



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



In the matter of:)	
)	
XXXXXXXXXXXX, XXXXX)	ISCR Case No. 08-03752
SSN: XXX-XX-XXXX)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Eric Borgstrom, Esq., Department Counsel
For Applicant: *Pro Se*

December 30, 2008

Decision

TUIDER, Robert J., Administrative Judge:

Applicant has mitigated security concerns pertaining to Financial Considerations. Clearance is granted.

Statement of the Case

Applicant submitted a Security Clearance Application, on April 15, 2004. On September 4, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing 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 answered the SOR in writing on September 29, 2008, and requested a hearing before an Administrative Judge. Department Counsel was prepared to proceed on October 19, 2008, and I received the case assignment on October 21,

2008. On October 31, 2008, I submitted a request to the hearing office to schedule this case to be heard on December 3, 2008. Delay in setting this case was due to schedule conflicts. DOHA issued a notice of hearing on November 12, 2008, scheduling the hearing for December 3, 2008. The hearing was held as scheduled.

The Government offered Government Exhibits (GE) 1 through 4, which were received without objection. The Government submitted a List of Government Exhibits, Exhibit (Ex.) I and a Summary of Debts and Supporting Evidence, Ex. II. The Applicant submitted a binder, marked Applicant Exhibit (AE) A, containing numerous dividers, which was received without objection, and he testified on his own behalf.

I held the record open until December 12, 2008 to afford the Applicant the opportunity to submit additional documents on his behalf. Applicant timely submitted AE 1 through 15 without objection. DOHA received the hearing transcript (Tr.) on December 11, 2008.

Findings of Fact

Applicant admitted SOR ¶¶ 1.a., 1.b., 1.e., 1.g., and 1.k. He denied ¶¶ 1.d. and 1.h. (stating it was the same debt as 1.a.), 1.f. (stating it was the same debt as 1.j.) and 1.c., 1.i., and 1.l. (stating they were paid in full). His admissions are incorporated herein as findings of fact. After a thorough review of the evidence, I make the following additional findings of fact:

Applicant is a 37-year-old test and evaluation engineer, who has worked for his defense contractor employer since June 2003. GE 1, Tr. 17. He currently holds a secret security clearance, which he held as a civilian employee since March 2002. Tr. 19. He seeks to retain his security clearance, which is a condition of his employment. Tr. He previously held a clearance while he was in the U.S. Navy, discussed *infra*. Tr. 18-20.

Applicant graduated from high school in June 1989. He estimates he has earned approximately 100 college credit hours. Tr. 17-18. He served in the Navy from August 1992 to July 2001. He was honorably discharged as an Operations Specialist First Class (Surface Warfare) (pay grade E-6), and served the majority of his naval service on sea duty. Tr. 20-23. Applicant was previously married from September 1995 to June 2002. That marriage ended by divorce. Applicant and his former wife had one child born during that marriage, an eight-year-old son. Applicant's former wife was granted custody of their son. Applicant remarried in March 2006, and he and his wife have a two-year-old son. GE1, Tr. 16-17.

Applicant's background investigation addressed his financial situation and included the review of his April 2004 SF-86, his July 2008 Response to DOHA Financial Interrogatory, and his June 2006 and March 2008 credit bureau reports (CBR). GE 1 – 4.

Applicant's SOR identified 12 separate debts, which included two judgments, five collection accounts, and five charged off accounts for a total of \$19,952. Excluding duplicate debts, the amount of indebtedness is \$12,944. The following chart lists debts alleged, status, references, and comments as appropriate.

SOR Debt	Status	Reference	Comment
1.a. Judgment filed in Mar. 2007 \$2,646 (credit card).	Currently unresolved/unpaid. Attempting to settle. Paid \$30 to "provoke" a reply from creditor.	Response to SOR, Tr. 26-31, 35, AE A (TAB 4), AE 1, AE 2, AE 3, AE 5, AE 6, AE 9, AE 10, AE 11, AE 14, AE II.	Duplicate of SOR 1.d. & 1.h. Made numerous attempts to contact creditor. Awaiting response. Debt increased due to interest and penalties. Efforts to resolve thoroughly documented.
1.b. Judgment filed in Jan. 2004 \$1,651.	Currently unresolved/unpaid. Attempting to settle. Paid \$30 to creditor.	Response to SOR, Tr. 31-33, 36, AE A, AE 1, AE 2, AE 3, AE 4, AE 9, AE 10, AE 11, AE 15, AE II.	Duplicate of SOR 1.f., 1.g. & 1.j. Made numerous attempts to contact creditor. Awaiting response. Debt increased due to interest and penalties. Efforts to resolve thoroughly documented.
1.c. Collection account \$238 (phone bill).	Attempted to pay. Check returned.	Response to SOR, Tr. 33-35, AE A, AE 3, AE II.	Efforts to pay thoroughly documented.
1.d. Charged off account \$2,574 (credit card).	See comments.	See comments.	SOR 1.d. & 1.h. same as 1.a.
1.e. Charged off account \$3,347 (credit card).	Currently unresolved/unpaid. Attempting to settle. Paid \$100 to creditor.	Response to SOR, Tr. 36-39, AE A, AE 3, AE II.	Efforts to resolve thoroughly documented.
1.f. Charged off account \$908 (credit card).	See comments.	Tr. 39-41.	SOR 1.f., 1.g. & 1.j. same as 1.b.
1.g. Charged off account \$1,370 (credit card).	See comments.	Tr. 41-42.	SOR 1.f., 1.g. & 1.j. same as 1.b.
1.h. Charged off account \$1,972 (credit card).	See comments.	See comments.	SOR 1.d. & 1.h. same as 1.a.

1.i. Collection account \$134 (cable).	Paid.	Response to SOR, Tr. 42-43, AE A.	N/A.
1.j. Collection account \$1,311.	See comments.	See comments.	Duplicate of 1.b.
1.k. Collection account \$3,751 (penalties for breaking lease).	Paid \$25 to creditor. Attempting to settle. Currently unresolved.	Response to SOR, Tr. 43-45, AE A, AE II.	Efforts to settle thoroughly documented.
1.l. Collection account \$50 (medical).	Paid.	Response to SOR, Tr. 45-46, AE A, AE II.	N/A.

As the chart demonstrates, Applicant paid, attempted to pay and/or resolved all debts *supra*. After Applicant's divorce from his first wife, he relocated to another part of the U.S. Debts alleged are directly related to his divorce or move. Applicant's costs associated with his divorce and move are \$17,427. He has paid \$52,840 in child support from June 2002 to December 2008. Applicant's divorce was bitter, protracted, and costly. Applicant describes his former wife as "continuing to remain defiant with court orders related to my oldest son... ." He continues to be frustrated in exercising his visitation rights with his son, and must bear the legal and travel costs associated with exercising those rights. Applicant was also involved in an automobile accident in August 2006 leaving him with unreimbursed medical expenses. GE 2, AE 8.

Applicant considered bankruptcy, but was advised "that (bankruptcy) would be an instant killer for my security clearance." GE 2. The primary obstacle Applicant has encountered in attempting to settle with his creditors is the amounts the creditors require. He has not been able to convince them that his available income is insufficient to meet their demands. He will; however, continue his efforts to resolve his debts. Applicant's wife is a real estate agent. Given the current state of the market, her commissions have decreased significantly. In 2008, she has earned only one \$2,800 commission in July. Those funds were applied towards Applicant's attorney fees and visitation costs. Tr. 100. Applicant submitted a comprehensive budget that shows a net monthly remainder of \$488. A review of his budget reflects that he and his family live a modest lifestyle. He has also taken on part-time work to augment their income. AE 7.

Applicant provided four reference letters. Three of the letters are work-related and provide favorable comments about his character and trustworthiness. The fourth letter is from his pastor and advises Applicant attends church every Sunday, is a man of integrity and is very loyal to his family and parish. Applicant also submitted evaluations, awards and citations from his naval service, and performance evaluations from his civilian employers. All of the reference/work-related documents reflect that Applicant has been and is a consistent top-notch performer. He has a demonstrated track record of being a trustworthy individual and an asset to his organization/employer. AE A (TAB 2).

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.

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

Under AG 18, the Government's concern is:

"[f]ailure 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 Government established that Applicant owes debts alleged in SOR, less duplicates, through Applicant's admissions and evidence presented.

Under AG ¶ 19, two disqualifying conditions raise a security concern:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant's separation, divorce, move, and post-divorce expenses have been very costly. He has yet to completely recover from this major setback and move on financially with his second wife and family. He is; however, making good faith efforts to come to terms with his creditors. These efforts are thoroughly documented.

Under AG ¶ 20, there are five potentially mitigating conditions:

- (a) the conditions 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;
- (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;
- (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;
- (d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and

(e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

The facts of this case warrant application of all five of the mitigating conditions, in whole or in part. The financial difficulties Applicant is experiencing are directly related to his divorce from his first wife. He has been challenged, emotionally and financially, in exercising his parental visitation rights. However, the collateral affects of his divorce are leveling off. In addition to his separation and divorce, he was involved in an automobile accident in 2006. He has sought financial counseling on his own and through his employer. He established a number of his debts are duplicates, debts which have increased over time due to interest and penalties. Although Applicant has yet to resolve all of his past indebtedness, he has demonstrated he is making a good-faith effort to repay overdue creditors or otherwise resolve debts. In short, Applicant has demonstrated financial responsibility. He has established a viable budget, which shows a net remainder after he has paid his bills, and is able to save money.

To conclude, Applicant presented sufficient evidence to explain, extenuate, or mitigate the financial considerations security concerns. Applicant met his ultimate burden of persuasion to obtain a favorable clearance decision. In reaching this conclusion, the whole person concept was given due consideration and that analysis does support a favorable decision.

I take this position based on the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), my “careful consideration of the whole person factors”¹ and supporting evidence, my application of the pertinent factors under the Adjudicative Process, and my interpretation of my responsibilities under the Guidelines. Applicant has mitigated or overcome the government’s case. For the reasons stated, I conclude he is eligible for access to classified information.

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. – 1.l.:	For Applicant

¹ See ISCR Case No. 04-06242 at 2 (App. Bd. June 28, 2006).

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.

ROBERT J. TUIDER
Administrative Judge