



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



In the matter of:)	
)	
-----)	ISCR Case No. 07-16959
SSN: -----)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Michael Lyles, Esquire, Department Counsel

For Applicant: *Pro se*

January 9, 2009

Decision

MARSHALL, Jr., Arthur E., Administrative Judge:

Applicant signed a security clearance application, Standard Form 86 (SF-86), on August 17, 2004. On June 12, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing security concerns regarding financial considerations (Guideline F) arising from 10 specifically identified delinquent debts. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended, and 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.

On July 7, 2008, Applicant signed a notarized document in which he denied all allegations, citing to a viable debt consolidation plan and to direct payments made toward his obligations. A hearing before an Administrative Judge was requested. I was assigned the case and the parties agreed to a hearing date of October 22, 2008. A Notice of Hearing was issued on October 6, 2008, to that effect.

The hearing was timely convened. Department Counsel introduced nine documents, accepted into the record without objection as exhibits (Exs.) 1-9. Aided by his wife, Applicant gave testimony and offered two documents, accepted into the record without objection as Exs. A-B. Applicant's wife and an associate gave testimony on behalf of Applicant. Applicant was given until November 4, 2008, to submit any additional documents for consideration. The transcript (Tr.) was received on October 30, 2008. No additional documents were forwarded for admission and the record was closed on November 7, 2008. Based upon a review of the limited case file and exhibits presented, Applicant carried his burden and mitigated financial considerations security concerns. Clearance is granted.

Findings of Fact

Applicant is a 42-year-old military operations research analyst. He earned a bachelor of science degree while serving in the United States military. Applicant has two young children from a prior marriage that ended in divorce in 2003. From his current marriage, he has a four-year-old child and a 23-year-old step-son.

From 1987 through 1988, Applicant served in the Army National Guard. He then served in the United States Army from 1988 through 2000. He maintained a security clearance throughout this time without incident. He was employed as a network engineer in the private sector after his honorable discharge in December 2000 through August 2002. Up to this point in his career, Applicant had good credit and was in control of his finances.¹

A downturn in the economy following the September 11, 2001, attacks and the subsequent decline in the technology field left Applicant unemployed from August 2002 until June 2003. During that 11 month break in employment, Applicant was divorced and given custody of the two young children from that union. With his period of unemployment being unforeseeably protracted, money became scarce and some pre-existing accounts became delinquent. Committed to not acquiring any additional new debt as the year went by, he ultimately made the decision to prioritize his bills. His top priorities were for current expenses and family medical needs. He kept current on such bills by accepting temporary, part-time assignments.² In June 2003, he was hired for a position requiring a security clearance, and an interim security clearance was granted.³ The economy again impacted his employment when he lost his job in early September 2003. He again resorted to temporary work in order to cover current living and medical expenses and preclude the accumulation of more delinquent debt. As a consequence, some of the bills that became delinquent during his last period of unemployment and some of the debts accrued early on during that same period remain unpaid. Ultimately,

¹ Tr. 28.

² Tr. 27.

³Ex. 9 ("Person Summary," dated October 17, 2008).

he accepted a position with his most recent employer in late February 2004, around the same time the technology sector stabilized.

In addition to Applicant's two periods of unemployment, divorce, and assumption of child custody, Applicant has also been responsible for extraordinary medical expenses. His medical insurance did not cover, or only minimally covered, necessary medical care related to chiropractic and dental problems for his children from his prior marriage. Additionally, Applicant's new wife has had significant health issues in the past couple of years. Problematic dentition led to the removal of many of her teeth, requiring a partial bridge and other dental care not covered by health insurance.⁴ Moreover, she suffers from severe sleep apnea which has demanded extensive medical attention and related expenses. This condition not only contributed to her 2006 heart attack and regular migraines, but it also has affected her ability to work full-time. As well, her 23-year-old son from a prior marriage incurred uncovered medical care debts while he was a dependent. The child suffers from a debilitating form of rheumatoid arthritis.⁵ As a result, that son has found it difficult to work. Applicant and his wife, however, have limited their responsibility for his medical bills to those acquired while he was a dependent. Applicant and his wife agree that they have considered medical care a top priority. In all, they state that they have managed "tens of thousands" of dollars in medical care over the past few years.⁶

Applicant first discovered the full extent of his delinquent debt when he received the SOR in June 2008. By that time, Applicant had already instituted measures to address some of his delinquent accounts. In order to address their debts and still live within their means, Applicant and his wife developed a strict budget which Applicant's wife oversees.⁷ Although Applicant has made it a priority to make sure his children are educated and receiving appropriate medical care, he has explained his financial situation to their children. The elder children are aware that their parents can no longer assist them financially.⁸ Consequently, the eldest two have moved out of the home and live independently, leaving only the four-year-old and a teenager at home.

Unable to work efficiently due to her sleep apnea, Applicant's wife provides daycare for their four-year-old and manages the home. She has sold their non-essential possessions, mostly at flea markets. She also earns \$300-\$500 a month making crafts and infant clothing items. Applicant maintains a part-time job to supplement the family

⁴ Tr. 50.

⁵ Tr. 28. The child was deemed ineligible for disability because he had not worked a sufficient amount of time. Tr. 57.

⁶ Tr. 51. Applicant estimated a minimum of \$10,000 in medical bills was paid out of pocket for family medical expenses between late 2002 and 2007. Tr. 56-57.

⁷ Tr. 52.

⁸ Tr. 51.

coffers.⁹ The couple has downsized to a rental property for housing. Applicant's car is paid for, as are two cars previously purchased for the elder two children. Applicant's wife's truck has a car note upon which he makes timely payments. The vast majority of available income goes to their old debt and current daily living expenses. Entertainment, eating out, and extras are at a minimum.¹⁰

The SOR notes 10 delinquent obligations, amounting to approximately \$19,000.¹¹ With regard to the 10 debts noted in the SOR, Applicant sought advice and guidance from financial counselors. Applicant provided evidence that commenced repayment on four of the accounts through a debt consolidation repayment plan.¹² Through that plan, \$270 is deducted from his personal account for monthly disbursements toward the accounts noted in the SOR under allegations 1.a, 1.c, 1.f, and 1.i.¹³ Additionally, a prior balance of approximately \$2,325 to an account noted at SOR allegation 1.d has been reduced to approximately \$1,424 through direct payments.¹⁴ Moreover, direct payment resumed in the summer of 2008 on the account noted in SOR allegation 1.j with an approximate balance of \$2,257.¹⁵

Applicant has been unsuccessful thus far in addressing the four remaining accounts. He has been unable to find information about the account noted at SOR allegation 1.b for a balance of approximately \$2,081.¹⁶ He is attempting to add the obligation noted at SOR allegation 1.e for approximately \$1,468 to the consolidation plan.¹⁷ Information on the telecommunications accounts noted in the SOR as allegations 1.g and 1.h, for approximately \$425 and \$121, respectively, had only recently been received.¹⁸ Applicant is in the process of adding them to the consolidation plan.¹⁹

⁹ Tr. 45.

¹⁰ Tr. 48 ("I think the last time we went out was for our anniversary.")

¹¹ SOR allegations 1.a – 1.j.

¹² Ex. B (Debt Consolidation Plan Payment Statements for June 30, 2008, through August 30, 2008); Tr. 34, 60-61.

¹³ *Id.*

¹⁴ Ex. 7 (Receipt I, dated May 21, 2008).

¹⁵ Ex. 8 (Receipt II, dated May 21, 2008).

¹⁶ Tr. 36.

¹⁷ Tr. 37.

¹⁸ *Id.*

¹⁹ *Id.*

Applicant's wife concurs that Applicant is actively working to address his debt. She also depicted their economizing efforts and simplified lifestyle. Applicant's former boss spoke highly of Applicant's work efforts and product, noting Applicant was poised for promotion before these financial issues were raised.²⁰ Applicant's former supervisor knows of no reason to doubt Applicant's ability to maintain classified information and has no reason to think Applicant lives beyond his finances.²¹

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. Under AG ¶ 2(c), this 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.

The Government must present evidence to establish controverted facts alleged in the SOR. An applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." ²² The burden of proof is something less than a preponderance of evidence.²³ The ultimate burden of persuasion is on the applicant.²⁴

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

²⁰ Tr. 21.

²¹ Tr. 2-21.

²² See also ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

²³ *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

²⁴ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

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). “The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”²⁵ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information. The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of an applicant.²⁶ It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Analysis

Based upon consideration of the evidence, I find Guideline F (Financial Considerations) to be the most pertinent to the case. Under that guideline, failure or an 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. Conversely, an individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.²⁷ The Regulation sets out several potential disqualifying conditions.

Applicant was unemployed for about 17 out of the 19 months between August 2002 and February 2004. Combined with a divorce, custody of his children, and a number of medical bills which required immediate payment, Applicant acquired debt which became delinquent. Much of that debt remains unpaid to date. Consequently, Financial Considerations Disqualifying Condition (FC DC) AG ¶ 19(a) (“inability or unwillingness to satisfy debts”) and .FC DC AG ¶ 19(c) (“a history of not meeting financial obligations”) apply. With such conditions raised, it is left to Appellant to overcome the case against him and mitigate security concerns.

Shifts in the technology field and market affected Applicant twice and caused him to be unemployed for about 17 months between August 2002 and February 2004.

²⁵ *Id.*

²⁶ Executive Order 10865 § 7.

²⁷ Revised Adjudicative Guideline (AG) ¶ 18.

In the interim, he was divorced and he assumed custody of his two young children. Addressing his debts became more difficult as his period of unemployment dragged on and he became increasingly responsible for a number of unforeseeable and necessary medical bills accrued by family members. Short of financial resources, he devoted his limited available funds to current medical and living expenses. In this manner, he attempted to provide his family with necessities while precluding the accumulation of more delinquent debt. Therefore, Financial Considerations Mitigating Condition (FC MC) AG ¶ 20(b) (“the conditions that resulted in the behavior 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”) applies.

Following his first bout of unemployment, Applicant was given a reprieve with employment that commenced in the middle of 2003. The reprieve, however, was brief. Through no fault of his own, he was unemployed again by September 2003. As a result, he was unable to make any significant progress on his previously acquired delinquent debt or to save for his next period of unemployment. At the time, these two periods were unique to his area of expertise (technology) and were unfortunate interruptions to an otherwise continuous history of employment. During these periods of unemployment, however, he maintained custody of his children, made sure an appropriate education and medical care was provided, and did his best to limit his acquisition of additional delinquent debt. There is no indication that he lived extravagantly or otherwise exercised poor financial judgment. Once he returned to the work force, he and his wife developed a strict budget to guide them and he began repayment on his delinquent debt. Therefore, Financial Considerations Mitigating Condition (FC MC) AG ¶ 20(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”) and FC MC AG ¶ 20(d) (“the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts”) apply.

Applicant has received assistance from a debt consolidator, but he failed to show that he received actual financial counseling. Therefore, FC MC AG ¶ 20(c) (“the person has received or is receiving counseling for the problem and there are clear indications that the problem is being resolved or is under control”) cannot apply.

Through a repayment plan, Applicant is addressing four of the ten accounts at issue. Two additional accounts are being addressed by him through direct payment. Of the remaining four accounts, he is preparing to add three of the accounts to the repayment plan. He has been unable to find information as to the fourth account. Although financial counseling is clearly warranted, there is no evidence it has been received. On the other hand, there is no evidence that Applicant’s acquisition of delinquent debt was the result of poor self-control, lack of judgment, or an unwillingness to abide by rules and regulations, nor is there evidence that he is unreliable or untrustworthy. Applicant’s periods of unemployment were both recent and significant. By showing his efforts to address his delinquent debts through his debt consolidation

experts and the efforts he has done independently, Applicant has demonstrated his desire and ability to address his debts.

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." Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a public trust position 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 the facts and circumstances surrounding this case, as well as the "whole person" factors. Applicant is a mature and educated man with significant work experience. The record shows that he applies diligence in both his professional and personal life.

Through no fault of his own, Applicant experienced two significant and protracted periods of unemployment. Proactively, he resorted to temporary and part-time jobs to lessen the financial burden on his family and to prevent the acquisition of further delinquent debt. Today, Applicant continues with a part-time job. His wife continues to provide daycare and earns an additional \$300-\$500 per month for her crafts and handiwork. Applicant responsibly saw to it that his eldest child and his wife's eldest child were educated before they left the household to become self-supporting. Applicant's wife has sold off their non-essential possessions. The couple has downsized their living situation. Through these efforts, Applicant defrayed both his family's daily expenses and immediate medical expenses, areas which he considered to be priorities both during the lean times and today. All of these efforts helped limit Applicant's acquisition of new debt.

The couple has no on-going obligations except for monthly housing expenses and a note on one truck. They live comfortably, albeit within a strict budget. Applicant started repayment on two of the delinquent accounts before receiving the SOR; he has since started repayment on six of the ten accounts at issue. Three more accounts have been verified and are poised for inclusion on his repayment plan. Only one account, of which he has been unsuccessful in his efforts to verify the account information and balance, remains unaddressed.

Applicant's acquisition of debt was not the result of poor self-control, lack of judgment, or an unwillingness to abide by rules and regulations. Based on the facts regarding his lifestyle and his periods of unemployment, there is no indication that his debt raises questions about his reliability, trustworthiness, or ability to protect classified information. Although he still owes significant debt, he has made appropriate strides to address that debt and instituted organized repayments on the majority of the accounts. In light of these financial considerations and the "whole person" analysis, I find that Applicant has mitigated financial considerations security concerns.

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
Subparagraph 1.f:	For Applicant
Subparagraph 1.g:	For Applicant
Subparagraph 1.h:	For Applicant
Subparagraph 1.i:	For Applicant
Subparagraph 1.j:	For Applicant

Conclusion

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

ARTHUR E. MARSHALL, JR.
Administrative Judge