



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



In the matter of:)	
)	
-----)	ISCR Case No. 08-08037
SSN: -----)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Jeff A. Nagel, Esquire, Department Counsel
For Applicant: *Pro Se*

February 24, 2009

Decision

GALES, Robert Robinson, Chief Administrative Judge:

Applicant mitigated the security concerns regarding financial considerations. Eligibility for a security clearance and access to classified information is granted.

Statement of the Case

On August 2, 2007, Applicant applied for a security clearance and submitted an Electronic Questionnaires for Investigations Processing (e-QIP) version of a Security Clearance Application. On November 6, 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* (February 20, 1960), as amended and modified; and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended and modified (Directive). The SOR alleged security concerns under Guideline F (Financial Considerations), and detailed reasons why DOHA could not make a preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant, and recommended referral to an Administrative Judge to determine whether a clearance should be granted, continued, denied, or revoked.

It should be noted that on December 29, 2005, the President promulgated revised *Adjudicative Guidelines for Determining Eligibility For Access to Classified Information*, and on August 30, 2006, the Under Secretary of Defense (Intelligence) published a memorandum directing implementation of those revised Adjudicative Guidelines (hereinafter AG) for all adjudications and other determinations made under the Directive and Department of Defense (DoD) Regulation 5200.2-R, *Personnel Security Program* (January 1987), as amended and modified (Regulation), in which the SOR was issued on or after September 1, 2006. The AG are applicable to Applicant's case because his SOR was issued after September 1, 2006.

Applicant acknowledged receipt of the SOR on November 12, 2008. In a sworn, written statement, dated November 13, 2008, Applicant responded to the SOR allegations and requested a hearing before an Administrative Judge. Department Counsel indicated the Government was prepared to proceed on December 8, 2008, and the case was assigned to Administrative Judge Martin H. Mogul on December 12, 2008. It was reassigned to me on January 23, 2009, due to caseload considerations. A Notice of Hearing was issued on February 2, 2009, and I convened the hearing, as scheduled, on February 12, 2009.

During the hearing, six Government exhibits and one Applicant exhibit were admitted into evidence without objection. Applicant testified. The transcript of the hearing (Tr.) was received on February 19, 2009.

The record was kept open until February 19, 2009, to enable Applicant to supplement the record by submitting a copy of his DD Form 214, Certificate of Release or Discharge from Active Duty, as well as evidence of satisfaction of a court-ordered payment of child support arrearage. Applicant submitted same on February 13, 2009. His submissions (marked as Applicant's Exhibits B and C) were admitted into evidence without objection.

Findings of Fact

In his Answer to the SOR, Applicant admitted the sole factual allegation in ¶ 1.a. of the SOR.

Applicant is a 42-year-old employee of a defense contractor, and he is seeking to retain the SECRET security clearance previously granted to him. Applicant's family has a long history of military service to the United States. His grandfather served in the U.S. Army, and his father was a Vietnam veteran with the United States Marine Corps. Applicant served with the U.S. Air Force and retired as a decorated Master Sergeant in 2006 after 22 years of honorable active service.¹ During the first Gulf War, he was deployed overseas as part of Operations Desert Shield and Desert Storm.² He has

¹ Tr. at 18, 34-36; Government Exhibit 1 (e-QIP, dated Aug. 2, 2007), at 36.

² Tr. at 36.

been gainfully employed by the same defense contractor since June 2007, and currently serves as an avionics technician.³

Applicant was married at the age of 19 in 1985.⁴ He and his wife had two children, born in February 1987 and January 1992, respectively, and they subsequently divorced in March 1992.⁵ His children both presently reside with his ex-spouse and her husband.⁶

In late 1989, Applicant and his spouse returned to the U.S. from an overseas assignment, and he was assigned to a military facility in South Carolina. It was while they were there that their second child was born. Subsequently they separated, and eventually divorced. He was then assigned to another base in the western U.S. and she and the children returned to their home state in the mid-west. He initially furnished her with temporary child support of \$260 per month, but felt that the amount was insufficient to care for both children so he agreed to raise the amount to \$450.⁷ In addition, he paid her alimony.⁸ At one point he was paying her a monthly total of \$805.⁹ For the next three or four years, although he experienced difficulties with his ex-spouse over visitation rights, especially when she refused Applicant the opportunities to have his youngest child visit him,¹⁰ Applicant dutifully continued his child support payments, through allotment, without incident.¹¹ While exercising periodic visitation rights in the mid-west, he provided extra clothing and shoes for both children, over and above his normal payments.¹²

At some point, about four years after the divorce, Applicant became concerned that his ex-spouse was misusing the child support he was providing. The children were dressed poorly and she was apparently spending the money on a new automobile and her credit card.¹³ Unable to resolve their differences, Applicant unilaterally stopped all child support payments for about five or six years before resuming them.¹⁴ For

³ Government Exhibit 1, *supra* note 1, at 14.

⁴ *Id.* at 27.

⁵ *Id.*

⁶ *Id.* at 30-31; Tr. at 55.

⁷ Tr. at 40.

⁸ *Id.* at 65.

⁹ *Id.*

¹⁰ *Id.* at 70-71.

¹¹ *Id.* at 40-41.

¹² *Id.* at 41.

¹³ *Id.* at 41, 66.

¹⁴ *Id.* at 42-43.

approximately three years, Applicant's older son resided with him, but Applicant initially continued to pay his ex-spouse \$200 per month.¹⁵ His youngest son moved in with Applicant and his older son for a period of six months, and Applicant continued to make the full child support payments.¹⁶ At no time while either or both children were residing with him, did Applicant ever petition the court or ask his ex-spouse to either suspend his child support payments or for her to provide him with child support.¹⁷ In 2001, Applicant was reassigned overseas, so the children returned to reside with their mother.¹⁸ During the next year, he did not make any child support payments.¹⁹ In 2004, while serving in another overseas location, Applicant's wages were garnished in the amount of \$450 per month.²⁰ About two years ago, an arrearage amount of \$90 per month also started being taken from his salary.²¹

Applicant's youngest son resided with him from March until June 2008, and Applicant wanted him to remain with him, but his ex-spouse refused.²² In July 2008, the state where the divorce was granted filed a collection action against Applicant for child support arrearage in the amount of \$30,718.²³

On February 9, 2009, Applicant and his attorney appeared in court, and with an agreement of both parties, an Order was entered reducing the child support arrearage. Under the Order, the civil contempt charge would be purged by Applicant paying his ex-spouse \$18,000, plus costs, no later than March 27, 2009, and the matter would be considered closed.²⁴ Once the payment is made, the monthly garnishment of \$90 will cease, and the amount of his continuing child support will return to \$450 per month.²⁵ On February 12, 2009, Applicant made two payments, totaling \$3,350, and indicated that since he has the money in an account, the remaining amount will be forwarded to his attorney within a week, well before the deadline.²⁶

¹⁵ *Id.* at 43-44.

¹⁶ *Id.* at 45.

¹⁷ *Id.* at 45-46.

¹⁸ *Id.* at 46.

¹⁹ *Id.* at 46-47.

²⁰ Government Exhibit 1, *supra* note 1, at 39.

²¹ Government Exhibit 2 (Retiree Account Statement, dated September 9, 2008, attached to Interrogatories, dated September 11, 2008), at 1-2; Tr. at 62-63.

²² Tr. at 68-69.

²³ Government Exhibit 4 (Equifax Credit Report, dated July 29, 2008), at 2.

²⁴ Applicant Exhibit A (Order, dated February 9, 2009), at 2.

²⁵ Tr. at 63.

²⁶ *Id.* at 52, 59.

Upon reflection, if Applicant were confronted with the same facts today as he was in the past, he would have done things differently. He would not have resorted to frustration-generated self-help by stopping the child support payments but, instead, would have gone back to court to resolve the unsettled matters.²⁷

Applicant's finances are unremarkable, and he has no other financial issues or difficulties.²⁸ In fact, according to his recent Personal Financial Statement, completed in September 2008, Applicant has a monthly sum of over \$3,200 for discretionary expenses.²⁹

Policies

When evaluating an Applicant's suitability for a security clearance, the Administrative Judge must consider the 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.

An Administrative Judge need not view the guidelines as inflexible, ironclad rules of law. Instead, acknowledging 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 meaningful decision.

Since 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, facts must be established by "substantial evidence."³⁰ The Government initially has the burden of producing evidence to establish a potentially disqualifying condition under the Directive. Once the Government has

²⁷ *Id.* at 52.

²⁸ *Id.* at 79.

²⁹ Government Exhibit 2 (Personal Financial Statement, dated September 4, 2008, attached to Interrogatories, *supra* note 21, at 1.

³⁰ "Substantial evidence [is] such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all contrary evidence in the record." ISCR Case No. 04-11463 at 2 (App. Bd. Aug. 4, 2006) (citing Directive ¶ E3.1.32.1).

produced substantial evidence of a disqualifying condition, under Directive ¶ E3.1.15, the Applicant has the burden of persuasion to present evidence in refutation, explanation, extenuation or mitigation, sufficient to overcome the doubts raised by the Government's case. The burden of disproving a mitigating condition never shifts to the Government.

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 as well. It is because of this special relationship that the Government must be able to repose a high degree of trust and confidence in those 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." Accordingly, nothing in this Decision should be construed to suggest that I have based this decision, in whole or in part, on any express or implied determination as to Applicant's allegiance, loyalty, or patriotism.

Analysis

Guideline F, Financial Considerations

The security concern relating to the guideline for Financial Considerations 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. . . .

The guideline notes several conditions that could raise security concerns. Under AG ¶ 19(a), an "inability or unwillingness to satisfy debts" is potentially disqualifying. Similarly, under AG ¶ 19(c), "a history of not meeting financial obligations" may raise security concerns. The evidence is insufficient to establish AG ¶ 19(a) because Applicant was never unable or unwilling to make the payments; he simply was under the erroneous impression that he could force his ex-spouse to abide by what he construed as the letter or spirit of the court-ordered guidelines for child support payments. Moreover, although there were periods in which Applicant should have made those payments, there were also lengthy periods when, if he had gone back to court, the

payments might have been suspended because the children were residing with him and not their mother.

The evidence does, however, establish AG ¶ 19(c). Over a period of years, without court approval, due to frustration over his ex-spouse's use of the child support he paid, as well as her thwarting his attempts at child visitation with his youngest son, Applicant periodically did not comply with the child support Order. His ex-spouse's failure to comply with the visitation requirements of the Order did not vitiate his responsibility to continue those child support payments. In his mind, Applicant's motivation might have been noble and in the best interests of the children. Nevertheless, they constitute a history of not meeting that one financial obligation. Accordingly, AG ¶ 19(c) applies.

The guidelines also include examples of conditions that could mitigate security concerns arising from financial considerations. Under AG ¶ 20(a), the disqualifying condition may be mitigated where "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." Evidence that "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" is potentially mitigating under AG ¶ 20(c). Similarly, AG ¶ 20(d) applies where the evidence shows "the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts."³¹ Also, AG ¶ 20(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" may apply.

Applicant's periodic unilateral stoppage of child support payments because of disputes and grievances with his ex-spouse, in contravention of the child support Order, is the single most potentially troublesome issue. The child support arrearage, when considering the circumstances at the time, with Applicant either frustrated with his ex-spouse or during periods when his children resided with him, is unlikely to recur because of several current circumstances. One son, who turned 22 only days after the hearing, is currently enrolled in college. The other son, now 17 and in high school, will not be Applicant's responsibility much longer. Furthermore, now that Applicant and his

³¹ The Appeal Board has previously explained what constitutes a "good faith" effort to repay overdue creditors or otherwise resolve debts:

In order to qualify for application of [the "good faith" mitigating condition], an applicant must present evidence showing either a good-faith effort to repay overdue creditors or some other good-faith action aimed at resolving the applicant's debts. The Directive does not define the term 'good-faith.' However, the Board has indicated that the concept of good-faith 'requires a showing that a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation.' Accordingly, an applicant must do more than merely show that he or she relied on a legally available option (such as bankruptcy [or statute of limitations]) in order to claim the benefit of [the "good faith" mitigating condition].

(internal citation and footnote omitted) ISCR Case No. 02-30304 at 3 (App. Bd. Apr. 20, 2004) (quoting ISCR Case No. 99-9020 at 5-6 (App. Bd. June 4, 2001)).

wife have agreed on a resolution of their long-standing dispute, and he has engaged the professional services of a domestic relations attorney to counsel, represent, and guide him, he is better aware of the potential problems of self-help regarding the stoppage of child support.

Considering the evidence pertaining to the confusion over child support with changing living arrangements for the children, as well as the ensuing court action, these circumstances no longer exist. There are clear indications that Applicant's financial issue has been resolved and is under control. He is well on his way toward satisfying the child support arrearage and is timely with his current child support payments. His actions in addressing his debt indicate good-faith efforts on his part as well as showing clear indications the problem is now largely under control. The evidence establishes AG ¶¶ 20(a), 20(c), 20(d), and 20(e).

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) 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 common sense 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. In his frustration, Applicant travelled down the wrong path toward resolving his disputes with his ex-spouse. Some of his actions were brought about by the confusion surrounding his child support responsibilities when his children were residing with him rather than their mother. He eventually sought legal guidance, and has taken decisive affirmative action and made substantial good-faith efforts to pay off or resolve his sole legitimate delinquent debt, the child support arrearage. The age of his children, the mutual agreement with his ex-spouse in resolving their disputes, and the newly found wisdom gained from the bad experience, along with an attorney to counsel and represent him, greatly diminish the likelihood of recurrence. (See AG ¶¶ 2(a)(2), 2(a)(5), 2(a)(6), and 2(a)(9).)

Of course, the issue is not simply whether all his debts are resolved; it is whether his financial circumstances raise concerns about his fitness to hold a security clearance. I am mindful that while any one factor, considered in isolation, might put Applicant's credit history in a sympathetic light, I have evaluated the various aspects of this case in light of the totality of the record evidence and have not merely performed a piecemeal analysis.³² Considering his continuing good-faith efforts, the circumstances behind the child support arrearage, the nature of his legitimate disputes with his ex-spouse, and his questionable responsibility for child support when the children were residing with him for lengthy periods, his past financial situation, as it pertains to the former child support arrearage, is insufficient to raise continuing security concerns. (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:

Paragraph 1, Guideline F:	FOR APPLICANT
Subparagraph 1.a:	For Applicant

Conclusion

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

ROBERT ROBINSON GALES
Chief Administrative Judge

³² See *U.S. v. Bottone*, 365 F.2d 389, 392 (2d Cir. 1966); See also ISCR Case No. 03-22861 at 2-3 (App. Bd. Jun. 2, 2006)