



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



In the matter of:)
)
) ISCR Case No. 08-06818
)
)
Applicant for Security Clearance)

Appearances

For Government: Julie R. Mendez, Esquire, Department Counsel
For Applicant: *Pro Se*

June 11, 2009

Decision

RIVERA, Juan J., Administrative Judge:

Applicant’s eight year naval service, his two year performance for a government contractor, and his efforts to resolve his financial problems before receipt of the SOR show some reliability, judgment, and willingness to comply with rules and regulations. He is now in a stable relationship and has a stable job. I believe Applicant has learned from his past mistakes and, in the future, will be able to live within his financial means. He mitigated the financial considerations security concerns. Eligibility for access to classified information is granted.

Statement of the Case

On February 4, 2008, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP). On December 18, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to him, pursuant to Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended and modified, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive),

dated January 2, 1992, as modified and revised.¹ The SOR alleges security concerns under Guideline F (Financial Considerations). The SOR detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for him, and recommended referral to an administrative judge to determine whether a clearance should be granted, denied or revoked.

On January 14, 2009, Applicant responded to the SOR allegations, and requested a hearing before an administrative judge. The case was assigned to me on February 26, 2009. DOHA issued a notice of hearing on March 11, 2009. The hearing was convened as scheduled on March 26, 2009. The government offered Government Exhibits (GE) 1 through 4, which were admitted without objection (Tr. 15). Applicant testified on his own behalf, and submitted Applicant Exhibits (AE) 1 through 9, which were admitted without objection (Tr. 19).² DOHA received the transcript of the hearing (Tr.) on April 3, 2009.

Findings of Fact

Applicant admitted the factual allegations in SOR ¶¶ 1.a, 1.b, and 1.d. He denied SOR ¶ 1.c, because he is disputing the debt. His admissions are incorporated herein as findings of fact. After a thorough review of the evidence of record, and having considered Applicant's demeanor and testimony, I make the following additional findings of fact.

Applicant is a 31-year-old acquisition management analyst working for a defense contractor. He graduated from high school in 1995, and joined the U.S. Navy in October 1998. He served honorably on active duty for eight years and was discharged in December 2006. He achieved the grade of E-5, and his service was characterized as honorable. Appellant took some college courses while in the Navy. He plans to enroll full time in college during the summer of 2009.

Applicant married his first wife in August 1999, they were legally separated in April 2006, and their divorce became final in June 2008 (Tr. 27). The court did not adjudicate the marital property because Applicant's ex-wife cannot be found. Applicant has two children of this marriage, ages nine and six. Applicant was forced to leave his Navy career to take care of his children after he received full custody of his children during his 2006 separation proceedings.

¹ On Aug. 30, 2006, the Under Secretary of Defense (Intelligence) published a memorandum directing application of revised Adjudicative Guideline to all adjudications and other determinations made under the Directive and Department of Defense (DoD) Regulation 5200.2-R, *Personnel Security Program* (Regulation), dated Jan. 1987, as amended, in which the SOR was issued on or after Sep. 1, 2006.

² AE 9 was submitted post-hearing. I left the record open to allow Applicant additional time to submit matters on his behalf.

After leaving the Navy, Applicant was unemployed for approximately three months (e-QIP). Between February 2007 and October 2007, he worked three different low paying jobs, twice as a pest control technician and then as a service technician. He was hired by his current employer, a large defense contractor, in October 2007.

Applicant married his second wife in June 2008. He has one stepchild and one new son of this marriage. His current wife worked and contributed to the household finances until she had to go on maternity leave to have their child. While on maternity leave she was laid off. She is currently not working but collects around \$1,200 from unemployment. She also receives \$650 in monthly financial support from the father of her child. She uses part of her money to contribute to the household finances.

In his February 2008 security clearance application, Applicant disclosed he filed for Chapter 7 bankruptcy protection in 2002, had a car repossessed in 2006, and had other financial problems. His background investigation addressed his financial status and included the review of February and December 2008 credit bureau reports (CBRs), Applicant's answers to August 2008 DOHA interrogatory, and his answer to the SOR.

The SOR alleges Applicant filed for Chapter 7 bankruptcy protection and was discharged of all debts in October 2002. Subsequent to his bankruptcy discharge, he acquired three new debts which became delinquent totaling approximately \$31,085. Concerning the bankruptcy, Applicant explained that in 2000, he bought a new Chevy Tracker (Tr. 45-46). The car caught fire due to an electrical short and was totaled. His insurance company paid the blue book value for the vehicle, but that was not enough to cover his total financial obligation. He still had a balance of around \$20,000. He was a sailor (E-2) in the Navy and could not afford to pay this debt and his family's day-to-day living expenses, thus he filed for bankruptcy protection (Tr. 24).

Concerning the other three SOR allegations and his financial problems, Applicant explained most of his delinquent debts were the result of his acrimonious divorce and his ex-wife acquiring numerous loans and debts without his knowledge.

SOR ¶ 1.a (MILITLNS/OMNI - \$1,703) concerns a loan made by his ex-wife while married to Applicant, but without his consent. Applicant contacted the creditor and settled this loan in December 2007. After the settlement, he made monthly payments of \$150 and finished paying off this debt in December 2008 (AE 1 & 9).

SOR ¶ 1.b (Navy Federal Credit Union debt for \$28,533) – this is a loan Applicant and his ex-wife made in 2004 for the purchase of a used 2000 Lincoln Navigator (Tr. 31-32). In April 2006, during the marital separation asset division hearing, Applicant's ex-wife took possession of the Navigator and a Dodge Neon he and she had purchased for her use. Applicant did not contest her request for the Navigator because he was scheduled to deploy and he did not want the Neon.

Applicant's ex-wife could not afford the Navigator and voluntarily turned it over to the creditor. Applicant was deployed and was not made aware that the Navigator had

been repossessed. He disputed the debt with the creditor because his ex-wife requested and was given the car during the 2006 property settlement hearing. However, neither marital property nor responsibility for the debts has been allocated by the divorce court because Applicant's ex-wife cannot be found. This debt is still outstanding and Applicant is responsible for it. He has not been making any payments. He intends to file for bankruptcy protection to resolve this debt.

SOR ¶ 1.c (Rash/Curtis Associates - \$849) this concerns a bill for medical services received by his ex-wife in July 2007. She illegally used her military dependent identification card to receive medical services after Applicant had left the Navy (December 2006), and after they were legally separated (Tr. 21). Applicant contacted the creditor and disputed the debt. The creditor agreed to release him from liability (Tr. 22). He is waiting for the release of liability document.

Applicant explained his financial problems were mostly the result of his acrimonious divorce, his ex-wife's acquiring loans and debts without his knowledge, and him losing his military career to take care of his children. He was granted custody of his children during the legal separation proceedings. His ex-wife was required to provide financial support. However, she disappeared and has provided no financial support to the children.

Currently, Applicant is remarried and has a stable home and lifestyle. Since October 2007 he has had stable employment and he and his wife have established a combined household budget. He has resolved all his delinquent loans, except for the loan alleged in SOR ¶ 1.b. In May/June 2008, and in January 2009, Applicant consulted with his attorney about filing for bankruptcy protection. He believes he cannot afford to pay for the Navigator debt and his family's day-to-day living expenses (Tr. 25). He has to wait until sometime in 2009 to be able to file for bankruptcy protection.

Applicant received pre-deployment financial counseling while in the Navy in 2005 (Tr. 40, 47). Since then, he has discussed his financial situation with his attorney, but he has not participated in any additional financial counseling (Tr. 48).

Applicant's current net monthly income is approximately \$2,600 (Tr. 34). His new wife contributes to the household finances and pays some of the family's financial expenses with her unemployment check and the financial support she receives from her child's father. His current expenses include: \$500 in rent; \$400 for utilities; \$50 for cable; \$450 for his wife's car payment; \$200 gas; \$300 for food; and \$150 in miscellaneous expenses. Applicant drives an F-150 his mother bought for him, and he does not pay insurance because he is included in his mother's insurance policy (Tr. 35).

Applicant expressed remorse for his financial problems. He was candid and forthcoming explaining the circumstances surrounding his financial problems. I believe he has learned his lesson. He is now well aware of what is required of him to show that he is reliable, trustworthy, and financially responsible. He is very concerned about the adverse impact losing his security clearance will have on his family and his career.

Applicant noted his eight year service to his country while in the Navy and that he has performed well for his current employer. His Navy evaluation reports show he was considered an outstanding sailor with excellent potential for future service. He was strongly recommended for early promotion (AEs 3 & 4). His current employer's performance evaluations show he meets or exceeds his performance requirements (AEs 6 & 8). He is regarded as a good employee. There is no evidence that during his years of naval service Applicant ever compromised or caused others to compromise classified information.

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 controlling 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.

In the decision-making process, the Government has the initial burden of establishing controverted facts alleged in the SOR by "substantial evidence,"³ demonstrating, in accordance with the Directive, that it is not clearly consistent with the national interest to grant or continue an applicant's access to classified information. Once the Government has produced substantial evidence of a disqualifying condition, the burden shifts to Applicant to produce evidence "to rebut, explain, extenuate, or

³ See Directive ¶ E3.1.14. "Substantial evidence [is] such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the contrary evidence in the record." ISCR Case No. 04-11463 at 2 (App. Bd. Aug. 4, 2006) (citing Directive ¶ E3.1.32.1). "Substantial evidence" is "more than a scintilla but less than a preponderance." See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994).

mitigate facts admitted by applicant or proven by Department Counsel, and [applicant] has the ultimate burden of persuasion as to obtaining a favorable clearance decision.” Directive ¶ E3.1.15. The burden of disproving a mitigating condition never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

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* Executive Order 12968 (Aug. 2, 1995), Section 3.

Analysis

Guideline F, Financial Considerations

Under Guideline F, the security concern is that 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. AG ¶ 18.

Applicant filed for bankruptcy protection in 2002 and was discharged of all of his financial obligations. Subsequent to his discharge, Applicant acquired three debts that were delinquent for a number of years. Of the three delinquent debts alleged in the SOR, Applicant paid SOR ¶ 1.a (\$1,703); he is properly disputing SOR ¶ 1.c (\$849); and SOR ¶ 1.b (\$28,533) is still delinquent and outstanding. Applicant did not have the financial means to pay his legal obligations, delinquent debts, and his day-to-day living expenses. AG ¶ 19(a): inability or unwillingness to satisfy debts; and AG ¶ 19(c): a history of not meeting financial obligations, apply in this case.

AG ¶ 20 lists six conditions that could mitigate the financial considerations security concerns:

- (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;

(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; and

(f) the affluence resulted from a legal source of income.

AG ¶ 20(a) applies, but only in part because Applicant's financial problems are ongoing. However, the evidence shows his financial problems occurred under such circumstances that they are unlikely to recur.

Applicant presented evidence that established circumstances beyond his control contributing to his inability to pay his debts, i.e., his discharge from the service to take care of his children; he was unemployed for three months after his discharge and underemployed for approximately one year; his ex-wife acquired loans and debts without his consent; and he had financial expenses related to his separation and divorce from his first wife. AG ¶ 20(b) applies, but only partially, and does not fully mitigate the financial concerns.

Applicant failed to show he acted financially responsibly in light of his income, financial stability, and overall financial practices. He presented some evidence of efforts to contact creditors or to resolve his debts by entering into a settlement agreement and payment plan starting in 2007, after he became permanently employed. Notwithstanding, Applicant's financial problems seem to be caused, in part, by him living beyond his means, i.e., buying expensive cars that he cannot afford.

AG ¶ 20(c) does not fully apply. Applicant is resolving his financial problems, but his financial problems are not yet under control. Considering the record as a whole, Applicant should have been more diligent resolving his financial problems. He did show, however, that he made good-faith efforts to resolve his debts, and that his financial problems are being resolved.

AG ¶ 20(e) applies. Applicant has a reasonable basis to dispute the debt alleged in SOR ¶ 1.c. The remaining mitigating conditions are not reasonably raised by the facts in this case.

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.

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. AG ¶ 2(c).

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant is a mature, well trained man, and a good father. He served honorably for eight years in the Navy and has been successful working for a defense contractor since October 2007. Applicant established circumstances beyond his control contributing to his inability to pay his debts, i.e., his discharge from the service; his period of unemployment and underemployment; his ex-wife over spending; and his separation and divorce.

There is no evidence he has ever compromised classified information or committed any security violations. He has established a reputation as a valuable, dedicated and reliable employee. Applicant expressed sincere remorse for his financial mistakes and seems resolute in fixing his current financial problems. These factors show responsibility, good judgment, and mitigation.

On the other hand, Applicant acted somewhat irresponsibly when he purchased several cars outside of his financial means, causing him to become financially overextended. He still has a \$28,533 delinquent debt for a car he acquired, likely beyond his financial means.

On balance, I conclude Applicant's favorable evidence is sufficient to mitigate the security concerns arising from his financial considerations. Applicant's eight year naval

service, his two year performance for a government contractor, and his efforts to resolve his financial problems before receipt of the SOR show some reliability, judgment, and willingness to comply with rules and regulations. He is now in a stable relationship and has a stable job. I believe Applicant has learned from his past mistakes and, in the future, will be able to live within his financial means. Overall, the record evidence convinces me of Applicant's eligibility and suitability for a security clearance.

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.d:	For Applicant

Conclusion

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

JUAN J. RIVERA
Administrative Judge