



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



In the matter of:)	
)	
)	ISCR Case No. 07-18577
SSN:)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Julie Edmunds, Esquire, Department Counsel
For Applicant: Pro Se

July 10, 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 February 15, 2007. On April 9, 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 April 14, 2008. He submitted a notarized, written response to the SOR allegations on April 28, 2008, and requested a decision on the written record in lieu of a hearing.

Department Counsel prepared a File of Relevant Material (FORM) and mailed Applicant a complete copy on May 14, 2008. Applicant received the FORM on May 28, 2008. He had 30 days from receipt of the FORM to file objections and submit material in refutation, extenuation, or mitigation. He submitted a response and additional evidence. DOHA assigned this case to me on June 23, 2008. The government submitted seven exhibits, which have been marked as Item 1-7 and admitted into the record.

Findings of Fact

In his Answer to the SOR, dated April 28, 2008, Applicant admitted the factual allegations in ¶¶ 1.a-1.j, with explanations. He also provided additional information to support his request for eligibility for a security clearance.¹

Applicant, who is 52 years old, works as an instructor for a Department of Defense contractor. He began his employment with his employer in November 2006. Applicant served on active duty in the United States Army for over 22 years. While in the Army, he held a top secret clearance without incident. He also received many awards, and retired as a sergeant first class (pay grade E-7). Applicant and his wife married in December 1979 and have two children.²

After retiring from the Army, Applicant initially attended school and worked in sales. In March 1999, he obtained employment as a computer systems network administrator for a local company. In 2004, this company decided to relocate to another city. At first, Applicant planned to move with the company to the new location. However, at the same time, his wife started showing signs of a medical problem. Although she sought medical care, the doctors could not identify her illness. His wife was unable to continue working as a teacher's assistant, could not drive, and could not be left alone for any period of time (She would try to cook and fires would erupt in the kitchen). Applicant's employment with this company ended in 2004 when it relocated. He chose not to move; instead, he remained to care for his wife as her mental state had deteriorated significantly.³

While working as a network administrator, Applicant started his own business, which focused on buying and selling houses. He used his personal credit cards to finance the business.⁴

¹Item 3 (Applicant's response to the SOR), at 1-2; Attachments to rebuttal.

²Item 4 (Applicant's security clearance application, dated February 15, 2007) at 1-4, 6.

³*Id.* at 2; Item 3, *supra* note 1, at 2-5.

⁴Item 3, *supra* note 1, at 2.

From June 2004 until he accepted his current position in November 2006, Applicant worked as a custodian, cut lawns, fixed computers, and performed any other odd jobs where he could earn money. At the same time, he drove his wife to a variety of medical appointments to determine the cause of her health issues. Doctors have determined what her medical problem is and have placed her on medication. Her medical condition has improved and she is more self-sufficient, but still not working. During this time, Applicant's military retirement pay of \$1,200 a month was the family's primary source of income. He paid his monthly mortgage of \$928 and utilities with this money. His odd jobs paid the rest of the family's daily living expenses, but provided few additional funds to pay his debts.⁵

Applicant provided a copy of his credit report for August 2005. The report reflects a very good payment history on his debts with almost all debts paid in a timely fashion and one or two debts 30 days late once. In July 2005, he sought the assistance of a credit counseling agency. He developed a repayment plan, which required him to pay \$342 a month to three creditors. He made the monthly payment for five months, but stopped because he lacked sufficient income to continue with the agreed upon payments.⁶

In December 2007, Applicant consulted with an attorney about filing for bankruptcy. Before the attorney could proceed with filing the necessary papers, Applicant had to pay him at least \$1,125 as set forth in the Bankruptcy rules. He also had to complete a credit counseling program, which he did. Applicant paid the fee and the attorney filed a Petition for Chapter 7 bankruptcy on June 6, 2008. His bankruptcy petition is proceeding through the courts.⁷

Applicant's gross income from his current job is \$3,520 a month and his net pay is \$2,324 a month. His gross monthly retirement income is \$1,700 a month and his net monthly retirement income is \$1,333 a month for a total net monthly income of \$3,657 a month. His monthly expenses, including mortgages, utilities, food, and car expenses, total \$3,259, leaving approximately \$400 a month.

Applicant paid the debt listed in ¶ 1.a of the SOR on June 4, 2008. Except for the foreclosure, the remaining debts listed in the SOR are included in his bankruptcy. The two credit reports submitted by the government reflect a zero balance on the foreclosure debt listed in the reports. Applicant believes that this property was sold in November 2006 and has provided documentation which supports his position.⁸

⁵*Id.*

⁶Rebuttal, Item I (A); Item I (b); Item VIII (A) and (b).

⁷Item 6 (Supplemental information and interrogatory answers) at 9-14; Rebuttal, Item V (A).

⁸Item 5 (Credit reports, dated March 19, 2008) at 3; Item 7 (Credit report, dated January 4, 2008) at 3; Rebuttal - Items II (A), III (A), V (A) at 3.

Applicant's former employer praised his work skills and described him as a person of integrity, character, and high moral standing.⁹

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 for 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.

⁹Item 3, *supra* note 1, at 5-6.

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 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(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 delinquent debt and was unable to pay some obligations for a period of time. 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 in 2005 and about 20% of his debt remains unpaid, thus it is recent. This mitigating condition is not raised.

Under AG ¶ 20(b), mitigation may occur when “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.” Applicant’s financial problems arose when his wife developed medical problems which doctors could not identify for some period of time. When her condition continued to deteriorate, he could not relocate with his company. Instead, he took care of his wife and pursued medical treatment for her. He worked various odd jobs to help pay the family’s monthly expenses because his retirement income was insufficient to meet all their monthly expenses. He has filed for bankruptcy under Chapter 7 to eliminate his remaining old debts. He acted reasonably under the circumstances he faced in 2004 and has mitigated the government’s security concerns.

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). Applicant sought credit counseling in 2005 in an effort to gain control over his debts. He made five payments under the repayment plan developed through the credit counselors, but stopped the payments because he lacked sufficient income to continue with the payments. This mitigating condition partially applies.

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 paid his most recent, small debt and established that the foreclosure sale provided the creditor with sufficient funds to pay the mortgage debt. He chose to file bankruptcy as a means to resolve his remaining old, outstanding debts. I conclude this potentially mitigating condition has some applicability. The remaining mitigating conditions are not applicable in this case.

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 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 first began when his wife developed an unidentified and thus, untreated illness in 2004, which forced him to refuse an offer from his employer to relocate to another city. At the same time, his wife’s illness forced her to stop working. As a result, he lost two-thirds of his monthly household income. His military retirement provided enough income to pay his mortgage and utilities, but nothing else. He worked various odd jobs, while caring for his wife, who could not be left alone for long periods of time, and seeking medical care for her. This erratic income maintained other monthly household expenses, but did not provide additional funds to pay old debts, some of which he incurred because he started

a business. His inability to pay the business-related debts is directly related to his wife's illness and the loss of income in his household. He attempted to repay his debts in 2005, but lacked sufficient funds to continue with the payment plan he developed.

Applicant recently filed bankruptcy, which will eliminate his old debts. While his budget indicates that he has some money to pay his remaining debts, his listed expenses do not account for recent and significant increases in normal everyday household expenses. These increased costs will most likely deplete the \$400 remaining each a month. Had Applicant used the bankruptcy filing fee towards repayment of his old debts, this money would have reduced his overall debt by less than 5%. He made a choice on how to resolve his unpaid debts. He deemed bankruptcy as the best, under the facts of this case, for his family. The filing for bankruptcy is not an automatic reason for denial of a security clearance; rather, it is a factor I must consider and I have.

Except for the period of time from 2004 to 2006, Applicant has always paid his bills and maintained excellent credit. He lives within his financial means, even though his wife still does not work. His debts cannot be a source of improper pressure or duress because his overall financial history reflects fiscal responsibility, not irresponsibility. Of course, the issue is not simply whether all his debts are resolved – it is whether his financial circumstances raise concerns about his fitness to hold a security clearance. While some debts remain unpaid because his bankruptcy action has not been completed, this fact is insufficient to raise security concerns as his major debt, the foreclosure, is resolved. With the exception of a two-year period of time, over the last 30 years, Applicant has always managed his finances in a prudent and fiscally responsible manner.

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

Subparagraph 1.i:
Subparagraph 1.j:

For Applicant
For 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.

MARY E. HENRY
Administrative Judge