards and recommendations); AE P (Boy Scout verification); Tr. 52, 56, 58.

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

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 willingness 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 significant delinquent debt over a period of time, which was referred to collection or resulted in the initiation of foreclosure proceedings twice and a judgment. The evidence is sufficient to raise these potentially disqualifying conditions, 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.” Applicant’s financial worries arose when his wife became ill after the birth of their second son. She hid the problem and its extent from Applicant for years. While his debt problems began years ago, the problems continued until the present. This potentially mitigating condition does not apply.

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, some of the financial problems arose from his wife’s medical problems, as well as loss of her income during her long period of illness. When Applicant learned of the first foreclosure, he borrowed money from his 401K account and repaid the overdue mortgage payments. In 2006, he took over the household finances when he learned about the extent of the new financial problems. He acted responsibly in identifying and resolving these debts. I find this potentially mitigating condition is applicable.

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). 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 attempted to hire financial counselors, but was rejected because his debt was too high. He also considered bankruptcy, but decided to pay his debts. Over the last two years, Applicant has negotiated repayments amounts for his debts and paid these amounts. He honored his commitment to repay his past due mortgage payments. He has resolved all his delinquent debts, either by payment or settlement. With his current income, 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) 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's financial problems started about eight years ago. Over a period of four years, his debts slowly escalated. His wife's depression and PTSD contributed significantly to the problem because she did not work much and hid the extent of the problem from Applicant. Applicant's failure to take an active role in household finances also contributed to the problems. Since 2006, Applicant has completely changed his attitude about his role in the household finances. He now takes primary responsibility for managing the household finances. He decided against filing for bankruptcy and to repay his debt, which he has done. He did not resort to any illegal means to obtain the money necessary to repay his debt. He negotiated settlements, then used his tax returns and the money from the sale of his leave to pay the debts. He complied with the terms of his repayment plan with his mortgagor. He pays all his current bills in a timely fashion. His wife's medical condition is under control. She acknowledges her conduct in creating this problem and he considers the debts his responsibility. He is a dependable and reliable worker. His employer routinely rates his performance as excellent. He provides a stable domestic environment for his family. Most significantly, he has taken affirmative action to pay or resolve the delinquent debts raising security concerns. His debts cannot be a source of improper pressure or duress. 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. His household income has improved significantly in the last five years and his current debts are easy to manage with his present net monthly income. He has acted responsibly in resolving his debts, which are insufficient to raise security concerns. (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:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	For Applicant
Subparagraph 1.e:	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. Eligibility for access to classified information is granted.

MARY E. HENRY
Administrative Judge