



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



In the matter of:)	
)	
)	ISCR Case No. 08-01197
SSN:)	
)	
Applicant for Security Clearance)	

Appearances

For Government: James F. Duffy, Esquire, Department Counsel
For Applicant: Pro Se

August 12, 2009

Decision

HOGAN, Erin C., Administrative Judge:

Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP), on July 12, 2007. On December 5, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline F, Financial Considerations. 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.

On December 29, 2008, Applicant answered the SOR and requested a hearing before an administrative judge. Department Counsel was ready to proceed on February 6, 2009. The case was assigned to another administrative judge on February 10, 2009. The case was delayed because Applicant works at a remote location and was not available until July 2009. The case was transferred to me on June 1, 2009. On June 18, 2009, a Notice of Hearing was issued, scheduling the hearing for July 13, 2009. The case was heard on that date. The Government offered three exhibits which were

admitted as Government Exhibits (Gov) 1 – 3 without objection. Applicant and his wife testified and offered seven exhibits which were marked as Applicant Exhibits (AE) A - G. The record was held open until July 27, 2009 to allow Applicant to submit additional documents. Applicant timely submitted a two-page document that was admitted as AE H. Department Counsel's comments pertaining to the document are marked as Hearing Exhibit (HE) I. The transcript was received on July 30, 2009. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

Findings of Fact

In his Answer to the SOR, Applicant admits all of the SOR allegations.

Applicant is a 44-year-old employee of a Department of Defense contractor seeking a security clearance. He has been employed with the defense contractor since October 2004. Prior to this position, he served on active duty in the United States Air Force, retiring as a Master Sergeant after 22 years of honorable service. He has held a SECRET clearance for 26 years. He is married and has two sons, ages 20 and 23. (Tr at 4-5, 8, 27; Gov 1)

On July 12, 2007, Applicant completed an Electronic Questionnaire for Investigations Processing (e-QIP). (Gov 1) A subsequent background investigation confirmed that Applicant had the following delinquent accounts: a \$7,607 credit card account placed for collection in May 2008 (SOR ¶ 1.a: Gov 2 at 2, 6, 19; Gov 3 at 2); a \$4,757 credit card account that was placed for collection in April 2008 (SOR ¶ 1.b: Gov 2 at 2, 19; Gov 3 at 2); a \$19,490 second mortgage foreclosure that was charged off in April 2008 (SOR ¶ 1.c: Gov 3 at 2; Gov 2 at 2, 10-18, 20); and a \$7,891 credit card account that was placed for collection in May 2008 (SOR ¶ 1.d: Gov 2 at 2, 7, 20; Gov 3 at 2).

Applicant works at an isolated location in the northern hemisphere. He works for ten weeks and then is off for five weeks. (Tr at 5) His wife handles the household finances. In 1994, Applicant and his wife purchased a home while he was still on active duty. They lived in the house until September 2006, when they moved into a new home they had built. Applicant's wife testified that all of her friends were building new homes and had no problems selling their homes prior to moving into the new homes. She contacted Applicant in early 2006 to ask if they could build a new home. Applicant told her that he had no problem with building a new home as long as they sold their current home. The home they were building would not be ready for six months so Applicant's wife thought that they would have no trouble selling their old home. (Tr at 22-25; Gov 2 at 2)

In September 2006, Applicant and his wife moved into their new home. Their old home did not sell. They became responsible for two mortgages. They attempted to rent out their old home but were unable to find renters. They paid both mortgages for a period of six months, occasionally charging the mortgage payments on their credit

cards. In March 2007, they could no longer afford to make the mortgage payments. In February 2008, their old home was foreclosed. The home had two mortgages. (Tr at 25, 32-34, 46; Gov 2 at 5)

Around late December 2006, Applicant's oldest son was arrested. He was incarcerated and his bond was initially set at \$100,000. It was subsequently reduced to \$75,000, but they had to pay ten percent of the bond to get him out of jail. He was arrested again in June 2007. His bond was set at \$10,000 and Applicant had to pay \$1,000 to get him out of jail. His son went into a rehabilitation facility. He was involuntarily released from the rehabilitation facility and got into further trouble, and is currently in jail. Applicant and his wife have spent about \$12,000 in bail money for their son's arrests. (Tr at 25-27) Their youngest son attends college. They provide him money for expenses such as books. (Tr at 27)

Applicant and his wife were unable to keep up with their finances as a result of being responsible for two mortgages and the expenses paid related to their son's repeated criminal problems. Applicant's wife does not work. (Tr at 34, 46; Gov 2 at 5)

Applicant has been working on resolving his delinquent debts for at least a year. In December 2008, he consulted with a judge advocate about how to resolve his delinquent debts. The status of the delinquent debts are:

SOR ¶ 1.a, \$7,607 delinquent credit card account placed for collection: In January 2009, Applicant agreed to pay the collection agency \$100 a month. Timely payments have been made in accordance with the agreement. (Tr at 16, 21-22, 32; AE A; AE H)

SOR ¶ 1.b, \$4,757 credit card account placed for collection: In September 2008, Applicant originally agreed to pay \$100 a month towards this account. The account was sold to another collection agency. Applicant agreed to pay \$150.96 per month for 36 months towards this account. Timely payments have been made in accordance with the agreement. (Tr at 14-17, 35-36; AE B; AE E; AE F)

SOR ¶ 1.c, \$19,490, charged off second mortgage: The holder of the second mortgage cancelled the debt on June 13, 2008. Applicant provided an IRS FORM 1099-C verifying cancellation of the debt. (Tr at 15, 17, 31; AE C)

SOR ¶ 1.d, \$7,891 credit card account placed for collection: Applicant claims that he initially paid \$100 a month beginning in September 2008. The account was sold to another collection agency. In March 2009, Applicant agreed to pay \$245 a month towards the account over a period of 30 months. Timely payments have been made in accordance with the agreement. (Tr at 14-15, 18, 36; AE D; AE E; AE F)

During the hearing, Applicant volunteered that he discovered an additional delinquent account that was not alleged in the SOR. In February 2009, he agreed to pay \$108.95 each month towards this debt. Timely payments have been made in

accordance with the agreement. (Tr at 41; AE G) Applicant and his wife are current on their taxes. They are not aware of any additional delinquent debts. With these payment agreements, Applicant is able to meet his monthly financial obligations and pay towards his delinquent accounts. (Tr at 40-43)

Applicant provided a personal financial statement during his background investigation. His net monthly income, which consists of his full-time job and his Air Force retirement, is \$6,951. His net monthly expenses are \$2,590. His monthly debt payments were listed as \$3,358, leaving \$1,003 left over each month. However, the personal financial statement did not include his debt payments towards SOR ¶¶ 1.a, 1.b, and 1.d. The total amount paid towards these three debts each month is \$495, leaving an excess of \$508 each month. (Tr at 37; Gov 2 at 4)

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.

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 overarching adjudicative goal is a fair, impartial, and commonsense 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.

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.

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 disqualifying conditions that could raise security concerns. I find Financial Considerations Disqualifying Condition (FC DC) ¶19(a) (an inability or unwillingness to satisfy debts); FC DC ¶19(c) (a history of not meeting financial obligations); and FC DC ¶ 19(e) (consistent spending beyond one's means, which may be indicated by excessive indebtedness, significant negative cash flow, high debt-to-income ratio, and/or other financial analysis) apply to Applicant's case. Applicant recently accumulated four delinquent accounts, an approximate total balance of \$39,745.

The government's substantial evidence and Applicant's own admissions raise security concerns under Guideline F. The burden shifted to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the security concerns. (Directive ¶E3.1.15) An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the government. (See ISCR Case No. 02-31154 at 5 (App. Bd. September 22, 2005)).

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. The following Financial Considerations Mitigating Conditions (FC MC) potentially apply to Applicant's case: FC MC ¶ 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) does not apply. While Applicant has been making payments towards each of his delinquent accounts, only one account was resolved at the close of the record. The debts became delinquent over the past few years, so they are recent. FC MC ¶ 20(a) does not apply.

FC MC ¶ 20(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) applies. Applicant's financial problems were the result of a downturn in the real estate market. He and his wife were unable to sell their older home which made them responsible for two mortgages after their new home was built. However, Applicant's decision to buy a new home was within his control. His oldest son's repeated criminal arrests created additional expenses for the family. Applicant acted responsibly under the circumstances. Applicant and his wife were unable to pay both mortgages. They attempted to rent out their older home but were unsuccessful. Their largest debt, the \$19,000 second mortgage, was cancelled by the bank. Over the past year, Applicant has been actively attempting to resolve his remaining delinquent accounts. He did so while living thousands of miles away from his family. Overall, FC MC ¶ 20 (b) applies.

FC MC ¶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. In December 2008, Applicant consulted with a judge advocate as to how to resolve his delinquent accounts. He entered into repayment plans for each of his remaining delinquent accounts. He is capable of meeting the terms of these repayment agreements and his expenses. He is working to resolve these accounts.

FC MC ¶20(d) (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts) applies. Applicant's largest debt, the \$19,000 second mortgage has been cancelled. He entered into repayment agreements with the other debts, and has been making timely payments towards these accounts for more than six months. He and his wife have proactively monitored their credit report. They volunteered during the hearing that they discovered one more delinquent account. They entered into a repayment agreement with that account. Applicant is making a good-faith effort to resolve his accounts.

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 commonsense 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. I considered Applicant's 22 years of active duty service in the United States Air Force. Applicant's financial problems were a result of being responsible for two mortgages because he and his wife were not able to sell their older home. His oldest son's criminal problems placed an additional financial burden on the family finances during the same period of time that they were having problems with paying the mortgage. Applicant has focused on resolving his delinquent accounts for the past year. The bank cancelled the largest debt related to the second mortgage. Applicant entered into payment agreements and is making payments towards his remaining delinquent accounts. Applicant mitigated the security concerns raised under 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

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. Eligibility for access to classified information is granted.

ERIN C. HOGAN
Administrative Judge