



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



In the matter of:)	
)	
-----)	ISCR Case No. 07-16158
SSN: -----)	
)	
Applicant for Security Clearance)	

Appearances

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

October 7, 2008

Decision

HARVEY, Mark W., Administrative Judge:

Applicant mitigated the financial consideration security concerns. He paid or settled and paid the seven debts listed on the statement of reasons (SOR). He does not have any delinquent debt. Clearance is granted.

Statement of the Case

On July 2, 2007, Applicant submitted an Electronic Questionnaires for Investigation Processing (e-QIP) or Security Clearance Application (SF 86). On May 13, 2008, the Defense Office of Hearings and Appeals (DOHA) issued an SOR to him,¹ pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review*

¹Government Exhibit (GE) 1 (Statement of Reasons (SOR), dated May 13, 2008). GE I is the source for the facts in the remainder of this paragraph unless stated otherwise.

Program (Directive), dated January 2, 1992, as amended, modified and revised.² The SOR alleges security concerns under Guideline F (Financial Considerations). The SOR detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for him, and recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

On June 15, 2008, Applicant responded to the SOR allegations, and elected to have an administrative judge decide his case after a hearing. On August 26, 2008, the case was assigned to me. A Notice of Hearing was issued on August 28, 2008. At the hearing held on September 18, 2008, Department Counsel offered five exhibits (GEs 1-5) (Transcript (Tr.) 10, 16-17), and Applicant offered Applicant's Exhibits (AE) A-H (Tr. 19). There were no objections, and I admitted GE 1-4 and AE A-H (Tr. 18-21). Additionally, I admitted the Hearing Notice (GE 6), the SOR (GE 7), and Applicant's response to the SOR (GE 8). I granted a delay until October 3, 2008 (Tr. 68, 70, 74). On September 25, 2008, I received the transcript. Applicant provided additional documentation (AE I-N), which I received on October 3, 2008. Department Counsel did not object to my consideration of AE I-N, and I admitted AE I-N. I closed the record that same day.

Findings of Fact³

Applicant admitted in his SOR response that he would take responsibility for the seven debts listed in the SOR and documented that he paid five of them in May 2008. He said he was current on his payments to the last two creditors (GE 7, 8). His admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence of record, I make the following findings of fact.

Applicant is 34 years old.⁴ He graduated from high school in 1992 (Tr. 6). He attended college for two years and majored in computer programming (Tr. 6). However, he has not completed his associate's degree (Tr. 6). He does not currently hold a security clearance (Tr. 7). Applicant is now a career firefighter and emergency medical technician (Tr. 25). He married in June 2005 and does not have any children (Tr. 40, 59).

²On Aug. 30, 2006, the Under Secretary of Defense (Intelligence) published a memorandum directing application of revised Adjudicative Guideline to all adjudications and other determinations made under the Directive and Department of Defense (DoD) Regulation 5200.2-R, *Personnel Security Program* (Regulation), dated Jan. 1987, as amended, in which the SOR was issued on or after Sep. 1, 2006. The revised Adjudicative Guidelines are applicable to Applicant's case.

³Some details have not been included in order to protect Applicant's right to privacy. Specific information is available in the cited exhibits. GE 8 (Response to SOR) is the source for the facts in this section unless stated otherwise.

⁴GE 1 (2007 security clearance application) is the source for the facts in this paragraph, unless stated otherwise.

Financial Considerations

Applicant began working for an insurance company in 1994 (Tr. 45). In 2003, his income declined because of lack of sales and commissions (Tr. 40, 45-46). In 2003, take home income declined to \$600 a month (Tr. 41). His debts became delinquent and went to collection (Tr. 41). He left the insurance business and became a government contractor in 2005 (Tr. 47).⁵ Between 2005 and 2008, he paid off four or five non-SOR debts including one for \$6,000 (Tr. 62).

Applicant's statement of reasons (SOR) lists seven delinquent debts. In his response to the SOR Applicant provided proof that from May 23 to 30, 2008, he paid or satisfied the five smaller SOR debts: SOR ¶ 1.a (\$107 paid on May 30, 2008; GE 8 at 1-2); SOR ¶¶ 1.c. and 1.d (\$67 and \$865 paid or satisfied on May 28, 2008; GE 8 at 1-2, 5-6); and SOR ¶¶ 1.f and 1.g. (\$186 and \$66 paid or settled and paid on May 23, 2008; GE 8 at 2, 7-8). Although he did not formally dispute the five small debts, he did not believe he was responsible for them (Tr. 57-58). Nevertheless he paid them after receiving the SOR to alleviate any security concerns (Tr. 57-58).

In 2002 or 2003, the debts in SOR ¶¶ 1.b and 1.e became delinquent (Tr. 42). Both of them were credit card debts. However at \$14,245 and \$10,458, respectively, these two debts were still of some concern at his hearing as they had previously been delinquent. As of June 2008, the debts in SOR ¶¶ 1.b and 1.e were current in that Appellant was making required payments (GE 8 at 1-2). In 2006, the creditors for the debts in SOR ¶¶ 1.b and 1.e reached agreements with Applicant that he would make \$100 monthly payments, and Applicant made those agreed upon payments for more than a year prior to his hearing (Tr. 38-39, 42-43, 55; AE E-H). Applicant's \$14,245 debt was settled for \$6,000 and paid on September 26, 2008 (AE K, L). The \$10,458 debt was settled for \$8,381 and paid on September 30, 2008 (AE K, N).

Applicant and his spouse's current monthly gross pay is \$4,300 (Tr. 49). Applicant's current monthly take-home pay is \$2,400 and his wife's current monthly take home pay is \$1,200 (Tr. 48). They own their home and are current on their mortgage, which totals \$113,000 (Tr. 48, 54). Their equity in their house is about \$100,000 (Tr. 48). They have \$3,000 in IRAs, \$1,500 in savings and \$1,500 in checking accounts (Tr. 52). The loans on both of their vehicles are fully paid (Tr. 52-53). Applicant's wife has three credit cards, and they are all current (Tr. 53-54).

Applicant received credit counseling in 2004 (Tr. 59). Their suggested debt consolidation plan was impractical to him because he lacked the funds to implement it (Tr. 60-61). His spouse pays their bills and is conscientious about keeping their debts current.

⁵The District Manager at the insurance company where Applicant was employed provided a letter lauding Applicant's loyalty, dedication and honesty as well as his solid reputation in the business. The insurance company regretted his departure (AE C).

Recommendations

Applicant's supervisor for the last two years works closely with Applicant as they are on 24-hour-shifts together at the fire station (Tr. 23, 25). He described Applicant as a good employee and worker, who is dedicated, trustworthy, conscientious and responsible (Tr. 23-26). Another friend for the last 30 years has also worked with Applicant for the last two years at the fire station (Tr. 30). He indicated Applicant has played the organ at the church they both attend for many years and volunteers in the community (Tr. 31, 32). He relates Applicant is honest, trustworthy, reliable and responsible (Tr. 32).

A third friend and co-worker at the fire station has known Applicant for fifteen years (Tr. 35). He described Applicant as trustworthy, loyal and generous (Tr. 35). He is one of Applicant's best friends (Tr. 36).

Two other friends, who have known Applicant for many years, and previously employed him (AE A, B) describe Applicant as a generous, compassionate and diligent person (AE A). One remarked, "his attitude and job performance were unsurpassed." (AE B). Applicant is honest and has strong integrity (AE B).

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.

In the decision-making process, the Government has the initial burden of establishing controverted facts alleged in the SOR by “substantial evidence,”⁶ demonstrating, in accordance with the Directive, that it is not clearly consistent with the national interest to grant or continue an applicant’s access to classified information. Once the Government has produced substantial evidence of a disqualifying condition, the burden shifts to Applicant to produce evidence “to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel, and [applicant] has the ultimate burden of persuasion as to obtaining a favorable clearance decision.” Directive ¶ E3.1.15. The burden of disproving a mitigating condition never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).⁷

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* Executive Order 12968 (Aug. 2, 1995), Section 3.

Analysis

Upon consideration of all the facts in evidence, and after application of all appropriate legal precepts, factors, and conditions, including those described briefly above, I conclude one relevant security concern is under Guideline F (Financial Considerations). AG ¶ 18 articulates the security concern relating to financial problems:

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

⁶See Directive ¶ E3.1.14. “Substantial evidence [is] such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the contrary evidence in the record.” ISCR Case No. 04-11463 at 2 (App. Bd. Aug. 4, 2006) (citing Directive ¶ E3.1.32.1). “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994).

⁷The Administrative Judge [considers] the record evidence as a whole, both favorable and unfavorable, evaluate[s] Applicant’s past and current circumstances in light of pertinent provisions of the Directive, and decide[s] whether Applicant ha[s] met his burden of persuasion under Directive ¶ E3.1.15.” ISCR Case No. 04-10340 at 2 (App. Bd. July 6, 2006).

protect classified information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

AG ¶ 19 provides two Financial Considerations Disqualifying Conditions that could raise a security concern and may be disqualifying in this case, “(a) inability or unwillingness to satisfy debts,” and “(c) a history of not meeting financial obligations.” Applicant’s history of delinquent debt is documented in his credit reports, in his SOR response and at his hearing. As indicated in SOR ¶¶ 1.a to 1.g, he had seven delinquent debts totaling about \$26,000. The debts became delinquent in 2003. They were not paid until 2008. The government established the disqualifying conditions in AG ¶¶ 19(a) and 19(c).

Five Financial Considerations Mitigating Conditions under AG ¶¶ 20(a)-(e) are potentially applicable:

(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; and

(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.

Applicant’s conduct does not warrant full application of AG ¶¶ 20(a) or 20(b) because he did not act more aggressively and responsibly to resolve his delinquent debt. Because there is more than one delinquent debt, his financial problems are not isolated. The debts were not paid until September 2008, and therefore his debt is “a continuing course of conduct” under the Appeal Board’s jurisprudence. See ISCR Case No. 07-11814 at 3 (App. Bd. Aug. 29, 2008) (citing ISCR Case No. 01-03695 (App. Bd. Oct. 16, 2002)). He receives partial credit under AG ¶ 20(a) because the debt “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." Under AG ¶ 20(b), he receives partial mitigation because his financial situation was damaged through underemployment when he worked in the insurance industry. He lacked the income to pay his debts. In 2005, he obtained his current employment and thereafter he has steadily reduced his delinquent debt. However, he did not provide sufficient information to establish that he acted responsibly under the circumstances from 2005 to May 2008.⁸

AG ¶ 20(c) fully applies. Applicant received financial counseling. He gradually reduced his delinquent debt and in September 2008 paid off the last two SOR debts. Moreover, there are "clear indications that the problem is being resolved or is under control." He understands the security implications of delinquent debt and will scrupulously avoid future delinquent debt. However, there is insufficient information to establish mitigation under AG ¶ 20(d) because Applicant did not meet his burden of showing good faith⁹ in the resolution of his SOR debts. There is a paucity of information about what he did to resolve the SOR debts between June 2005 and May 2008. Moreover, when he started making payments on his two large SOR debts, he could have made larger monthly payments or resolved these two debts sooner, but failed to do so.

AG ¶ 20(e) is not applicable to mitigate any SOR debts because the Applicant did not provide "documented proof to substantiate the basis of the dispute" with respect to any SOR debts.

Although he did not formally dispute the five small SOR debts, he did not believe he was responsible for them. Nevertheless within 30 days after Applicant received the

⁸"Even if Applicant's financial difficulties initially arose, in whole or in part, due to circumstances outside his [or her] control, the Judge could still consider whether Applicant has since acted in a reasonable manner when dealing with those financial difficulties." ISCR Case No. 05-11366 at 4 n.9 (App. Bd. Jan. 12, 2007) (citing ISCR Case No. 99-0462 at 4 (App. Bd. May 25, 2000); ISCR Case No. 99-0012 at 4 (App. Bd. Dec. 1, 1999); ISCR Case No. 03-13096 at 4 (App. Bd. Nov. 29, 2005)). A component is whether he maintained contact with his creditors and attempted to negotiate partial payments to keep his debts current.

⁹The Appeal Board has previously explained what constitutes a "good faith" effort to repay overdue creditors or otherwise resolve debts:

In order to qualify for application of [the "good faith" mitigating condition], an applicant must present evidence showing either a good-faith effort to repay overdue creditors or some other good-faith action aimed at resolving the applicant's debts. The Directive does not define the term 'good-faith.' However, the Board has indicated that the concept of good-faith 'requires a showing that a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation.' Accordingly, an applicant must do more than merely show that he or she relied on a legally available option (such as bankruptcy [or statute of limitations]) in order to claim the benefit of [the "good faith" mitigating condition].

(internal citation and footnote omitted) ISCR Case No. 02-30304 at 3 (App. Bd. Apr. 20, 2004) (quoting ISCR Case No. 99-9020 at 5-6 (App. Bd. June 4, 2001)).

SOR, he paid those five SOR debts, even though he felt he should have disputed them. He had been making monthly payments on the remaining two SOR debts for over a year. Although Applicant should have been more diligent and made greater efforts sooner to resolve his delinquent debts, his payment of the remaining two SOR debts in September 2008 are adequate to fully mitigate financial considerations security concerns.

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) the 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.

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. AG ¶ 2(c). For purposes of the whole person analysis in this case, I will presume that none of the mitigating conditions under AG ¶ 20 apply.

There is evidence against mitigating Applicant's conduct. The SOR lists seven debts totalling \$26,000 that were at one time or another delinquent during the last five years. He failed to keep his accounts current and negotiate lesser payments when his income decreased, showing some financial irresponsibility and lack of judgment. His lack of success resolving delinquent debt raises sufficient security concerns to merit further inquiry.

The mitigating evidence under the whole person concept is more substantial. Applicant's record of good employment weighs in his favor. There is no evidence of any security violation. He is a law-abiding citizen. Between 2005 and 2008, he paid off four or five non-SOR debts, including one for \$6,000. His debts are current and his SOR debts are all paid. His mortgage and credit cards are current. The loans on both of the family cars are paid. He currently does not have any delinquent debt. The Appeal Board has addressed a key element in the whole person analysis in financial cases stating:

In evaluating Guideline F cases, the Board has previously noted that the concept of "meaningful track record" necessarily includes evidence of actual debt reduction through payment of debts." However, an applicant is

not required, as a matter of law, to establish that he has paid off each and every debt listed in the SOR. All that is required is that an applicant demonstrate that he has ‘ . . . established a plan to resolve his financial problems and taken significant actions to implement that plan.’ The Judge can reasonably consider the entirety of an applicant’s financial situation and his actions in evaluating the extent to which that applicant’s plan for the reduction of his outstanding indebtedness is credible and realistic. See Directive ¶ E2.2(a) (‘Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination.’) There is no requirement that a plan provide for payments on all outstanding debts simultaneously. Rather, a reasonable plan (and concomitant conduct) may provide for the payment of such debts one at a time. Likewise, there is no requirement that the first debts actually paid in furtherance of a reasonable debt plan be the ones listed in the SOR.

ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) (internal citations omitted). Applicant is a fire fighter and emergency medical technician. He attended college, but did not graduate. He is not sophisticated in the area of finance. He made mistakes, and debts became delinquent. There is, however, simply no reason not to trust him. He has paid his debts. Furthermore, he has established a “meaningful track record” of debt payments. These factors show responsibility, rehabilitation, and mitigation. After weighing the disqualifying and mitigating conditions, and all the facts and circumstances, in the context of the whole person, I conclude he has mitigated the financial considerations security concerns.

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 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
Subparagraphs 1.a to 1.g:	For Applicant

Conclusion

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

Mark W. Harvey
Administrative Judge