



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



In the matter of:)	
)	
SSN:)	ISCR Case No. 08-00113
)	
Applicant for Security Clearance)	

Appearances

For Government: Daniel F. Crowley, Esquire, Department Counsel
For Applicant: Pro Se

November 13, 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 is granted.

Applicant submitted his Security Clearance Application (SF 86), on May 14, 2005. On June 20, 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 June 30, 2008. He submitted a notarized, written response to the SOR allegations on July 24, 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 September 16, 2008. Applicant received the FORM on September 24, 2008. He had 30 days from receipt of the FORM to file objections and submit material in refutation, extenuation, or mitigation. He timely submitted a response and additional evidence. DOHA assigned this case to me on November 5, 2008. The government submitted eight exhibits, which have been marked as Items 1-8 and admitted into the record. Applicant's response to the SOR has been marked and admitted as Item 2. His response and attachments to the FORM are admitted into evidence.

Findings of Fact

In his Answer to the SOR, dated June 30, 2008, Applicant admitted the factual allegations in ¶¶ 1.a through 1.d of the SOR, with explanations. He denied the factual allegations in ¶¶ 1.e and 1.f of the SOR. He also provided additional information to support his request for eligibility for a security clearance.

Applicant, who is 53 years old, works as an aircraft mechanic for a Department of Defense contractor. He has worked for his employer for more than 11 years. He has held a clearance for the last 10 years, without any violations.¹

Applicant and his wife have been married for 34 years. He has three daughters, ages 32, 31 and 26. He served in the United States Army from 1975 until 1978. His wife is disabled from working, which has resulted in a reduction in family income. He complies with the laws and rules of society.²

Applicant's gross monthly income is \$3,986. His net monthly income is \$2,237 and his wife's disability income is \$755 for a total monthly income of \$2,992. His estimated monthly expenses total \$3,094. This amount includes estimates for food, utilities and car expenses which vary on a monthly basis. I conclude that he is able to meet his monthly expenses every month.³

The SOR identifies six debts totaling \$14,096. Applicant settled and paid the \$256 debt listed in allegation 1.a. for \$145.92 in July 2008. The unpaid cell phone bill identified in allegation 1.b (\$627) and 1.e (\$546) of the SOR are the same account. Applicant paid \$313.86 on the \$627 bill and has a payment plan for the remainder of

¹Item 4 (Applicant's security clearance application (SF-86)) at 1, 5.

²*Id.* at 2-4

³Item 7 (Interrogatories and answers, dated March 28, 2008) at 5.

this bill. Likewise, after determining he owed the \$476 debt identified in SOR allegation 1.f, Applicant established a payment plan and recently paid \$200 on this debt. The two largest debts, \$8579, and \$3612 remain unpaid.⁴

The 2005 credit report reflects that Applicant regularly paid his monthly payment on the voluntary car repossession debt identified in allegation 1.c. He experienced mechanical problems with the car when it was three years old. The repairs were expensive; the company refused to pay for the repairs; and he could not afford them. He voluntarily returned the car and as a result the debt was incurred. He has indicated that when his smaller debts are paid, he can begin paying this debt.⁵

The \$3,612 debt (SOR allegation 1.d) relates to a credit card, which became past due in November 2000 and remains unpaid. Applicant has been unable to locate or contact this creditor to discuss paying the debt. The most recent credit report does not reflect this debt and the 2007 credit report does not contain any contact information regarding this account, although the 2005 credit report does show contact information.⁶

The record contains three credit reports. The 2005 credit report (Item 5) shows 37 credit entries, of which three are past due or unpaid (allegations 1.a, 1.b and 1.c in the SOR) and totaled less than \$10,000. This report also indicates that Applicant had been 30 to 60 days behind in his monthly payments on seven debts in the past, but that four of these debts, which range for \$630 to a \$23,000 car loan were paid by September 2005. The payments on the three other debts were current. The report shows that Applicant paid 27 debts, ranging from \$190 to a \$8,900 car loan and totaling approximately \$45,000, as agreed or satisfactorily. By 2005, Applicant had paid 24 of these 27 debts in full. The three remaining debts totaled about \$1,000.⁷

The 2007 credit report (Item 6) lists all the debts alleged in the SOR. Outside of the SOR debts, this credit report reflects that Applicant timely paid, as agreed, his monthly mortgage, two car loans which totaled \$25,000, a \$6,000 recreational debt, and three small debts, which totaled \$2,850. The credit report shows that he paid 57 debts in full. These debts ranged from \$190 to \$9,000 and included two car loans, nine bank notes and 24 small loans. He also paid in full an \$8,500 installment loan and a \$23,000 car loan. The 2008 credit report (Item 8) lists three of the SOR debts (allegations 1.a, 1.b and 1.c) which total less than \$10,000. It also reflects that Applicant timely pays his

⁴Item 2, Applicant's response to the SOR; Response to form, October 2008.

⁵Item 7, *supra* note 3, at 6.

⁶Item 5 (Credit report, dated September 13, 2005) at 3; Item 6 (Credit report, dated March 10, 2007) at 4; Item 8 (Credit report, dated May 21, 2008).

⁷Item 5, *supra* note 6.

mortgage, two car loans (\$17,000 and \$8,000) and a small loan. This credit report contains 39 entries which are closed or paid accounts with a zero balance.⁸

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.

⁸Item 6, *supra* note 6; Item 8, *supra* note 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 some 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.” Given that Applicant’s debts are generally more recent, this mitigation 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.” Applicant’s financial problems arose when his wife became disabled from working, causing a loss in household income. They experienced difficulty making all their monthly payments in a timely fashion, but they were able to return all of their then existing debts to current status without filing for bankruptcy or refinancing. I find this mitigating condition is partially applicable in this case.

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). While Applicant has not sought financial

counseling, the credit reports reflect that his finances are under control. He pays his current debts as required and agreed. Over the years, he timely paid the majority of his debt. Although he has not paid an old credit card debt and the remaining balance owed on the car he voluntarily returned to the car dealer, an overall review of his credit reports indicates that he lives within his financial means. He does not use credit cards to excess or fail to pay the majority of his loans, and he regularly pays his monthly living expenses. He has resolved or is resolving his smaller debts. This mitigating condition 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.” Despite his limited resources, Applicant has resolved one small debt and is paying two smaller debts. He has attempted to contact the credit card company without success. Although he has not made any effort to resolve the voluntary car repossession debt, he has made a good faith effort to resolve his four other debts. I conclude this mitigating condition applies.⁹

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.

The mitigating evidence under the whole person concept is more substantial. In reaching a conclusion, I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant’s three-year-old car developed significant mechanical problems in 2006. The car dealer and manufacturer refused to fix the problem and Applicant could not afford the repairs. He decided to return the car to the dealer and has since learned that he still owes a significant amount of money on the car loan. Due to his limited finances, he has not

⁹AG ¶¶ 20 (e) and 20 (f) are not raised in this case.

developed a repayment plan for this debt, but has indicated that once he resolves smaller debts, he will work on repayment of this debt.

Applicant's financial problems began when his wife became disabled from working, causing a loss in household income. Her disability resulted in overdue bills for a period of time. Nonetheless, Applicant and his wife apportioned their reduced income to make up the missed payments and returned most of the debts to current payment status. Applicant has made an effort to resolve the remaining debts listed in the SOR. The two cell phone debts listed are the same. He has paid 50% of this debt. He settled another small debt and paid approximately 45% on the remaining small debt. The creditor for the credit card debt never reduced it to a judgment and the Statute of Limitations has expired, making it uncollectible. (See AG ¶ 2(a)(8).) Thus, this debt cannot be a source of improper pressure or duress. Even so, Applicant made an effort to locate the creditor without success. He accumulated debt due to circumstances largely beyond his control when his wife could no longer work. Despite the loss of her income, Applicant did not allow the majority of his bills to become unpaid debts. Rather, he paid his monthly bills and continues to do so. Although he has little extra money each month, he has repaid or is repaying his small debts. He has a stable home life. Because he has a very good track record for paying his bills, his two unresolved debts do not raise security concerns. (See AG ¶ 2(a)(6).) 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. While some debts remain unpaid, they 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
Subparagraph 1.f:	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