



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



In the matter of:)
)
XXXXXXXXXXXX, XXXXX) ISCR Case No. 07-15024
SSN: XXX-XX-XXXX)
)
Applicant for Security Clearance)

Appearances

For Government: John B. Glendon, Esq., Department Counsel
For Applicant: *Pro se*

September 12, 2008

Decision

TUIDER, Robert J., Administrative Judge:

Applicant mitigated security concerns pertaining to Financial Considerations and Personal Conduct. Clearance is granted.

Statement of the Case

Applicant submitted his Electronic Questionnaire for Investigations Processing (e-QIP), on February 22, 2007. On April 23, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing security concerns under Guidelines F and E 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 May 13, 2008, and requested a hearing before an Administrative Judge. Department Counsel was prepared to proceed on May 22, 2008, and I received the case assignment on May 28, 2008. DOHA issued a notice of hearing on June 6, 2008, scheduling the hearing for June 24, 2008. The hearing was held as scheduled.

The Government offered Government Exhibits (GE) 1 through 4, identified by List of Government Exhibits (Ex. I), which were received without objection. Applicant offered Applicant Exhibits (AE) A through F, which were received without objection, and testified on his own behalf.

I held the record open until August 8, 2008 to afford Applicant the opportunity to submit additional documents. Applicant timely submitted AE G and H, without objection, which were forwarded to me by Department Counsel by Memorandum, dated August 7, 2008 (Ex. II). By e-mail dated August 8, 2008, Applicant requested an extension of the August 8, 2008 deadline. Without objection from Department Counsel, I granted Applicant's request to keep the record open until August 19, 2008 (Ex. III). Applicant submitted AE I and AE J without objection on August 14, 2008. Applicant submitted AE K without objection, which was forwarded to me by Department Counsel by Memorandum, dated August 19, 2008 (Ex. IV). DOHA received the hearing transcript (Tr.) on August 4, 2008. The record closed on August 19, 2008.

Findings of Fact

Applicant admitted all of the allegations in the SOR. 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 a 46-year-old old computer operator, who has been employed by his defense contractor employer since July 2003. GE 1, Tr. 20-21. He seeks to renew his security clearance, which was previously granted while serving in the U.S. Air Force and was transferred to his current employment. Applicant believes retaining a clearance is a condition of his continued employment. Tr. 21-22, 35.

Applicant graduated from high school in May 1980. Tr. 19. He served in the Air Force from June 1982 to August 2002, and retired as a Staff Sergeant (pay grade E-5). His Air Force Specialty Code was 250X2 – Supply Systems Analyst. GE 1, Tr. 16-19. Applicant successfully held a secret clearance while in the Air Force for his last 18 years of active duty. Tr. 21-23. Applicant has never been married, and has no dependents. GE 1, Tr. 16. Applicant estimates that he has completed 12 college credit hours. Tr. 20.

Applicant's background investigation addressed his financial situation and personal conduct which included the review of his February 2007 e-QIP, his April 2008

and March 2007 credit bureau reports, and his February 2008 Responses to Interrogatories. GE 1 – 4.

Applicant's SOR identified four separate line items consisting of two collection accounts and two charged off accounts totaling \$27,423. (SOR ¶¶ 1.a. - 1.d.) All of these debts are credit card accounts. Tr. 31. Applicant retained the services of a credit counseling service, received financial counseling, and established a debt consolidation program. His credit counseling service contacted all of his creditors, established a single monthly minimum payment for Applicant, which he pays to his credit counseling service by direct debit. AE G. Before he retained the services of a credit counseling service, Applicant was attempting to pay off his creditors in a piece meal fashion, which he found inefficient and costly. Tr. 36-40, 44-54. In short, he has resolved all debts alleged in the SOR.

Applicant attributes his financial difficulties to loss of income when he retired from the Air Force, a move, and underemployment. He explained while the Air Force a significant portion of his pay was tax free. Upon retiring from the Air Force he also incurred medical expenses he did not previously have as a result of paying for health insurance and co-pays. After he retired, he moved to an area not served by a military treatment facility and had to seek medical care outside of the military health care system. He also acknowledged he fell prey to easy credit and was not a good money manager. Answer to SOR, Tr. 59-62.

Applicant has established a budget with the assistance of his credit counseling service, which reflects a net monthly remainder of \$253 after he has paid all of his monthly bills. His credit counseling service developed a comprehensive plan to achieve financial stability to include an estimated payoff and savings plan, creditor summary, spending assessment, and personal action plan. AE H.

When Applicant completed his February 2007 e-QIP SF-86, he failed to provide correct answers relating to financial delinquencies over 180 days in the last seven years, and financial delinquencies currently over 90 days delinquent. (SOR ¶¶ 2.a. and 2.b.)

When queried about his incorrect answers, he responded "as stated in the [Answer to SOR], that was my own stupid mistake. Stupidity on my part." Tr. 56. Applicant stated that he did not pull his credit report before completing his e-QIP. Tr. 56-57. Four months later in July 2007, Applicant was interviewed by an Office of Personnel Management (OPM) Investigator and freely acknowledged to that Investigator after reviewing his credit report that his answers on his e-QIP were incorrect. Answer to SOR, Tr. 76-77.

Applicant provided a reference letter from one of his company managers, who said, "[Applicant] also demonstrated honesty, reliability and proved to be very dependable while performing his daily duties." Referring to the position Applicant fills, "The position is one of our highest positions of trust within the government operations

for this particular contract for [Government agency].” Adding, “I can confirm that [Applicant] is a man of great integrity, trustworthiness, and is extremely dedicated to his family and work.” AE D. Applicant submitted his last three years of work performance evaluations reflecting consistent above average performance. AE E.

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

The security concern relating to 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.

Applicant’s financial considerations concerns were established by his admissions and the Government’s evidence. Applicant’s financial difficulties stem from underemployment, difficulty in making the financial adjustment of active duty pay to private sector pay, uncovered health care costs, and mismanagement.

Of the nine Financial Considerations Disqualifying Conditions listed under AG ¶ 19, two are applicable:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant demonstrated that whatever financial difficulties he encountered transitioning from active duty Air Force life to private sector life are behind him. His underemployment no doubt created part of his financial difficulties. His current job and Air Force retirement provide him sufficient income to meet his financial obligations. Also, he had the good sense to seek the services of a competent and reputable financial counseling service, which guided him through the process of achieving financial stability. His debts although not paid in full are being paid in a timely and predictable manner. After all of his monthly payments are made, he has a net monthly remainder of \$253.

Considering the record evidence as a whole,¹ I conclude three of the six Financial Considerations Mitigating Conditions under AG ¶ 20 are applicable or partially applicable:

(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; and

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

Guideline E, Personal Conduct

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

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

Of the seven Personal Conduct Disqualifying Conditions under AG ¶ 16, two are applicable:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities; and

(e) personal conduct, or concealment of information about one's conduct, that creates vulnerability to exploitation, manipulation, or duress, such as (1) engaging in activities which, if known, may affect the person's personal, professional, or community standing, or (2) while in another country, engaging in any activity that is illegal in that country or

¹ 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.

that is legal in that country but illegal in the United States and may serve as a basis for exploitation or pressure by the foreign security or intelligence service or other group.

Posing potential security concerns are Applicant's documented omissions of his financial delinquencies from his February 2007 e-QIP. His omissions are attributable to his misunderstanding of the question asked and carelessness. Having observed Applicant's demeanor and the forthright assessment of his failure to exercise greater care in responding to these questions and character evidence suggests his behavior was not intentional. I also note when he was questioned by the OPM Investigator four months after he completed his e-QUIP, he freely acknowledged his failure to provide accurate information about his financial indebtedness.

I found Applicant to be credible and acted in good faith. While he could reasonably have been expected to be more diligent when answering questions regarding financial delinquencies, his judgment lapses and inattention to detail are not enough to impute knowing and willful falsification under Guideline E. There being no misconduct substantiated, there is no need to discuss Personal Conduct Mitigating Conditions.

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"² 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. – 1.d.:	For Applicant

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

Paragraph 2, Guideline E: FOR APPLICANT

Subparagraph 2.a. -2.b.: 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