



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



In the matter of:)
)
) ISCR Case No. 08-07669
)
)
Applicant for Security Clearance)

Appearances

For Government: Robert Coacher, Esquire, Department Counsel
For Applicant: *Pro Se*

April 15, 2009

Decision

HEINY, Claude R., Administrative Judge:

Applicant owed approximately \$18,000 on five past due accounts. All of the obligations have been paid. Applicant has successfully mitigated financial considerations security concerns. 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 to Applicant a Statement of Reasons (SOR) on December 10, 2008, detailing security concerns under Guideline F, financial considerations, based on a history of financial problems as evicenced by delinquent debts.

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) approved by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

On December 18, 2008, Applicant answered the SOR, and requested a hearing. On February 9, 2009, I was assigned the case. On February 19, 2009, DOHA issued a notice of hearing scheduling the hearing held on March 18, 2009. The government offered Exhibits (Ex.) 1 through 5, which were admitted into evidence. Applicant testified on his own behalf and submitted Exhibits A through F, which were admitted into evidence. On March 31, 2009, the transcript (Tr.) was received.

Findings of Fact

In his Answer to the SOR, Applicant denied the allegation in SOR ¶ 1.e and admitted the remaining factual allegations of the SOR. Applicant's admissions to the SOR allegations are incorporated herein. After a thorough review of the record, pleadings, exhibits, and testimony, I make the following findings of fact:

Applicant is a 28-year-old plastic fabricator who has worked for a defense contractor since February 2008, and is seeking to obtain a security clearance.

All of the debts in question listed in the SOR are for credit cards acquired in 1999 and 2000. (Tr. 26) In 1999, Applicant graduated from high school. Applicant worked two jobs and attended college at night. (Tr. 25) At age 18 and 19, while in college, Applicant received a number of unsolicited credit cards, which he used. The credit cards had very high interest rates, some as high as 28%. (Tr. 25) By 2003, Applicant was no longer able to pay his credit card bills. (Ex. 3)

Applicant owed one credit card company (SOR ¶ 1.a) \$3,934. The debt has been paid and settled in full. (Ex. C, F) He owed \$2,200 on a bank credit card (SOR ¶ 1.b), which has been settled in full. (Ex. D) The \$203 debt listed in SOR ¶ 1.d relates to a company which is out of business. Applicant provided proof that he sent two checks to the collection agency to pay this debt. 9Ex. F)

Applicant had two credit cards with the creditor listed in SOR ¶ 1.c (\$5,712), which became delinquent in 2004. The accounts were transferred to another credit card and Applicant was contacted by a collection agency about this debt. (Ex. 3) Applicant's September 2008 credit bureau report (CBR) indicates the account was transferred or sold and the account charged off. (Ex. 4, p 2) Applicant's April 2008 CBR indicates one of the accounts was with a collection agency and the other account was "purchased by another lender." (Ex. 5, p 15, 16)

The debt for these two accounts was transferred to creditor listed in SOR ¶ 1.d (\$6,455). These debts have been settled in full. (Ex. A, F) The collection firm's February 2009 letter indicates the balance was \$6,455 (the amount listed in SOR ¶ 1.e) and references an account number, which is listed in the April 2008 CBR as belonging to the creditor listed in SOR ¶ 1.c. The debts listed in SOR ¶ 1.c and SOR ¶ 1.e are the same debt.

Applicant's wife has a job working in a daycare center. (Tr. 31) His first child was born in September 2008. Due to the importance to himself and his family that he pay his obligations, Applicant sold his four wheeler, hunting gear, and guns to raise the funds necessary to pay his past due obligations. (Tr. 28) Applicant provided proof of payment for two additional debts not listed as debts of concern in the SOR. (Ex. C, E) Applicant's monthly net income is \$4,335. His monthly expenses are \$2,212, which leaves his monthly disposable income at \$1,068. If granted a clearance, his salary would increase by \$20,000 annually. (Tr. 30) His financial obligations are being paid in a timely manner. He is not being contacted by creditors.

Policies

When evaluating an Applicant's suitability for a security clearance, the administrative judge must consider the revised adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are useful in evaluating an Applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's over-arching adjudicative goal is a fair, impartial and common sense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the "whole person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical and based on 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 to obtain 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 (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.

Applicant's history of delinquent debt is documented in his credit report, SOR response, his response to interrogatories, and his testimony. Throughout this process, he had admitted responsibility for his debts. At age 18 or 19 Applicant obtained credit cards and incurred debts. The five debts listed in the SOR totaled more than \$18,000. 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;

(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.

Under AG ¶ 20(a), Applicant's financial problems were contributed to by his obtaining credit cards when he was 18 or 19 years old and lacked knowledge of properly handling credit. His family circumstances have changed. He is married and recently become a father. It is unlikely he will again incur financial problems due to credit cards. AG ¶ 20(a) applies.

AG ¶ 20(b) does not apply because his financial problems were not beyond his control. Although a 28% interest rate on the creditor cards greatly contributed to his inability to repay his debt. The interest rate was a factor beyond his control.

Under AG ¶ 20(c) and ¶ 20(d), Applicant has paid all of his debts. There is a clear indication that his financial problems are resolved. He entered into a good-faith effort and has repaid his debts. AG ¶ 20(c) and ¶ 20(d) apply. AG ¶ 20(e) does not apply because Applicant did not dispute his debts.

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 were incurred when Applicant was young and not financially savvy. He obtained the credit cards when he was 18 or 19 years old. He is now 28. His inability to repay the debts was caused by the very high interest rate the credit card companies charged. Understanding the seriousness of maintaining good credit and paying his past due obligations, Applicant chose to sell his hunting equipment and guns to pay his debts. So doing indicates Applicant understands how important it is to maintain good credit. His debts now having been paid, it is unlikely he will incur additional obligations that would become past due. In September 2008, he became a father, which has greatly impacted on his view of life and properly maintaining his credit.

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:

Paragraph 1, Financial Considerations:	FOR APPLICANT
Subparagraph 1.a – 1.e:	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