



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



In the matter of:)
)
) ISCR Case No. 08-06533
)
)
Applicant for Security Clearance)

Appearances

For Government: John B. Glendon, Esq., Department Counsel
For Applicant: *Pro Se*

June 9, 2009

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant mitigated the Government's security concerns under Guideline F, Financial Considerations. Applicant's eligibility for a security clearance is granted.

On January 15, 2009, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) detailing 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 February 13, 2009, and requested a hearing before an administrative judge. The case was assigned to me on March 26, 2009. DOHA issued a Notice of Hearing on April 7, 2009. I convened the hearing as scheduled on May 27, 2009. The Government offered Exhibits (GE) 1 through 4.

Applicant did not object and they were admitted. Applicant testified and offered Exhibits (AE) A through M, which were admitted without objection. The record was held open May 22, 2009, to allow Applicant an opportunity to provide additional exhibits, which he did, and they were marked as AE N through S. Department Counsel did not object and they were admitted.¹ DOHA received the transcript of the hearing (Tr.) on May 18, 2009.

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 38 years old and a high school graduate. He began working for his present employer, a federal contractor, in February 2008. He enlisted in the Navy in 1997 and was honorably discharged in June 2005. Prior to his discharge, he accepted a job which required him to relocate to a different state. His salary was to be \$50,000 annually, in addition to a monthly cost of living allowance of \$2,500. After he accepted the job and moved, the company had a reduction in work and because Applicant was the last one hired, he was the first one laid off in October 2005. He was now living in an unfamiliar city with no job.²

Applicant was unable to find a job in his field and applied for unemployment benefits in November 2005. He had financial obligations that were based on his salary prior to losing his job. He received \$295 a week in unemployment benefits. His monthly rent was \$875 and his other expenses, such as car, food, and basic living expenses exceeded his benefits. Applicant soon began to fall behind in his bills. At the time he was engaged to be married, but terminated the relationship because of the financial strain. Applicant explained he continued to look for a job, but to no avail and was eventually forced to call his parents and move home.³

While living with his parents Applicant could only find minimum wage jobs and he was just covering his living expenses. He continued to fall behind further in his financial obligations. In November 2007, he applied for a job with his current employer and started working for them in February 2008. Since he has been employed Applicant has been gradually paying his delinquent debts. He researched using a debt consolidation company and concluded that they had high interest rates and fees and he would be better off paying the debt himself.⁴

¹ Department Counsel's memorandum was marked Hearing Exhibit I.

² Tr. 18-22, 82-84.

³ Tr. 18-24.

⁴ Tr. 25-26, 86-89.

The SOR alleges 13 delinquent debts, totaling \$30,000. The status of the debts is as follows:

The debt in SOR ¶ 1.a (\$2,893) is a personal loan from Applicant's credit union. He incurred the debt in February 2005 while on active duty and stopped paying it in December 2005 after he lost his job. He has settled and paid the debt for \$1,900.⁵

The debt in SOR ¶ 1.b (\$1,527) is a jewelry store debt incurred in February 2005 for an engagement and wedding ring. Applicant paid the debt on time and had an insurance rider regarding this debt that if he lost his job the insurance would pay the balance of the debt. Applicant complied with the terms of the agreement and sent a claim to cover the debt when he lost his job. The company claimed they lost his paperwork and the debt was sent to a collection company. He has a pending insurance claim and is attempting to resolve this debt through the insurance company. He stated if he can not resolve it he will pay the debt.⁶

The debt in SOR ¶ 1.c (\$6,137) is for a military credit card debt. Applicant provided proof that he has already paid \$7,722 on the account. Applicant used his income tax refund to make this payment. Due to interest and penalties he still owes \$1,400. Applicant credibly testified he has saved \$500 and by September 2009 he will have enough to make a lump sum payment to pay off the debt. He notified the creditor and they will not accept monthly payments.⁷

The debt in SOR ¶ 1.d (\$347) was a payday loan that Applicant took when he lost his job. He paid the debt in the past month and had not yet received the receipt of payment.⁸

The debt in SOR ¶ 1.e (\$2,582) was a credit card debt. Applicant has not yet paid this debt. He is saving money so he can make a lump sum payment and will use his state tax refund to pay the debt. He stopped paying the debt in October 2005 when he lost his job.⁹

The debt in SOR ¶ 1.f (\$5,718) is a credit card debt. Applicant used this credit card to help pay his living expenses when he was unemployed. He has not paid this debt, but is saving his income to do so.¹⁰

⁵ Tr. 26-30, 39-40; AE B and G.

⁶ TR. 30-34; AE J.

⁷ Tr. 35-39; AE I.

⁸ Tr. 37-38, 44-49; AE P.

⁹ Tr. 49-54.

¹⁰ Tr. 55-56.

Applicant disputed the debt in SOR ¶ 1.g (\$4,136) with the credit bureau because it is not his account. The account's history shows it was opened in Chicago in 2001 and Applicant credibly testified he did not live there and did not open the account. He provided documentation of his dispute.¹¹

The debt in SOR ¶ 1.h (\$1,127) is for a cell phone account. He credibly testified that when he lost his job he needed to keep a cell phone account so potential employers had a way of contacting him. He negotiated a settlement with the creditor to pay \$450 and provided proof he paid it.¹²

The debt in SOR ¶ 1.i (\$1,207) was due to an overdraft on a bank account. Applicant credibly testified that his checkbook was stolen and he advised the bank, but they continued to cash stolen checks that Applicant did not write. Despite his assertions the bank charged him overdraft fees and the account was turned over to a collection company. Applicant decided to pay the account and settled and paid \$600.¹³

The debt in SOR ¶ 1.j (\$550) is an electric bill Applicant incurred when he was unemployed. He fell behind on the payments in November and December 2005. He turned off his electricity and did not have any power during January and February 2006. He would go to friends' houses to use their showers. He negotiated a settlement of \$330 to be paid on his next pay day.¹⁴

The debt in SOR ¶ 1.k (\$1,755) is a credit card debt that Applicant used for living expenses while unemployed. He defaulted on the credit card in November 2005. He intends to pay the debt by October 2009. He intends on returning to school in August 2009 while continuing to work. His employer is permitting him to work in the morning and attend school in the afternoon. He is authorized to use the GI Bill for his education and anticipates receiving extra money at that time to help with his expenses.¹⁵

The debt in SOR 1.l (\$1,931) is a phone bill. Applicant was unaware that he was incurring roaming charges that increased his bill. He is following his plan of saving his income and then negotiating a settlement with the creditor. This bill has not been paid. Applicant credibly testified he intends to pay this debt.¹⁶

¹¹ Tr. 56-58; AE O.

¹² Tr. 58-62; AE Q and S.

¹³ Tr. 63-65; AE H.

¹⁴ Tr. 65-68.

¹⁵ Tr. 68-75.

¹⁶ Tr. 75-76.

The debt in SOR ¶ 1.m (\$731) is a credit card debt. Applicant used this credit card when he moved with his new job. He negotiated a settlement with the creditor and paid \$641. This debt is resolved.¹⁷

Applicant credibly testified that he was not overspending when he was in the Navy and got his first job, but he took for granted that he had a steady income. When he started his new job, he was earning, with his additional benefits, about \$5,000 a month. He did not realize that everything could change so quickly. He is attempting to keep some money in savings so the same thing does not happen again. Applicant's goal is to have all of his debts paid by the end of 2009. He is also working towards earning his engineering degree to better his situation. He credibly testified that he has been living a "hermit's" life to save money. He regularly works overtime, if it is offered. After he pays his monthly expenses, he uses the remainder to pay his delinquent debts. He does not have any credit cards. He pays all of his bills and car payment on time.¹⁸ He eats only two meals a day and skimps on food items to save money by eating soup, cereal and fruit. He copiously and regularly examines his credit report. He is learning how to manage his finances because he does not want to live paycheck to paycheck. He has cut out unnecessary expenditures. Applicant has a written budget that he follows and a spread sheet reflecting the status of his debts and his payments toward them.¹⁹

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

¹⁷ Tr. 76-77; AE F.

¹⁸ AE B.

¹⁹ Tr. 36-44; 78-91; AE C and D.

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. I have considered all of them under AG ¶ 19 and especially considered the following:

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

Applicant has delinquent debts from 2005. He has paid some of the debts, but others are still owed. I find both disqualifying conditions have been raised.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. I have considered all of the mitigating conditions under AG ¶ 20 and especially considering the following:

(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 individual 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's behavior is recent because he still has several delinquent debts that he has not paid. Applicant admitted he took for granted his good fortune of having a regular paycheck and when he lost his job his financial situation collapsed. He developed an appreciation for scrupulously maintaining his finances. I find the circumstances that put Applicant in a financial bind are unlikely to recur and do not cast doubt on his reliability, trustworthiness and good judgment. Hence, I find mitigating condition (a) applies.

Applicant was paying all of his bills when he was employed. He took a well paying job and incurred some moving expenses to do so. Two months after he moved to a new location he was laid off and he was unable to find work. He incurred living expenses that he could not pay and used his credit cards to survive. As a last and final resort, he moved back home with his parents. He could only find minimum waged jobs and was unable to pay outstanding bills. Once Applicant was employed in a well paying job, he began to tackle his outstanding bills. He reasonably concluded that it was best for him to save his income and negotiate his own settlement agreements with creditors versus using a debt consolidation company and paying extra fees. He has paid and

settled many of his delinquent debts. I find Applicant's unemployment was a condition that was beyond his control and the direct result of his financial difficulties. I also find that once he was employed he acted responsibly in addressing his debts. Therefore, I find mitigating condition (b) applies.

Applicant did not provide evidence that he has received financial counseling, but he provided a copy of a written budget that he is following and a spread sheet indicating his repayment plan for his debts. Although he still has some debts to pay, I find there are clear indications that his financial problems are being resolved and are under control. Applicant paid and settled some of his debts and is saving money to resolve the remaining debts, thereby making a good-faith effort to repay his overdue creditors. I find mitigating conditions (c) and (d) apply.

Applicant formally disputed a debt he did not think belonged to him. He provided documents to substantiate his dispute and I found his testimony credible that the debt did not belong to him. I find mitigating condition (e) 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) 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 served in the Navy for eight years and was honorably discharged. He accepted a good paying job with additional financial benefits, but was required to move to a new location, which he did. The job market slowed down and he was laid off months after he moved. He was then confronted with the costs of his move and debts he had been paying regularly. He had difficulty finding work and could not pay his bills. He took extreme measures to save money, by living without electricity and reducing his food consumption. Despite his best efforts, he was forced to move back home with his parents and could only find minimum

wage jobs. Finally, when he started the job with his present employer he was able to begin addressing his delinquent debts. He has paid or settled many of them, but others remain unpaid until he can save enough to make a settlement offer. Applicant has a new appreciation for being fiscally responsible. He is actively reducing his debts and anticipates being debt free by the end of 2009. Overall, the record evidence leaves me with no 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
Subparagraphs 1.a-1.m:	For Applicant

Conclusion

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

Carol G. Ricciardello
Administrative Judge