



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



In the matter of:)) -----) SSN: -----)) Applicant for Security Clearance)	ISCR Case No. 08-05590
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Appearances

For Government: Michael Lyles, Esquire, Department Counsel
For Applicant: *Pro Se*

November 3, 2008

Decision

HOWE, Philip S., Administrative Judge:

On September 25, 2007, Applicant submitted his Security Clearance Application (SF 86). On July 21, 2008, the Defense Office of Hearings and Appeals (DOHA) issued 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 acknowledged receipt of the SOR on July 29, 2008. He answered the SOR in writing on August 2, 2008. On August 27, 2008, Department Counsel submitted the Department's written case. A complete copy of the file of relevant material (FORM) was provided to the Applicant. He was given the opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant received the file on September 15, 2008. Applicant filed a Response to the FORM on September 22, 2008.

I received the case assignment on September 24, 2008. 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, dated August 2, 2008, Applicant admitted the factual allegations in ¶¶ 1.a, 1.c, and 1.d of the SOR, with explanations. He denied the factual allegations in ¶ 1.b of the SOR. He also provided additional information to support his request for eligibility for a security clearance.

Applicant is 44 years old and married. He has one child. He has been employed by a defense contractor since May 2006. Prior to then he held a variety of employment positions with defense contractors. He was unemployed for several periods of time, starting with December 1999 to March 2000, March 2003 to January 2004, and April 2004 to November 2004. He does not appear to have a college degree or a professional degree. His wife is also employed. (Item 1; Answer; Response)

Applicant filed for Chapter 7 bankruptcy on February 4, 1999. His debts were discharged on May 19, 1999. Applicant lost several contractual employment positions, and could not pay his debts. He sought legal advice about the various options he had to pay his debts. After consultations, he decided to file Chapter 7 bankruptcy. His case was a "no asset" case because there were no assets in the bankruptcy estate above the exemptions Applicant claimed under the state law. Applicant's total assets were listed as \$46,225. His total liabilities were \$68,164.27, of which \$56,700 was for his mobile home, and two vehicles he purchased. He surrendered one vehicle and kept the mobile home and pickup truck (valued at \$30,000 and \$15,000, respectively). The remaining \$11,464.27 consisted of a \$3,000 loan, two medical bills, five credit cards or department store charge accounts, a cable television bill, and an air conditioning repair bill. Applicant used his credit cards during periods of unemployment prior to filing bankruptcy to pay his debts. His monthly income when he filed the bankruptcy was \$2,258.45, including his wife's income. His monthly expenses were \$2,429.87. As of May 11, 2000, the date of a statement Applicant gave to a Government investigator, he paid his current bills on time. (Items 2-6; Response)

Applicant owes \$19,964 on an auto loan pertaining to a repossessed automobile. Applicant purchased a pickup truck in 1998, before he knew he would lose his job and might have to file bankruptcy. He kept the truck and made the payments, reaffirming the debt from the bankruptcy. Then, in 2000, when both he and his wife were employed, they purchased a Chevy Blazer, financed by the same company, which loaned Applicant the money to buy the pickup truck. In 2003, Applicant and his wife were unemployed. They withdrew money from his wife's IRA account and paid off the loan on the 1999 pickup truck because they had paid on that loan longer and had more invested. That payment resolution is shown on the credit reports of October 11, 2007, and September 1, 2008, in the file. The monthly \$600 payments on the Blazer could not be maintained, and the lender repossessed the vehicle. The balance owed on the loan

is \$19,964. It is owed to another creditor who purchased the loan from the original lender. Applicant denies owing this debt because the lender repossessed the vehicle and sold it. Applicant claims in his Response to the FORM that the vehicle sold for \$10,000, and they paid \$18,000 on the vehicle when they possessed it. He further claims he borrowed \$20,000 to purchase the vehicle, and the amount sought by the creditor is nearly that amount, after Applicant has already paid them \$18,000 plus the \$10,000 realized from the sale, making the amount sought far greater than the original loaned amount plus the interest required under the loan agreement. But Applicant did not submit his loan agreement for the Blazer as part of his Answer to the SOR or his Response to the FORM. This debt remains unpaid. (Items 4, 6, 7, 8; Answer; Response)

Applicant admits he owed \$64 to a collection agency. He paid that debt with a check dated September 16, 2008. This debt resulted from a medical procedure. Applicant claims it was treatment for his wife's burst appendix when they were both unemployed. The debt dates from 2005, when the last payment was made. (Items 2, 7, 8; Answer; Response)

Applicant owed another collection agency \$1,276 for a medical debt. While the SOR alleges this amount, both credit reports in the file show only a \$25 debt. It was unpaid as of October 11, 2007, but the credit report of July 1, 2008, shows the debt was paid January 2008. This debt is paid. (Items 2, 4, 7, 8; Answer; Response)

Applicant's Response shows he paid other debts according to the repayment schedule or in full. The credit reports attached to his Response contain the comments about his repayments on schedule. Those debts are not at issue in the SOR, but do show Applicant has paid debts in a timely manner. He did borrow \$9,890 on a signature loan in February 2007, to purchase a "4-wheeler" for his ten-year-old son and himself. He reduced the balance to \$3,600 by September 16, 2008, and he contends this regular debt repayment shows his responsibility. The other debts were credit cards and a computer purchase. These items on Applicant's credit report show zero balances. (Items 1, 2, 5, 6; Answer; Response)

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 and 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. Under AG ¶ 19(a), an “inability or unwillingness to satisfy debts” is potentially disqualifying. Similarly under AG ¶ 19(c), “a history of not meeting financial obligations” may raise security concerns. Applicant accumulated some delinquent debt that he was unable to pay for a period of time. He also filed Chapter 7 bankruptcy in 1999 to eliminate \$68,000 in debt. After reaffirmations and exemptions under state law, Applicant actually eliminated about \$22,000 in debt. The evidence is sufficient to raise these potentially disqualifying conditions.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Under AG ¶ 20(a), the disqualifying condition may be mitigated where “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.” Applicant’s financial worries arose between about 1998 and 2005. He accumulated two small delinquent debts subsequent to his bankruptcy discharge due to his wife’s medical issues and sporadic unemployment. His periods of unemployment led to the repossession of one of his vehicles in 1995. These circumstances are no longer extant. He completed the bankruptcy nine years ago. I find the behavior occurred under such unusual circumstances that it is unlikely to recur, and it does not raise concerns about his current reliability, trustworthiness, or good judgment. The evidence raises this potentially mitigating condition.

Under AG ¶ 20(b), it may be mitigating where “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.” As noted above, some of the financial problems arose from his wife’s medical problems, including the medical bills. Other financial problems resulted from the periods of unemployment for Applicant and his spouse. He acted responsibly in identifying and resolving these debts. I find this potentially mitigating condition is a factor for consideration in this case.

Evidence that “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” is potentially mitigating under AG ¶ 20(c). Similarly, AG ¶ 20(d) applies where the evidence shows “the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.” Applicant received legal counseling about various repayment options in 1999 when he was unemployed, and chose to file Chapter 7 bankruptcy. He was swiftly discharged in bankruptcy because he had no assets above the state law allowed exemptions. Applicant resolved the two other small delinquent debts by payment in 2008. He is now more financially sound and prepared for future contingencies. I conclude these potentially mitigating conditions apply.

Finally, AG ¶ 20(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” is potentially mitigating. Applicant does not state it precisely in his Response that he has not paid the remaining debt of concern in the SOR, the \$19,964 owed to a collector for a car loan, because he fulfilled the contract and does not want to unjustly enrich the creditor, which are valid legal arguments. Although he has not asserted these defenses through an attorney to the creditor through court action, he does not consider the debt valid because he borrowed \$20,000 on the car, paid \$18,000 back under the loan agreement, and the car sale realized \$10,000. Applicant would have enhanced his presentation in writing if he had included the loan agreement and information about the sale price of the vehicle after repossession as part of his Response. Nonetheless, his position is credible based on the other evidence he submitted. The documented proof is the credit report showing the debt. Applicant is in contact with the creditor, who wants Applicant to admit the debt, but he refuses to do so because he terminated the agreement, in his opinion, by surrendering the vehicle. I conclude Applicant has a reasonable legal basis to dispute the debt. He would be well advised to hire an attorney to resolve this debt by some compromise to remove it from his credit record.

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.” According to 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 suffered economic losses because of unemployment at various times. Applicant was an adult and married when these economic woes befell him. He used a legal process, the Federal bankruptcy law, to eliminate about \$22,000 in debt after keeping his mobile home and one car in 1999. He has shown he has not accumulated additional debt during the past nine years which he has not paid. He did show he pays his debts, and that both he and his wife are now employed. He manages his income within its limits.

He has shown, however, that on his other debts and total financial picture, he has learned from his bankruptcy and past unemployment periods the need to establish and maintain good credit.

Overall, the record evidence leaves me with no questions or doubts as to Applicant's eligibility and suitability for a security clearance. Applicant is not a security risk or threat. For all these reasons, I conclude Applicant mitigated the security concerns arising from his 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.

PHILIP S. HOWE
Administrative Judge