



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



In the matter of:)	
)	
-----)	ISCR Case No. 08-00994
SSN: -----)	
)	
Applicant for Security Clearance)	

Appearances

For Government: D. Michael Lyles, Esq., Department Counsel

For Applicant: *Pro se*

February 26, 2009

Decision

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

Applicant completed Electronic Questionnaires for Investigations Processing (e-QIP) which were certified on November 7, 2007. On July 29, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) stating security concerns under Guideline F (Financial Considerations) and Guideline E (Personal Conduct). 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 for SORs issued after September 1, 2006.

In a response notarized on August 22, 2008, Applicant constructively admitted three of nine allegations regarding finances and denied all allegations raised with regard to personal conduct. DOHA received Applicant's request to have the matter heard before an Administrative Judge on October 2, 2008. I was assigned the case that

same day. Applicant and Department Counsel agreed to a hearing date of October 23, 2008. A Notice of Hearing to that effect was issued on October 6, 2008.

The hearing was timely convened. As a preliminary matter an Amendment to the SOR was received, signed by Department Counsel and Applicant. By that amendment, the Government revised allegations 1.f., 1.g., 1.h., 2.a., 2.b., and 2.c.. Applicant denied the amended allegations. Allegations 1.i., 2.d., and 2.e. were deleted. During the hearing, Department Counsel introduced six documents which were admitted into the record as exhibits (Exs.) 1-6 without objection. Applicant introduced six documents which were admitted into the record as Exs. A-F without objection. Applicant testified on his own behalf; no witnesses appeared. The transcript (Tr.) was received on October 31, 2008, and the record was closed on November 6, 2008. Based upon a review of the case file, exhibits, and testimony, security clearance is granted.

Findings of Fact

Applicant is a 50-year-old technical consultant, performing networking and telephonic installation for a government contractor. He has a high school diploma and attended two years of post-secondary technical school for electronics. He is married and has three minor daughters.

In the mid-1990s, Applicant sold the family home for a smaller house they intended to refurbish. During the renovations, they planned on living in a mobile home situated on the same lot.¹ Expenses on the home remodeling far exceeded what they had expected. Meanwhile, Applicant's elderly mother-in-law's health was in decline and needed assistance. She came to live with the family for a year before her condition necessitated a hospital stay and professional nursing care. A year after her arrival, she passed away. Applicant's wife developed a crippling hand disorder that precluded her from working as a waitress, which started her on a protracted period of unemployment.² Then the family was informed that they could have only one dwelling per lot. Applicant had to buy a new lot on which to move the mobile home. As a result of this conflux of problems, bills continued to arrive and become delinquent. Applicant sought Chapter 7 bankruptcy protection in September 1997.

In 2004, Applicant and his wife bought a new home.³ Shortly thereafter, Applicant's sister-in-law needed major medical treatment. She and her son moved in with Applicant's family shortly after they moved into the house.⁴ A person with considerable disabilities, the sister-in-law relied upon her son for transportation as she received essential medical treatments in a nearby hospital. Applicant and his wife

¹ Tr. 43.

² Tr. 40.

³ Compare Ex. 1 (Security Clearance Application) at 8; Tr. 42.

⁴ Tr. 44.

helped care and provide for her during her stay. They stayed with Applicant and his family for about six months. She died shortly after leaving Applicant's home. Meanwhile, Applicant was faced with a mortgage for which he should never have qualified.⁵ He almost immediately began having difficulty making the house payments. He also had a van requiring large monthly payments.⁶ "And we just had more bills than we could pay and stay in the house."⁷ Applicant became unable to meet his obligations. He filed for Chapter 13 bankruptcy protection in 2005, on which regular payments have been made.

In November 2007, Applicant completed a security clearance application. He did so without first consulting a recent credit report.⁸ He believed all of his delinquent debts had been included in his bankruptcy. On the application, at Section 27, he fully detailed both the 1997 and 2005 bankruptcy filings. In doing so, he constructively gave notice that he had considerably delinquent debts within the past seven years of his application.⁹ However, in answering the following sections, Sections 28a and 28b,¹⁰ he answered "No" to questions as to whether he had been over 180 days delinquent on any debts in the prior seven years or was currently delinquent on any debts over 90 days.¹¹ He further testified that he believed his answers to be true.

In sum, Applicant filed bankruptcy twice, Chapter 7 in 1997, and Chapter 13 in 2005.¹² Applicant's credit bureau report shows a third bankruptcy, from 2001, but it is an erroneous entry for a bankruptcy filed by his wife.¹³ The Government alleges that despite the bankruptcies, Applicant owes a cumulative delinquent debt of \$1,943¹⁴: \$74 to a credit union, an amount which was charged off,¹⁵ \$100 to a creditor, which was

⁵ Tr. 42.

⁶ *Id.*

⁷ *Id.*

⁸ Tr. 53.

⁹ Ex. 1 (Security Clearance Application), at 25-26.

¹⁰ The original SOR incorrectly cites to these questions as being Sections 38 and 39. The amended SOR incorrectly refers to Section 28b as Section 29.

¹¹ *Id.* at 26.

¹² SOR allegations 1.c. and 1.a., respectively. Included in the Chapter 13 filing (SOR allegation 1.a.) was a \$700 obligation to a furniture company, noted in the SOR under allegation 1.d. See Tr. 35.

¹³ Ex. A (Wife's bankruptcy discharge, dated May 15, 2001); Tr.24-26.

¹⁴ Excluding the debt noted in SOR allegation 1.d. and conceded by the Government as being included in the Chapter 13 bankruptcy filing.

¹⁵ SOR allegation 1.e.

turned over for collection,¹⁶ \$50 to a creditor, which was turned over for collection,¹⁷ and \$1,719 on an account since placed for collection as a bad debt.¹⁸

Applicant denied the debts alleged. As proof, Applicant introduced Exhibit B, Notice of Claims Filed in the Chapter 13 bankruptcy, which shows that the obligations for \$100 (SOR allegation 1.f., as revised) and \$50 (SOR allegation 1.g., as revised) were included in that filing. He also introduced Exhibit C, an October 22, 2008, credit report, indicating that the account noted at SOR allegation 1.h, as revised, is now at a zero balance by virtue of the Chapter 13 bankruptcy.¹⁹ The account balance of \$74, which apparently failed to be included in the bankruptcy, remains unpaid.²⁰

Late in 2007, Applicant's wife was in a car accident which damaged her foot and caused deep thrombosis. Immediate surgery was required. As a result, she has been unable to return to work. Aside from that impact on the family coffers, Applicant has no large debt. His wife is currently awaiting qualification for unemployment assistance based on her disability. While she waits out that protracted process, she is contemplating finding some form of work she can perform. If his wife can return to work or when she is finally eligible for Social Security disability payments, the family will be doing much better financially.²¹ They have no car payments and Applicant nets approximately \$3,250 per month in take-home pay.²² With three girls in public school, ranging in age between 10 and 17, little is left at the end of the month after all living expenses and extras are paid. Applicant currently has three credit cards. None of the balances ever exceed \$500. Two are currently 30 days past due for amounts between \$230 and \$222.²³ On the other hand, Applicant is generally keeping up with his debts and living within his income. The family lives simply, but comfortably.

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

¹⁶ SOR allegation 1.f. (as amended).

¹⁷ SOR allegation 1.g. (as amended).

¹⁸ SOR allegation 1.h. (as amended).

¹⁹ Tr. 33.

²⁰ Tr. 39. Appellant was given 14 days following the hearing to submit to Department Counsel any evidence of payment or inclusion in the bankruptcy, but no further documents were timely received.

²¹ Tr. 46.

²² Tr. 48.

²³ Tr. 55-56.

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. . . ." ²⁴ The burden of proof is something less than a preponderance of evidence. ²⁵ The ultimate burden of persuasion is on the applicant. ²⁶

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). "The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials."²⁷ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive

²⁴ See *also* ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

²⁵ *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

²⁶ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

²⁷ *Id.*

information.²⁸ The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of an applicant.²⁹ 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.

Based upon consideration of the evidence, I find Guideline F (Financial Considerations) to be the most pertinent to the case. Conditions pertaining to this adjudicative guideline that could raise a security concern and may be disqualifying, as well as those which would mitigate such concerns, are set forth and discussed below.

Analysis

GUIDELINE F

Under Guideline F, 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. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.³⁰ The Regulation sets out several potentially disqualifying conditions under this guideline.

In 1997 and in 2005, Applicant's expenses exceeded his income, debts became delinquent, and he was forced to resort to bankruptcy protection. Today, one minor debt for \$74 appears to remain delinquent and unpaid. Consequently, Financial Considerations Disqualifying Condition (FC DC) AG ¶ 19(c) ("a history of not meeting financial obligations") and FC DC AG ¶ 19(a) ("inability or unwillingness to satisfy debts") apply. With such conditions raised, the burden shifts to Appellant to overcome the case against him and mitigate security concerns.

Applicant bought a modest house in the 1990s he wished to remodel. Expenses toward that project exceeded his expectations, and a mobile home on the property had to be moved and a new lot purchased for its placement. While both situations arose unexpectedly, neither was necessarily unforeseeable had more diligence been exercised. What was unforeseeable and beyond Applicant's control, however, was his wife's inability to work due to a crippling hand injury and his mother-in-law's need of end-term care. Similarly, with regard to the facts leading to the 2005 bankruptcy, Applicant realizes the mortgage he undertook was more than he could afford, especially when he had an expensive vehicle note. To the extent he and his wife provided end-care assistance to his sister-in-law, however, those expenses were unforeseeable. Consequently, with regard to his wife's injury and his in-laws' final illnesses, Financial

²⁸ *Id.*

²⁹ Executive Order 10865 § 7.

³⁰ Revised Adjudicative Guideline (AG) ¶ 18.

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.

Applicant provided no evidence that he has received financial counseling. He has, however, demonstrated that all the debts noted in the amended SOR but one – a delinquent debt for \$74 – have been satisfied. It is troublesome, however, that so minor a debt has not been satisfied in the months since he received the SOR. Also troubling is the fact that two of his credit cards are currently over 30 days past due. Conversely, Applicant has met his responsibilities with the bankruptcy court. He has realistically adjusted his budget to account for his wife’s current disability and unemployment and is contemplating options for when she either returns to work or receives disability. While it cannot be said Applicant’s financial problems are under control, he has demonstrated that considerable progress has been made toward resolving the problem. Therefore, FC MC, AG ¶ 20(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”) applies. None of the other mitigating conditions, however, apply.

GUIDELINE E

Under this guideline, examination is made of an Applicant’s reliability, trustworthiness, and ability to protect classified information based on his past personal conduct and actions. 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. Based on the amended SOR, Department Counsel argues that Applicant actively falsified material facts on his security clearance application when he denied he had debts currently delinquent over 90 days. To support this claim, he points to the debts noted at allegations 1.d. through 1.h.

Applicant denies he falsely answered any application questions. Not having first consulted his most recent credit report, he had no idea what his credit report revealed. However, he felt sure that any delinquent accounts had been addressed through the 2005 bankruptcy. That bankruptcy was duly described on the security clearance application on page 28 at the end of Section 27 – inches above his denials regarding delinquent debts in Sections 28a and b.

Applicant apparently overlooked the \$74 debt when he was preparing his bankruptcy petition, just as he missed it when he completed his application by not first checking his credit report. Given the nominal sum at issue, Applicant’s highly credible testimony, and his success in demonstrating that the other four accounts alleged were, in fact, included in his bankruptcy, it is difficult to conclude Applicant deliberately falsified facts simply to conceal one minor outstanding debt. I find no falsity or concealment was committed. Lacking that element, a Personal Conduct Disqualifying Condition cannot be sustained. Applicant’s evidence and explanation mitigate personal conduct 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) 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 all the facts and circumstances surrounding this case, as well as the "whole person" factors. Applicant is a forthright and mature man who is quick to accept blame for poor business choices, yet capable of both articulating and documenting his efforts in managing his finances. While he found himself over-extended in the 1990s due to a variety of factors, the story behind his most recent bankruptcy is an all too familiar tale in this recent economic climate. He was extended a mortgage which grew beyond his means, other accounts suffered, and his personal finances became undone. He has complied with the terms of the bankruptcy court. Applicant has made great strides to modify and monitor his family's expenditures. He is committed to holding his family to their budget.

The Government's initial SOR was revised, with many prior allegations withdrawn to conform with the evidence. The evidence, however, showed this Applicant has only twice sought bankruptcy protection, not thrice. Of several alleged delinquent debts amounting to about \$2,500, he showed that all but one \$74 debt was addressed in his 2005 bankruptcy petition. Applicant did well in addressing those allegations head on.

What remains is an examination of Applicant today. He has no large or unwieldy debts, nor does he have any car note payments. He is currently budgeting within his means and comfortably providing for his family, although little is left for extras. He is able to meet the daily needs of both his spouse and three maturing girls on his income. Family resources should be much improved when his wife's disability or work situation is resolved. While two credit cards are just over 30 days late, his use of credit is minor. It would be easy to contemplate various future scenarios as to his future solvency or insolvency, particularly given the current economic climate, but this process demands that I avoid drawing inferences grounded on mere speculation or conjecture. The simple fact is that at present, Applicant is living within his means with only a \$74 delinquent debt outstanding. The meager amount of Applicant's unresolved delinquent debt is not large enough to be of security concern.

Moreover, there is no indication that Applicant committed a falsity or otherwise tried to conceal the existence of the \$74 which, at the time of the hearing, remained unresolved. Given his candid testimony and other factors previously discussed, personal conduct security concerns are similarly mitigated. With security concerns thus mitigated, I conclude it is clearly consistent with national security to grant Applicant a security clearance. Clearance is granted.

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

Paragraph 2, Guideline E: FOR APPLICANT

Subparagraph 2.a:	For Applicant
Subparagraph 2.b:	For Applicant
Subparagraph 2.c:	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.

ARTHUR E. MARSHALL, JR.
Administrative Judge