



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



In the matter of:)	
)	
)	ISCR Case No. 08-05060
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Richard Stevens, Esq., Department Counsel
For Applicant: *Pro Se*

October 24, 2008

Decision

LOUGHRAN, Edward W., Administrative Judge:

Applicant mitigated the security concerns raised by his financial issues. Eligibility for access to classified information is granted.

On July 29, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant, 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.

Applicant answered the SOR in writing on August 14, 2008, and requested a hearing before an Administrative Judge. The case was assigned to another Administrative Judge on August 25, 2008, and reassigned to me on September 16, 2008. DOHA issued a notice of hearing on September 4, 2008. I convened the hearing

as scheduled on September 24, 2008. The Government offered Exhibits (GE) 1 through 3, which were received without objection. Applicant testified on his own behalf and submitted Exhibits (AE) A through L, which were received without objection. I granted Applicant's request to keep the record open to submit additional information. Applicant submitted eight documents, marked AE E through T and admitted without objection.¹ Department Counsel's memo is marked Hearing Exhibit (HE) I. DOHA received the transcript of the hearing (Tr.) on October 8, 2008.

Findings of Fact

Applicant is a 47-year-old employee of a defense contractor. He is a skilled tradesman and has worked on the same military installation since 1985. He has worked for various companies as the contracts have changed hands. He is a high school graduate.²

Applicant was married in 1984, and divorced in 1991. He has a 23-year-old child from that marriage. Applicant paid \$410 per month in child support until the child turned 18 in 2003.³

Applicant married again in 1991. He has a 15-year-old child from this marriage. They separated in 2002, after his second wife left the home, and divorced in 2004. She developed psychological problems during the marriage and was hospitalized on two occasions for her condition. Her illness forced her to resign from her job in 1997. Applicant was unable to pay their debts, which included her numerous medical bills. He filed Chapter 7 bankruptcy in 1998, and his debts were discharged the same year. He fell behind on his debts again and filed Chapter 13 bankruptcy in 2001. He attempted to maintain the payments to the trustee, but was unable to do so. The Chapter 13 bankruptcy was dismissed in August 2002, and re-filed the same month.⁴

After his second wife left him, Applicant attempted to pay the trustee on his income alone, but could not keep up the payments. His wife had custody of their child. Applicant was ordered to pay \$750 per month in child support. He paid the child support until November 2006, when he obtained custody of their child. His second wife does not pay child support for this child. The bankruptcy was dismissed in March 2003. Applicant's car was repossessed and he lost his house to foreclosure. There was no deficiency owed on the mortgage.⁵

¹ Applicant provided several documents about his bankruptcy immediately following the hearing. The documents were submitted again in the more extensive package submitted by Applicant on October 10, 2008. I have not separately marked the documents received immediately after the hearing.

² Tr. at 19-21; GE 1.

³ Tr. at 19-22; GE 1; AE E.

⁴ Tr. at 22-24; Applicant's response to SOR; GE 1-3; AE E, F.

⁵ Tr. at 23-24, 37-38; Applicant's response to SOR; GE 1-3.

In about 2002, Applicant started having back problems which caused him to miss work. He is also diabetic. In March 2004, Applicant had a series of seizures which led to a very serious brain illness. He was hospitalized for about four to six weeks over a two month period. He had hallucinations and was catatonic at times. He was out of work for about six months. He eventually had some recovery. He suffered long term memory loss. He does not remember many of the debts that were discussed at the hearing, but assumed he was responsible for them because of the supporting documentation. Applicant has continued to have medical problems which has resulted in numerous doctor visits and unpaid time off work. Applicant's Social Security statement shows his annual earnings increasing every year until it topped out at \$50,000 in 2002. It then started declining because of unpaid time off work for medical reasons. He earned \$44,000 in 2003; \$30,000 in 2004; \$34,000 in 2005; \$35,000 in 2006; and \$36,000 in 2007.⁶

Applicant married for the third time in 2004. His wife developed severe medical problems. She has a debilitating and potentially life-threatening disease. She is unable to work and is essentially bedridden. He and his wife separated in about January 2007, when he was no longer able to care for her. She has returned to live with her parents who are retired and able to provide full-time care for her. She is covered by his health insurance, but there continues to be numerous medical expenses above what is paid by the insurance.⁷

The SOR lists 28 delinquent debts. Applicant admitted to owing all the debts in the SOR with explanations, with the exception of ¶¶ 1.e and 1.q, which he denied. He also provided additional information to support his request for eligibility for a security clearance. The 26 debts that he admitted he owes total approximately \$22,657. Of those 26 debts, 22 are medical debts. Applicant has not ignored his medical debts, but has paid whatever he could. The medical debts in the SOR reflect those medical debts above what he has been able to pay.⁸

The largest debt, alleged in SOR ¶ 1.v, is to an automobile finance company for \$11,194. Applicant admitted the debt was for a car loan after his car was repossessed following the dismissal of his Chapter 13 bankruptcy. The debt is listed on the July 11, 2007 credit report, with a balance of \$11,194 and a high credit of \$13,394. It is not clear whether \$11,194 reflects what was owed on the loan after repossession or the deficiency balance owed on the loan after the car was sold at auction. The June 24, 2008 credit report lists a debt to the same automobile finance company but shows the debt as "closed or paid account/zero balance." This is likely a second car loan. If it is a second car loan, then the debt alleged in the SOR is not listed on the credit report.⁹

⁶ Tr. at 24-28; Applicant's response to SOR; AE F, G, I, J

⁷ Tr. at 33-37.

⁸ Tr. at 27-29; Applicant's response to SOR.

⁹ Tr. at 37-38; Applicant's response to SOR; GE 2, 3.

Applicant denied owing the debt of \$209 to a collection company, as alleged in SOR ¶ 1.e. He stated that the original creditor was a phone/internet/cable provider and he was current on the debt. He also denied SOR ¶ 1.q, which alleges that he is \$610 past due on a car loan, with a balance of \$17,355. Applicant provided documentation that while he may have been late on payments, he is currently up-to-date on his payments and in good standing on the loan.¹⁰

Applicant filed a Chapter 7 bankruptcy in July 2008. He listed only one secured claim, his auto loan as discussed above. He reaffirmed this debt. Under Schedule E – Creditors Holding Unsecured Priority Claims, he listed back taxes owed to the IRS for tax years 2005 and 2006, in the total amount of \$4,369. Schedule F – Creditors Holding Unsecured Nonpriority Claims listed 42 creditors and debts totaling \$16,895.¹¹

Applicant has received counseling pursuant to his bankruptcy. He also joined an on-line service that provides advice and answers on money management and personal finances. He has a booklet from the company and has referenced it extensively. He has established a budget and is working diligently at maintaining the budget and not incurring new delinquent debts.¹²

Applicant submitted numerous letters of appreciation and character letters stating he is honest, trustworthy, responsible, professional, and reliable; a man of sound moral principles and integrity; and a real asset to his employer and the U.S. military.¹³

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 to be used 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, Administrative Judges apply the guidelines 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

¹⁰ Tr. at 39-41; Applicant's response to SOR; GE 2-3; AE A, O.

¹¹ Tr. at 41-47; AE Q-T. The tax debts were not alleged in the SOR and are not considered for disqualifying purposes. They are considered for the purposes of determining mitigation and under the whole person.

¹² Tr. at 32-34; AE B, H, Q, R.

¹³ AE K, L.

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 the 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 adverse 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. Two are potentially applicable in this case:

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

Applicant accumulated a number of delinquent debts and was unable to pay his obligations for a period of time. The evidence is sufficient to raise AG ¶¶ 19(a) and (c).

Five Financial Considerations Mitigating Conditions under AG ¶¶ 20(a)-(e) are potentially applicable:

- (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;
- (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.

Applicant has a long history of financial problems. He recently filed a Chapter 7 bankruptcy, but the debts have not yet been discharged. AG ¶ 20(a) is not applicable at this time.

Applicant and his family have had extensive medical problems causing him to have much unpaid time off work and leaving him with large medical bills. He is a diabetic with back problems and was hospitalized with a serious brain illness in 2004. He was out of work for about six months. He is still recovering from that illness and has long term memory loss. His wife's medical conditions became so severe that Applicant could no longer care for her and she moved back to live with her retired parents who could provide her with full-time care. His former wife developed psychological problems requiring much medical attention and two hospitalizations. These are conditions that

were beyond his control. To be fully applicable, AG ¶ 20(b) also requires that the individual act responsibly under the circumstances. Applicant has not been able to pay the debts alleged in the SOR. He has filed for Chapter 7 bankruptcy. Bankruptcy is a legally viable option to handle one's burdensome debts. The Supreme Court made this point about the purpose of the bankruptcy law in a 1934 decision:

[I]t gives to the honest but unfortunate debtor . . . a new opportunity in life and a clear field for future effort, unhampered by the pressure and discouragement of preexisting debt.¹⁴

Applicant is the very definition of "honest but unfortunate debtor." Under the limited circumstances of this case, I find that he has acted responsibly under the circumstances. AG ¶ 20(b) is applicable.

Applicant has received financial counseling. He has filed bankruptcy, which will provide him a clean start. There are clear indications that the problem is being resolved. AG ¶ 20(c) is applicable.

Applicant has been unable to pay his delinquent debts. Bankruptcy will resolve his debts, but AG ¶ 20(d) does not fully apply because he has not taken "good faith" steps to pay or resolve his debts other than filing for bankruptcy.¹⁵

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

¹⁴ *Local Loan Co. v. Hunt*, 292 U.S. 234, 244 (1934).

¹⁵ The Appeal Board has previously explained what constitutes a "good faith" effort to repay overdue creditors or otherwise resolve debts:

In order to qualify for application of Financial Considerations Mitigating Condition 6, an applicant must present evidence showing either a good-faith effort to repay overdue creditors or some other good-faith action aimed at resolving the applicant's debts. The Directive does not define the term 'good-faith.' However, the Board has indicated that the concept of good-faith 'requires a showing that a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation.' Accordingly, an applicant must do more than merely show that he or she relied on a legally available option (such as bankruptcy) in order to claim the benefit of Financial Considerations Mitigating Condition 6.

(internal citation and footnote omitted) ISCR Case No. 02-30304 at 3 (App. Bd. Apr. 20, 2004) (quoting ISCR Case No. 99-9020 at 5-6 (App. Bd. June 4, 2001)).

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.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant is a decent, hard-working man who has endured many trials and tribulations. His second wife had many psychological problems, resulting in numerous medical bills, hospitalizations, and the loss of her job and income. He was financially devastated and had his debts discharged in bankruptcy in 1998. He was unable to stay out from under financial distress and filed a Chapter 13 bankruptcy in 2001 and 2002. He could not maintain the payments to the trustee and both bankruptcies were dismissed. Applicant started having his own medical issues in about 2002. He had back problems and is a diabetic. He was out of work for six months in 2004, due to a severe brain illness, for which he is still recovering. His Social Security statement documents how his income has declined because of unpaid time off work. His current wife is a bedridden invalid. Her medical condition deteriorated to where she had to move back to live with her retired parents, who could provide her with the full-time care that she requires.

As a result of all the above, Applicant incurred much delinquent debt. At least 22 of the SOR allegations are medical debts. Applicant has taken his only viable option, and filed for bankruptcy in July 2008. He is attempting to manage his finances. He attended counseling, utilizes an on-line money management service, and established a budget. His unpaid taxes, while not alleged in the SOR, are a concern. However, once his debts are discharged in bankruptcy, he will be able to address his taxes.

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 has mitigated the security concerns arising from his financial issues.

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
Subparagraphs 1.a-1.ee:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the interests of national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

Edward W. Loughran
Administrative Judge