



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



In the matter of:)	
)	
-----)	ISCR Case No. 08-07308
SSN: -----)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Eric H. Borgstrom, Esquire, Department Counsel
For Applicant: *Pro se*

August 12, 2009

Decision

MATCHINSKI, Elizabeth M., Administrative Judge:

Applicant stopped paying on a credit card debt in 2006 when finances became tight because of unexpected legal and counseling costs for his younger son. He is saving funds and plans to resolve the \$6,378 balance as soon as he can determine who is presently entitled to collect it. Another creditor is not holding him legally responsible for his spouse's \$5,326 delinquent credit card balance, although the funds to repay it will come out of their household income. These unresolved debts are not likely to cause Applicant to engage in illegal activity. Clearance is granted.

Statement of the Case

Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) on February 6, 2008. On February 12, 2009, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a statement of reasons (SOR) detailing the security concerns under Guideline F that provided the basis for its preliminary decision to deny him a security clearance and refer the matter to an administrative judge. 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) effective within the Department of Defense as of September 1, 2006.

On February 23, 2009, Applicant answered the SOR and requested a hearing. The case was assigned to me on April 2, 2009, to conduct a hearing and to determine whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. On May 4, 2009, I scheduled a hearing for May 27, 2009.

I convened the hearing as scheduled. Five government exhibits (Ex. 1-5) and four Applicant exhibits (Ex. A-D) were admitted without any objections. Applicant, his spouse, and his brother-in-law also testified, as reflected in a transcript (Tr.) received on June 8, 2009.

Findings of Fact

DOHA alleged under Guideline F, financial considerations, that Applicant owed two delinquent consumer credit card debts of \$5,326 (SOR ¶ 1.a) and \$6,147 (SOR ¶ 1.b) as of December 2008, and a \$75 debt in collection as of February 2008 (SOR ¶ 1.c). When he answered the SOR, Applicant accepted responsibility for the three debts and indicated that the \$75 debt had been paid in 2008. He fell behind because of costs associated with his younger son, who had legal problems related to substance abuse. Applicant expressed his intent to satisfy the debts with his income tax refund. After considering the pleadings, transcript, and exhibits, I make the following findings of fact.

Applicant is a 48-year-old sheet metal mechanic, who has worked for a defense contractor most recently since February 2008 (Tr. 30). He had previously worked for the company from January 1980 until he was laid off in 1996 or 1997 (Ex. 1, Tr. 31, 96-97),¹ and he held a secret-level security clearance for most of that employment (Ex. 1).

Applicant and his spouse married in August 1981, and sons were born to them in March 1984 and August 1987 (Ex. 1, Tr. 26, 32-33, 82). In about December 1987, Applicant and his spouse bought their current residence, taking out a mortgage of \$68,000 (Ex. 4). The home was built in the mid-to-late 1940s (Tr. 70), and they have refinanced their mortgage several times over the years to pay bills and for home improvements (siding, windows, remodeling) (Ex. 4, Tr. 69).

Applicant was active in his parish and community while his boys were young. A scout himself during his youth, Applicant attained the rank of Eagle Scout and continued on as an adult leader, holding various positions at the troop, council, and district level over the years. His received several awards for his dedication to scouting (Ex. C, Tr. 59-62).

¹Applicant indicated on his e-QIP that he worked with the defense contractor until May 1996 (Ex.1). He subsequently indicated in September 2008 (Ex. 2) and at his hearing (Tr. 97) that he was laid off in 1997.

After he was laid off by the defense contractor in 1996/97, Applicant worked as building superintendent for his parish until December 2000 (Ex. 1). In January 2001, Applicant started working as a motor coach operator for a bus company (Ex. 1). The job took him away from home for two to three weeks at a time (Tr. 50-51). His mother-in-law moved into their household when she could no longer manage on her own due to Alzheimer's disease (Tr. 65). Applicant's spouse was employed by their parish school at \$7.50 per hour (Tr. 164) from about 2001 until 2004 when she decided to care for her mother full time (Tr. 65-66). In 2005, her mother went into a nursing home because she needed 24-hour care (Tr. 66). The nursing home costs were covered, but Applicant and his spouse paid for personal care items for her mother (Tr. 67).

In about 2003, Applicant's younger son began to get involved with the wrong crowd. He quit scouting and began to smoke marijuana and to drink alcohol (Tr. 59). In May 2005, Applicant's son was arrested twice by the local police for offenses related to underage drinking and disorderly conduct (Ex. B). Applicant paid a \$2,500 retainer fee for legal representation for his son (Tr. 41), and he covered the costs of court-ordered fines, counseling, and urinalysis testing for his son over the next two years. Applicant's son was discharged from various counseling programs and he was required to submit to urinalysis testing as frequently as three times weekly at one point for his failure to remain abstinent (Tr. 45). Applicant estimates that he paid \$2,000 to \$3,000 for his son's alcohol/drug screening and therapy (Tr. 47-48).

In October 2005, Applicant lost his job with the bus company due to a corporate acquisition and closure of his division (Tr. 101). Applicant was unemployed until January 2006, when he went to work for a relative who had a video service company (Ex. 1, Tr. 32, 52) at \$20 an hour and no benefits (Tr. 103). Applicant put in long hours for little pay (Tr. 52).

Applicant's spouse handled the family's finances (Tr. 34), with mixed results. A delinquent credit card account of Applicant's (not alleged in the SOR) was settled for less than the full amount in 2004 (Exs. 3, 4). They had a history of occasionally falling behind 30 to 90 days in their mortgage payments (Ex. 4). Their financial situation became tight in the fall of 2005 due to their son's legal costs. In November 2005, Applicant and his spouse were 30 days late on their \$117,000 mortgage. They took out an adjustable rate mortgage loan of \$147,000 (Ex. 4) to cover their expenses, but continued to have difficulties meeting all their obligations. Applicant was 30 days past due on a retail credit card account as of November 2005 and no payments were made after June 2006 on a balance of \$4,513 (SOR ¶ 1.b). As of February 2008, the account was in collection with a \$5,845 past due balance.² Applicant's spouse opened a credit card account with Applicant as an authorized user in February 2006. The credit grantor closed the account due to nonpayment in October 2006, and by February 2008, the

²Applicant apparently authorized a collection agency to withdraw \$100 per week from his checking account to repay the debt until the account was emptied at which time he closed the account (Tr. 39). Applicant estimated about \$1,000 was paid toward the debt. His February 2008 credit report shows that the account was 60 days past due in September 2003, and 30 days past due in March 2004 and November 2005, with last activity in June 2006. The payments could well have been made between November 2005 and June 2006. As of February 2008, the account was in collection with a past due balance of \$5,845 (Ex. 4).

past due balance was \$5,326 (SOR ¶ 1.a). In May 2006, a medical provider placed a \$75 balance for collection (SOR ¶ 1.c) (Ex. 4). Applicant was sickened with pneumonia on the job and the insurer paid the debt in 2008 (Tr. 35-36).

In about October 2006, Applicant's spouse began working for a home improvement retailer full time as a sales specialist (Tr. 147). From February to June 2007, Applicant held a second job with the home improvement company to supplement his income (Ex. 1, Tr. 31, 52). In August 2007, Applicant submitted an application to return to work for the defense contractor at a different facility. He did not apply for a specific position at that time (Tr. 98-99).

In about December 2007, Applicant left the employment of the video company after he confronted his relative about income and unreimbursed mileage on his vehicle for the job. An inquiry about the status of his job application with the defense contractor led to him being rehired at top rate (hourly wage \$24.87, Tr. 100) with all his benefits restored (Tr. 98-99). He completed an e-QIP on January 10, 2008 (signed on February 6, 2008), on which he disclosed in response to the financial delinquency inquiries that he was \$3,700 in arrears on his mortgage, and owed about \$5,000 on the retail credit card debt in SOR ¶ 1.b. He indicated that his mortgage would be brought current with his income from his job or with his income tax refund, and that he was working to pay off his other debt (Ex. 1).

In April 2008, Applicant was interviewed by a government investigator about the debts in the SOR. He admitted he had not made any payments on the two credit card delinquencies, and expressed an intent to resolve them by the end of the year (Ex. 5).

Applicant's mother-in-law died in late June 2008 (Ex. 2). Applicant and his spouse paid about \$3,500 of the funeral expenses (Tr. 64). In August 2008, a law firm attempted to collect the balance of SOR ¶ 1.b from Applicant (Ex. A), but he and his spouse were in arrears \$3,759.75 on their mortgage at the time and he could not afford to pay the credit card debt. In September 2008, Applicant and his spouse accepted an offer from their lender to modify their mortgage loan to a 7% fixed rate loan with a new principal balance of \$148,054.50. This loan modification brought their account current and lowered their monthly mortgage payment of principal and interest from \$1,156.80 to \$1,016.24 (Ex. 2). Accounting for escrow payments, their monthly mortgage is about \$1,400 (Tr. 148). As of late September 2008, Applicant estimated he had \$1,183.38 in discretionary funds each month after monthly expense and debt payments (Ex. 2, Tr. 156). Payments were not being made on the debts in SOR ¶¶ 1.a and 1.b (Ex. 3).³

With the help of his brother-in-law, Applicant began contacting the creditors in SOR ¶¶ 1.a and 1.b in January 2009 (Tr. 135), initially to verify the debts. In April 2009, the creditor in SOR ¶ 1.a notified Applicant that he was only an authorized user and was not responsible for the debt (Ex. A). Applicant's spouse was the listed account holder

³Applicant mistakenly indicated that the debt in SOR ¶ 1.b was held by an electronics retailer rather than with the creditor he named on his e-QIP. There is no listing on Applicant's credit reports that would indicate he held an account with the electronics retailer.

(Tr. 117, 136). As of May 2009, Applicant's brother-in-law was still in negotiations with the creditor about a possible settlement (Tr. 137).

In February 2009, a collection agent for the servicer (company X) of the debt in SOR ¶ 1.b offered to settle the \$6,237.08 balance on receipt of \$3,118.54 within 45 days. In March 2009, Applicant received his income tax refund of about \$6,000 for tax year 2008 (Tr. 68-69, 107, 160). He deposited the funds in a savings account because he could not determine to whom to send the money (Tr. 68, 108), and his spouse paid their mortgage out of those funds (Tr. 160). On March 25, 2009, Applicant sent letters to the collection agency and the listed holder of the account (company Y) requesting verification of the debt. In response to a telephone inquiry from Applicant's brother-in-law (Tr. 125), the collection agency offered to settle the balance on receipt of \$3,157.82, payable in a lump sum of \$1,007 followed by six consecutive monthly payments of \$358.47. Applicant did not settle the debt because he was not sure whether payment to the collection agency on behalf of company X would resolve the debt owed to company Y. On April 23, 2009, Applicant was informed by company X that the debt (balance \$6,377.93) and had been recalled by company Y (Ex. A, Tr. 118).⁴ As of late May 2009, company Y had not responded to telephone calls or to a registered letter sent by Applicant about the debt in March 2009 (Ex. A). The original credit card lender had written off the debt and rebuffed Applicant's attempt at repayment (Tr. 122). Applicant remains able and willing to settle the debt in SOR ¶ 1.b once he receives confirmation from a creditor that payment will legally satisfy the debt (Tr. 132). His plan is to resolve the debt in SOR ¶ 1.b before his spouse's debt in SOR ¶ 1.a, in the hope that it would resolve the issue impeding his security clearance (Tr. 139-40). He is expecting overtime to be available at work in June/July 2009, which would give him additional income to resolve the debts (Tr. 57).

Applicant and his spouse have been current on their mortgage since the loan was modified (Tr. 148). They are still working on a family budget (Tr. 154). They recently bundled their cable television and Internet services to reduce their monthly bill (Tr. 150). Applicant's spouse has a monthly car payment of \$239 (Tr. 150) and a cellular phone bill of \$120 per month (Tr. 152). Their present income is sufficient to meet their monthly expenses (Tr. 162), although his spouse, who pays the bills, was unable to provide specific figures (Tr. 162). Applicant, with the help of a friend, remodeled their kitchen in the last couple of years (Tr. 167). Applicant has not taken a vacation in the last ten years (Tr. 70). Applicant has no active credit card accounts (Tr. 58).

As of May 2009, Applicant's brother-in-law was living with Applicant and his spouse and contributing to the household finances (Tr. 133, 153). Applicant's younger son is still at home but he does not contribute financially (Tr. 33, 53). He is working in a restaurant about 30 hours a week (Tr. 55). Applicant paid more than \$2,000 in tuition and books for his son for one semester at a local community college (Tr. 155). Applicant's older son is a health services technician in the Coast Guard. He was

⁴A privacy notice included in the April 23, 2009, correspondence from the servicer of the debt (company X) indicates that X and Y are two of 15 companies under the umbrella of a parent company (Ex. A).

awarded an achievement medal for superior performance of duty in October 2007. In August 2008, this son was commended by his state's senate for his distinguished service on that date in October 2007 (Ex. D).

Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security emphasizing, "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). 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 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 that 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 about finances 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.

Applicant owes a credit card debt of about \$6,377.93 (SOR ¶ 1.b) on an account that has been delinquent since 2006. Although he is not legally liable for the \$5,326 credit card debt in SOR ¶ 1.a, the funds to repay the debt will be coming out of the household income, given it is his spouse's debt. Applicant's financial problems appear to be more extensive than the SOR would indicate, in that he and his spouse have had problems over the years remaining current on their mortgage. As of September 2008, they were in arrears \$3,759.75 on their mortgage before their loan was modified. AG ¶ 19(a), "inability or unwillingness to satisfy debts," AG ¶ 19(c), "a history of not meeting financial obligations," apply.

AG ¶ 20(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," cannot reasonably be applied. The delinquency is attributable in significant part to the legal problems of a rebellious teenager. However, since Applicant and his spouse have fallen behind at times on other expenses, including their mortgage, the fact that their son has been on good behavior for the past two years does not completely alleviate the financial judgment concerns.

AG ¶ 20(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," is clearly implicated. His household finances were negatively impacted by his spouse having to leave her job with the school to care for her mother in 2004. From May 2005 to the fall of 2007, Applicant incurred substantial costs because of his son's substance abuse and related legal problems. In October 2005, Applicant lost his job when the bus company closed his division. While he went to work for a family member in January 2006 at \$20 an hour, there were issues regarding his pay and unreimbursed mileage for his vehicle used in the video business that subsequently led him to leave that job in December 2007. He was rehired by the defense contractor in December 2007, but he did not start working until February 2008. Unexpected circumstances continued even after he began his present employment, in that he and his spouse had to pay about \$3,500 of her mother's funeral expenses in late June 2008.

AG ¶ 20(d), “the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts,” applies to the extent that he has taken steps to bring his mortgage current and to determine to whom he should pay the debt in SOR ¶ 1.b. After his April 2008 interview, Applicant determined that the debt in SOR ¶ 1.c had been paid. Applicant has demonstrated that his inaction until January 2009 on the other two debts was not due to disregard. He reported that he and his spouse had \$1,183.38 remaining at the end of the month as of September 2008, but this does not appear to be an accurate reflection of their finances at that point. He and his spouse had recently incurred the funeral expenses for her mother, and seen a spike in their monthly mortgage payment due to the adjustable interest rate which led the lender to modify their loan. Before the SOR was issued, Applicant’s brother-in-law began seeking verification of the debts. While Applicant has yet to make a payment toward resolving SOR ¶ 1.b, it is reasonable for him to require written confirmation beforehand that payment to company Y, the listed current holder of the account, would satisfy the debt. Applicant approached the original lender with an offer of repayment but the debt had been written off and the retailer would not accept payment. As for the creditor in SOR ¶ 1.a, no efforts to collect will be forthcoming against Applicant, but he intends to resolve that debt as soon as his debt is cleared.

AG ¶ 20(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,” applies when viewing his financial situation as a whole. His spouse credibly testified that with their joint income, they have been able to catch up on their obligations. Although they have yet to finalize a budget, and there is some question about whether they have a good handle on their finances, there is no evidence of extravagant expenditure or of new delinquencies. They took some steps to reduce expenses by bundling their cable television and Internet costs, and expressed a credible intent to resolve all outstanding financial obligations.

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 conduct and all the circumstances in light of 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 DOHA Appeal Board has addressed a key element in the whole-person analysis in financial cases stating, in part, “an applicant is not required, as a matter of

law, to establish that he has paid off each and every debt listed in the SOR. All that is required is that an applicant demonstrate that he has ‘ . . . established a plan to resolve his financial problems and taken significant actions to implement that plan.’” ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) (internal citations omitted).

Applicant’s financial struggles are due in part to financial naivete. By refinancing their mortgage several times, they improved their home and paid off some debts, but also increased their debt obligation substantially. Yet, factors outside of their control, most notably their son’s legal problems, the costs incurred caring for his spouse’s mother and then her funeral, and times of unemployment for Applicant and his spouse, have significantly impacted their ability to remain current in all their obligations. As of May 2009, Applicant had saved a portion of their joint income tax refund to pay off his delinquent debt. Given his desire to retain the employment that he needs to support his family, he is likely to resolve the debt in the near future. His record of dedication to his employer and to his community shows he is not likely to engage in illegal activities to obtain funds to resolve the delinquent debt.

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

Conclusion

In light of 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.

ELIZABETH M. MATCHINSKI
Administrative Judge