



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



In the matter of:)
)
) ISCR Case No. 08-07260
)
)
Applicant for Security Clearance)

Appearances

For Government: Emilio Jaksetic, Esquire, Department Counsel
For Applicant: *Pro Se*

April 23, 2009

Decision

RIVERA, Juan J., Administrative Judge:

Applicant’s 20-year naval service, his two-year performance for a government contractor, and his resolution of past financial problems show reliability, judgment, and willingness to comply with rules and regulations and that he can resolve his current financial problems. He mitigated the financial considerations security concerns. Eligibility for access to classified information is granted.

Statement of the Case

On January 2, 2008, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP).¹ On November 3, 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

¹ GE 2.

5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), dated January 2, 1992, as modified and revised.² 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 November 24, 2008, Applicant responded to the SOR allegations, and requested a hearing before an administrative judge. The case was assigned to me on December 22, 2008. DOHA issued a notice of hearing on January 7, 2009. The hearing was convened as scheduled on February 2, 2009. The government offered Government Exhibits (GE) 1 through 7, which were admitted without objection (Tr. 21). Applicant testified on his own behalf, and presented two witnesses and Applicant Exhibits (AE) 1 through 20, which were admitted without objection.³ DOHA received the transcript of the hearing (Tr.) on February 10, 2009.

Findings of Fact

Applicant admitted all the factual allegations in the SOR. 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 40-year-old senior test engineer working for a defense contractor. In October 1986, after graduating from high school, he joined the U.S. Navy. He served honorably on active duty during 20 years. He achieved the grade of E-6, and was honorably retired in October 2006. While in the Navy, Applicant had access to classified information at the secret and top secret levels. After his retirement, he was unemployed for one month. From November 2006 to July 2007, he worked first as an electrical mechanic and then as a test engineer for two private companies. He was hired by his current employer, a large defense contractor, in July 2007.

He has been married four times and divorced three times. He married his first wife in 1989, and they were divorced in March 1991. He married his second wife in November 1994, and they were divorced in October 1998. He married his third wife in April 2001, and they were divorced in October 2004. He has a seven-year-old son of this marriage for whom he provides \$600 a month in financial support. He is currently

² 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.

³ AE 20 was submitted post-hearing. I left the record open to allow Applicant additional time to submit matters on his behalf.

married to his fourth wife. However, it is not clear from the record when he married his current wife.

In his January 2008 security clearance application, Applicant disclosed he had a foreclosed property and other financial problems. His background investigation addressed his financial problems, and included the review of January and October 2008 credit bureau reports (CBRs), Applicant's answers to September 2008 DOHA interrogatory, and Department of the Navy Central Adjudication Facility (DONCAF) correspondence concerning a conditional grant of security clearance due to financial considerations concerns.

In 1998, a security clearance background investigation disclosed Applicant had financial problems which were later attributed to his ex-wife's failure to pay their creditors while Applicant was deployed. Applicant demonstrated he had initiated good-faith efforts to resolve his delinquencies prior to the start of the security clearance investigation. DONCAF considered his financial problems under control and he was granted a conditional security clearance. In March 2000, the conditions were vacated with a warning that future derogatory information would cause reconsideration of his security clearance.

The SOR alleges 13 delinquent/charged off accounts totaling approximately \$48,000. Applicant admitted responsibility for the alleged debts and promised to pay, settle, or resolve all his debts. He explained his financial problems were the result of a number of circumstances: he made the bad decision of buying a mobile home at his ex-wife's insistence; the expenses associated from his marital separation, maintaining two households, and his 2004 divorce; his retirement from the Navy; and being underemployed from November 2006 to July 2007.

On or about 2002, Applicant owned a home in State A and rented it while he was stationed and rented a house in State B. His third wife had an older son from a prior relationship who suffered from recurrent medical problems. He was receiving medical treatment in State C. His wife traveled frequently from State B to State C with Applicant's son to visit and stay with her older son. At his wife's insistence, Applicant bought a mobile home for his wife and son to live while she was visiting her older son. Applicant could not afford the expenses associated with maintaining the two households (paying two mortgages, utilities, and day-to-day living expenses). His problems were further complicated when his tenants gave him a bad check that caused his bank accounts to be frozen. His tenants later abandoned the property. Additionally, his wife filed for a divorce. During the separation pending the divorce, the court required Applicant to provide alimony and child support. As a result, his mobile home was repossessed and most of his debts became delinquent.

After his retirement, Applicant had no place to live. His home in State A was rented and the mobile home had been repossessed. He purchased a travel trailer from a friend with the promise to pay it off when he sold his State A home. Because of the loss of income and underemployment, he was forced to use his credit cards to pay for

his day-to-day living expenses. He attempted to consolidate his debts but was not able to do so because of the consolidation company's lack of performance and his lack of income. In January 2008, Applicant sold his State A home and used his profit to pay off his travel trailer and his ex-wife's car note (Tr. 45).

Currently, Applicant is remarried and has a stable home and lifestyle. Since 2007 he has had stable employment and established a combined household budget (AE 16). He sought credit counseling and entered into a debt management agreement to pay for his largest delinquent debts first (SOR ¶ 1.f, \$20,580) (AE 17). He intends to pay his largest debt first and continue addressing the remainder of the larger debts one by one under the debt management agreement. At the same time, he intends to settle and pay his smaller delinquent debts which are not part of the debt management agreement. Now that he is living with his fourth wife, he also plans to sell his travel trailer and use the profit to pay some of his delinquent debts.

Applicant owes the following delinquent debts: SOR ¶¶ 1.a, 1.b, 1.d, 1.e, and 1.i - 1.l, and 1.m.

Applicant settled and paid SOR ¶¶ 1.c and 1.g in January 2008 (AE 20). (I find SOR ¶¶ 1.c and 1.e alleged the same debt.) In February 2009, Applicant established a debt management agreement to pay for pay for SOR ¶ 1.f (\$20,580). It will take him approximately four years to pay this debt. He plans to accelerate the process by applying additional money to the debt as he satisfies other smaller financial obligations (AE 20).⁴ He satisfied the debt alleged in SOR ¶ 1.h in March 2008.

Applicant's current net monthly income is approximately \$5,600 (GE 5). His new wife contributes to the household finances and pays some of the family's financial expenses with financial support she received from her children's father. Applicant's fourth wife has delinquent accounts she is also trying to resolve. Applicant has acquired only one large debt since 2006. He purchased a 2006 truck (\$29,000) in June/July 2008, because his old truck was not working and he needed a truck to pull his travel trailer and commute to work.

Applicant expressed sincere remorse for his past 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.

He noted his selfless service to his country while in the Navy and that he has performed well for his current employer. Applicant's direct and technical supervisors

⁴ I note that Applicant attempted to start his debt management payment plan in August 2008 (GE 5). At the time, he was under the mistaken belief he had to include all of his delinquent debts in the debt management plan. He could not afford the then proposed debt management plan.

during the last two years consider him to be a highly responsible, dependable, and reliable employee. He is regarded as an employee with good work ethic and excellent performance. Applicant has handled classified information in his current job as well as when he was in the Navy. According to his references, during the last two years he has established an excellent reputation for following the rules and procedures required to safeguard classified information. He has not had any problems or violations handling classified information. There is no evidence that during his 20 years of Naval service Applicant ever compromised or cause others to compromise classified information.

Applicant believes he and his wife are personally and financially stable. They have been investing time and effort to become more financially responsible. He believes that given the opportunity he will be able to resolve his current financial problems as he previously resolved his financial problems while he was in the Navy.

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,"⁵

⁵ 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).

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 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).⁶

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.

Of the 13 delinquent debts alleged in the SOR, Applicant still has eight delinquent/charged off accounts totaling approximately \$25,401 which have been outstanding for many years. He placed the largest debt (SOR ¶ 1.f, \$20,580) in a debt management program and has been consistently making payments since February 2009. He paid SOR ¶ 1.h in March 2008, and SOR ¶¶ 1.c and 1.g in January 2009. Applicant did not have the financial means to pay his legal obligations, delinquent debts,

⁶ "The administrative judge [considers] the record evidence as a whole, both favorable and unfavorable, evaluate[s] Applicant's past and current circumstances in light of pertinent provisions of the Directive, and decide[s] whether applicant ha[s] met his burden of persuasion under Directive ¶ E3.1.15." ISCR Case No. 04-10340 at 2 (App. Bd. July 6, 2006).

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 retirement from the service reduced his monthly income in half; he was unemployed for one month after he retired and underemployed for approximately one year; he purchased a mobile home because his then stepson needed special medical treatment; and he had financial expenses related to his separation and divorce from his third 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 settlement agreements and payment plans, but mostly during 2008 and 2009.

AG ¶ 20(c) does not fully apply. Applicant is resolving his financial problems, but his financial problems are not yet under control. His inability to pay his small debts (less than \$100) shows he was financially overextended. 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. He also presented evidence that he is receiving financial counseling, and that his financial problems are being resolved. 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 and husband. He served honorably for 20 years in the Navy and has been successful working for a defense contractor since 2007. He has held access to classified information most of his professional life. 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. Moreover, his past behavior shows that when he had financial difficulties he acted responsibly and resolved those financial problems. 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 a mobile home outside of his financial means, causing him to become financially overextended. He also could have been more diligent in his efforts to resolve his delinquent obligations.

On balance, I conclude Applicant's favorable evidence is sufficient to mitigate the security concerns arising from his financial considerations. Applicant's naval service, his performance for a government contractor, and his resolution of past financial problems show reliability, judgment, and willingness to comply with rules and regulations and that he can resolve his current financial problems. He is now in a stable relationship and has a stable job. 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.m:	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