



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



In the matter of:)	
)	
)	ISCR Case No. 08-04279
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Braden Murphy, Esquire, Department Counsel
For Applicant: [Father], Personal Representative

September 25, 2008

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant has mitigated the government’s security concerns under Guideline F, Financial Considerations. Applicant’s eligibility for a security clearance is granted.

On June 23, 2008, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) detailing the security concerns under Guideline F. 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 July 2, 2008, and requested a hearing before an Administrative Judge. The case was assigned to me on August 8, 2008. DOHA issued a notice of hearing on August 19, 2008, and I convened the hearing as scheduled on September 10, 2008. The government offered Exhibits (GE) 1 through 3, which were admitted without objection. Applicant testified and submitted Exhibits (AE) A

through L which were admitted without objections. The record was left open until September 18, 2009 to allow Applicant an opportunity to submit additional documents, which he did. The documents were marked as AE M through Q and being no objection from Department Counsel, they were admitted. DOHA received the transcript of the hearing (Tr.) on September 18, 2008.

Findings of Fact

Applicant's admissions to the allegations in the SOR are incorporated herein. In addition, after a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is a 25-year-old computer systems analyst who has worked for a federal contractor since November 2007. Applicant attended college from 2000 to 2005, graduating in May 2005, with a degree in computer systems. He married in March 2008 and has no children.

Applicant incurred student loan debts while attending college. He also incurred credit card debts that were used for living expenses while he was in college. He made some payments on these debts for a period of time. He received grants and reduced tuition for three of his five years in college. He was employed while attending college, but lost his job. He had difficulty finding another job during this time and got behind in his obligations. After he graduated he attempted to find a full time job. During this time he worked part-time jobs to support himself, but it was not enough to pay his student loans and credit card debts and they became delinquent. Six months after applying for a job with his current employer he was hired.¹

The debt listed in SOR 1.a does not belong to Applicant. The government conceded that the debt is not Applicant's responsibility.²

The debts listed in SOR 1.b and 1.c are the same as the debt listed in SOR 1.l and 1.m. Applicant contacted the creditor for his student loans and consolidated all of his student loan debts.³ He set up a payment plan with the creditor, made consistent payments, whereupon they agreed to remove his loans from a delinquent status and permitted him to defer regular monthly payments until January 2009. Applicant is using the monthly payment amount he had been paying for his student loans to pay off other debts. He will resume paying his student loans in January 2009 as permitted by the creditor.⁴

¹ Tr. 50-62.

² Tr. 21-22.

³ The debts listed in SOR 1.b, and 1.c are the same debts as listed in 1.l and 1.m. The creditor listed in SOR 1.b and 1.c bought the loans from the creditors in 1.l and 1.m.

⁴ Tr. 22-36; AE D and G.

The debts listed in SOR 1.d, 1.e, 1.f, 1.g, 1.h, 1.k and 1.j have been consolidated and are included in a debt management program. Applicant has been making consistent automatic monthly payments of \$258 toward this program to reduce and satisfy these debts.⁵

Applicant has paid the debt listed in SOR 1.i.⁶

Applicant is married, but he and his wife each live with their parents to save money until he pays off his delinquent debts. He pays nominal rent and other household expenses. He earns approximately \$25,000 a year (before taxes). He does not have any credit cards. He owns a 1991 car that is paid for. He anticipates with the debt management program he will have his delinquent debts paid off in 12 months, excluding his student loans. The debts he incurred were while he was in college. He was working while in college, but the company dissolved and he lost his job. He did find other work while in college and paid what he could, but it was not enough to keep up. He understands his duty to be fiscally responsible and now that he has a job he is anxious to pay his delinquent debts and attain his career goals. He has a budget that he abides by.⁷

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

⁵ Tr. 36-48; AE J, N, O, P and Q. At his hearing Applicant thought that SOR 1.e and 1.k might have been the same debt. The additional documents provided confirm they are not and he has provided supporting documents to show he added the debt in 1.k to his debt management program.

⁶ Tr. 44-45, 59; AE I.

⁷ Tr. 56-64.

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

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. I have considered all of them and especially considered AG ¶ 19(a) (“inability or unwillingness to satisfy debts”) and (c) (“a history of not meeting financial obligations”). Appellant had delinquent debts that he failed to pay when due. I find the evidence raised both disqualifying conditions apply.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. I have considered all of the mitigating

conditions and especially considered AG ¶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”); (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”); and (d) (“the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts”).

Applicant incurred debts while he was in college. He paid his bills while he was employed, but lost his job and had difficulty finding a new job. During this period of time he got behind in paying his bills. When he graduated from college he had a difficult time finding a full time job. He worked at low paying part-time jobs until he was hired by his current employer. Since becoming employed in November 2007, he has consolidated his student loans and brought them out of a default status and they are now deferred until January 2009. He has placed his other debts in a debt consolidation program and is making consistent automatic monthly payments. Those debts not included in the program were paid. Applicant’s failure to pay his debts happened under circumstances that are unlikely to recur. He acted responsibly when he gained employment. Therefore, I find his actions do not cast doubt on his trustworthiness, reliability or good judgment. Applicant did not merely disregard his debts; he was unable to pay them because he was attempting to find employment. Once he got a job he resumed his payments, consolidated his debts and started paying his student loans. I find the conditions that caused the financial problems were beyond Applicant’s control and once he got back on his feet he acted responsibly and addressed his debts. Therefore, I find (b) applies. Applicant did not present evidence that he has received financial counseling, but there are clear indications that his financial problems are being resolved and are under control. Therefore, I find (c) applies. Applicant has all of his debts consolidated and is making consistent monthly payments through automatic withdrawal from his account. I find he has initiated a good-faith effort to repay his overdue creditors and (d) applies.

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 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. Applicant is a young man who has just started his career. He incurred credit card and student loan debts while attending college. He worked part-time in school to help defray his expenses. While employed he paid his debts. Once he graduated he had difficulty finding a job. He lives at home and pays his parents nominal rent and contributes towards the household expenses. Although he is married he and his wife do not live together because he wants to pay off all of his debts first. He is managing his money. He has a student loan deferment and is paying his other debts. He plans to completely pay off all of his delinquent debts within a year. He does not have any credit cards. He owns an old car. He has many goals and hopes to progress in his career. He understands the importance of paying his bills and now that he has a job he is committed to being fiscally responsible. 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 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-1.m:	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.

Carol G. Ricciardello
Administrative Judge