



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



In the matter of:)
)
) ISCR Case No. 08-06656
)
)
Applicant for Security Clearance)

Appearances

For Government: Tom Coale, Esq. Department Counsel
For Applicant: *Pro Se*

September 2, 2009

Decision

HEINY, Claude R., Administrative Judge:

Applicant owed approximately \$18,000 on three judgments and eleven accounts charged off or placed-for-collection. Applicant has paid, is paying, or has arranged payment on his debts. Applicant has rebutted or mitigated the government’s security concerns under financial considerations. Clearance is granted.

Statement of the Case

Applicant contests the Defense Department’s intent to deny or revoke his eligibility for an industrial security clearance. Acting under the relevant Executive Order and DoD Directive,¹ the Defense Office of Hearings and Appeals (DOHA) issued a

¹ 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.

Statement of Reasons (SOR) on March 11, 2009, detailing security concerns under financial considerations.

On April 6, 2009, Applicant answered the SOR, and requested a hearing. On June 16, 2009, I was assigned the case. On July 7, 2009, DOHA issued a notice of hearing scheduling the hearing which was held on August 3, 2009.

The government offered Exhibits (Ex.) 1 through 12, which were admitted into evidence. Applicant testified on his own behalf and submitted Exhibits A through Q, which were admitted into evidence. The record was held open to allow additional information from Applicant. On August 3, 2009, additional material was submitted. Department Counsel had no objection to the material, which was admitted into the record as Ex. R. On August 7, 2009, the transcript (Tr.) was received.

Findings of Fact

In Applicant's Answer to the SOR, he denied the factual allegations in SOR ¶ 1.a, 1.b, 1.h, 1.i, and 1.l. He admitted the remaining factual allegations. Applicant's admissions to the SOR allegations are accepted as fact. After a thorough review of the record, pleadings, exhibits, and testimony, I make the following findings of fact:

Applicant is a 39-year-old senior security engineer, who has worked for a defense contractor since February 2007. (Tr. 38) He is seeking to obtain a security clearance. In 2006, in a prior job, Applicant received a certificate of recognition for his outstanding work performance. (Ex. N) Two supervisors who knew him in 2006 stated Applicant demonstrated professionalism, technical excellence, forward thinking, progressive management capabilities, that he provided top-notch customer service, and provided outstanding performance. (Ex. O, Q) Another supervisor stated Applicant had outstanding character and duty performance. (Ex. P)

In May 2008, Applicant's gross monthly salary was \$7,000 and his net income was \$4,900. (Ex.2) In February 2008, Applicant obtained financial counseling from a friend who was a mortgage broker. (Tr. 67) Applicant was told to contact his creditors and have them correct any inaccurate information. (Ex. 2) In November 2008, when he answered written interrogatories, Applicant stated his net monthly income was \$2,170 and he was working diligently to clear up his debts. (Tr. 65, Ex. 3, p 20) His current yearly income is approximately \$98,000. (Tr. 76) In December 2009, he plans to marry. His fiancé's yearly income is \$70,000 and she is debt free. (Tr. 77)

Prior to 2003, Applicant asserts his credit was outstanding. (Tr. 36, Ex. 3, p 20) That year his mother experienced financial hardships and Applicant began to provide her support. (Tr. 36) While employed, her employer paid her insurance. Once retired, his mother had to pay the cost of her own health insurance, which was more than \$500 per month. (Tr. 64) She was unable to handle paying her insurance payments, mortgage payments, and utility bills. Applicant assisted her by sending her \$500 to \$700

per month. (Tr. 65) His mother's home is now paid off and his mother is in a better financial position. (Tr. 63) He no longer provides her support.

In January 2008, Applicant was interviewed about his finances. (Ex. 2) At that time, he stated he did not recognize either of the judgments listed in SOR ¶ 1.a. and 1.b (\$3,071 and \$2,896). In June 2004, a \$2,795 civil suit was filed against Applicant as to the debt listed in SOR ¶ 1.a (\$3,071). (Ex. 8) Following the hearing, Applicant arranged a \$180 per month automatic withdrawal to pay this debt.

In August 2003, the creditor filed for a \$3,057 judgment and in October 2003, filed for a \$2,896 judgment. (Ex. 6) This relates to the debt listed in SOR ¶ 1.b. Applicant makes \$434.50 monthly payments on this debt. (Tr. 44, 67, Ex. F, G)

Applicant owed a telephone account (SOR ¶ 1.j, \$648) being collected by a collection service. The account has been paid. (Tr. 55, Ex. H, I) Applicant disputed a \$186 telephone service debt (SOR ¶ 1.h). The telephone company was supposed to send him equipment. When it never arrived, Applicant called the telephone company again and the equipment was sent. However, he was double billed for the equipment. (Tr. 51) Applicant's telephone service is with this creditor and his account has a zero balance. (Ex. R 1, R 3)

Applicant obtained a student loan to pay tuition on a \$3,000 Microsoft course. (Tr. 53) The Sallie Mae account (SOR ¶ 1.i, \$5,891) went delinquent in late 2002. The successor-in-interest, a collection agency (SOR ¶ 1.k), obtained a \$3,903 judgment in April 2003. (Ex. 4) In September 2005, the collection agency obtained a second judgment (\$4,323). (Ex. 5) Starting in May 2009, Applicant has been making \$600 monthly payments on this debt (Tr. 53, Ex. B, C) The amounts owed in Applicant's September 2007 credit bureau report (CBR) list the same amount of high credit for the Sallie Mae account and for the creditor listed in SOR ¶ 1.k. (Ex. 9, p. 7) This collection agency also lists itself as a Sallie Mae corporation. Applicant is currently making payments to a successor-in-interest, another collection agency. Applicant spoke with Sallie Mae and confirmed there was only one student loan. (Tr. 54)

In February 2001, Applicant opened an account with a \$500 limit to buy clothing. The account (SOR ¶ 1.n, \$851) went delinquent in 2002. This debt was settled for \$425. (Ex. 3, p 21, Ex. L) In Applicant's answer to the SOR, he denied owing the \$210 debt listed in SOR ¶ 1.l., because he said he had paid it long ago. Applicant provided proof this debt has been paid. (R-8, R-9)

Applicant has one daughter, age 11, who lives with him. (Tr. 41) Applicant asserts his finances will not be a problem in the future. He manages his finances more methodically. (Tr. 78) He has only one credit card. (Tr. 78) Creditors are not calling him or mailing him concerning past due obligations. He is current on his car loan, utility bills, and other obligations. (Tr. 79)

A summary of the 14 SOR debts and their current status follows:

	Creditor	Amount	Current Status
a	Judgment.	\$3,071	Following the hearing, Applicant arranged to make automatic withdrawals of \$180 on the 25 th of each month. (Ex. R 2, R 6, R 7)
b	Judgment.	\$2,896	Paying \$434.50 each month starting in May 2009. (Tr. 44, 72, Ex. F, G)
c	Credit card account placed-for-collection.	\$851	Following the hearing, Applicant arranged to make monthly payments of \$110 starting August 22, 2009. (Tr. 46, Ex. R 2, R 5)
d	Collection firm collecting on a credit card account.	\$762	Settled in full in June 2009. (Tr. 48, Ex. J)
e	Collection firm collecting on a credit card account.	\$510	Settled in full in June 2009. (Tr. 48, Ex. K)
f	Charged-off credit card account.	\$497	\$245 paid August 2009. The remainder to be paid September 2009. (Ex. 10, Ex. R 3)
g	Credit card account placed-for-collection.	\$620	Settled in full. (Tr. 49, Ex. E)
h	Charged-off telephone account.	\$186	Paid. (Ex. R 1, R 3)
i	Student loan charged-off.	\$5,891	Paying \$600 per month which started in May 2009. (Ex. B, C, D, and R 11 and R 12)
j	Collection firm collection for a telephone account.	\$648	Settled in full in May 2009. (Ex. H, I)
k	Judgment on a delinquent student loan.	\$4,137	This is the same debt as the debt listed in SOR ¶ 1 i. (Ex. 9)
l	Account placed-for-collection.	\$210	Paid in full in August 2009. (Ex. R 8, R 9)
m	Account placed-for-collection before it went to judgment.	\$2,066.81	This is the same debt as the debt listed in SOR ¶ 1 b. Applicant is making \$434.50 monthly payments. (Tr. 44, 72, Ex. F and G)
n	Collection firm collecting on a credit card account.	\$851	Settled in full in March 2009. (Ex. L)
	Total debt listed in SOR	\$23,196	

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 must be considered 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 overarching adjudicative goal is a fair, impartial and commonsense 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

Revised Adjudicative Guideline (AG) ¶ 18 articulates the security concerns relating to financial problems:

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.

Additionally, an individual who is financially irresponsible may also be irresponsible, unconcerned, negligent, or careless in properly handling and safeguarding classified information. Behaving responsibly or irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life.

A person's relationship with his creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to repay debts under agreed upon terms. Absent evidence of strong extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a position of risk that is inconsistent with holding a security clearance. An applicant is not required to be debt free, but is required to manage his finances so as to meet his financial obligations.

The record evidence supports a conclusion Applicant has a history of financial problems. Applicant had three unpaid judgments and nine charged off or placed-for-collection accounts, which total approximately \$18,000. The debts listed in SOR ¶ 1.b (\$2,896) and SOR ¶ 1.n (\$851) are the same obligation and the student loan listed in SOR ¶ 1.i (\$5,891) and the judgment listed in SOR ¶ 1.k (\$4,137), are the same obligation. Disqualifying Conditions AG ¶ 19(a), "inability or unwillingness to satisfy debts" and AG ¶ 19(c), "a history of not meeting financial obligations," apply.

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.

The mitigating factors in AG ¶ 20(a) only partially apply because the debts were recent and numerous. However, Applicant has paid or is paying his obligations. Under the circumstances, it is unlikely Applicant's financial problems will recur. Applicant was helping his mother when she first retired. His mother no longer requires his assistance.

The mitigating factors in AG ¶ 20(b) have limited applicability. Applicant incurred unanticipated expenses of assisting his mother following her retirement. It was unexpected that he would have to do so. However, this was not a condition that was largely beyond his control. It was his choice to assist her, which led to his financial problems.

The mitigating factors in AG ¶ 20(c) apply. Applicant sought financial counseling and his financial problems are under control. He maintains a single credit card, is not receiving calls or mail from creditors demanding payment, and is paying his debts as agreed. Applicant is making payments on the judgment listed in SOR ¶ 1.b and student loan listed in SOR ¶ 1.i, which shows a good-faith effort to repay debts. AG ¶ 20(d) applies.

Following the hearing, Applicant arranged to make \$180 monthly payments on the judgment listed in SOR ¶ 1.a (\$3,071) by automatic withdrawal. He also agreed to make \$110 monthly payments on the debt listed in SOR ¶ 1.c (\$851). Normally, arrangements to start making payments following the hearing are of little weight because it is often difficult to ascertain if the repayment schedule will be met. However, in this case, Applicant shows a pattern of making automatic withdrawals from his checking account on a monthly basis to pay his debts. It is this pattern of payment which makes it likely he will continue making his monthly payments.

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 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. The debts incurred were not the types that indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations. Applicant chose to assist his mother during her financial time of need. She no longer needs his financial support. At one point, Applicant's finances were out of control and he was unable to pay his obligations in a timely manner. He is now in control of his finances and is making timely payment on his debts. He makes approximately \$98,000 a year. He has paid, is paying, or will shortly start paying on all the SOR debts. Applicant is living within his means and paying his obligations in a timely manner.

Of course, the issue is not simply whether all his debts are paid—it is whether his financial circumstances raise concerns about his fitness to hold a security clearance. (See AG ¶ 2(a)(1)) 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 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:

Guideline F, Financial Considerations: FOR APPLICANT

Subparagraph 1.a—1.n: For Applicant

Conclusion

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

CLAUDE R. HEINY II
Administrative Judge