



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



In the matter of:)	
)	
-----)	ISCR Case No. 08-08149
SSN: -----)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Fahryn E. Hoffman, Esquire, Department Counsel
For Applicant: *Pro se*

July 17, 2009

Decision

CURRY, Marc E., Administrative Judge:

Applicant mitigated the government’s financial considerations security concern. Clearance is granted.

On February 13, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, financial considerations. 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) promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant answered the SOR on March 1, 2009, admitting SOR subparagraphs 1.a through 1.c and 1.f, and denying SOR subparagraphs 1.e and 1.g. He requested a hearing, and the case was assigned to me on April 2, 2009. On April 9, 2009, a Notice

of Hearing was issued scheduling the case for May 5, 2009. The hearing was conducted as scheduled. I received five government exhibits, one Applicant exhibit, and the testimony of six Applicant witnesses. At Applicant's request, I left the record open at the conclusion of the hearing to allow him to submit additional exhibits. Within the time allotted, he submitted eight additional exhibits that I marked and received as Applicant's Exhibits B through I. The transcript was received on May 15, 2009.

Findings of Fact

Applicant is a 53-year-old married man with one adult son. Applicant has earned some college credits. He served in the U.S. Army from 1975 through his retirement in 1997. He was honorably discharged. He is a Gulf War veteran.

Since retiring from the Army, Applicant has worked as a cabling technician (Tr. 163). He installs copper cables and fiber optic cables on unsecure and secure systems for a government agency (Tr. 33). According to his supervisor, his character and work ethic are above reproach (Tr. 136,140).

In 2003, Applicant experienced a work slowdown that resulted in a cut in pay (Tr. 169). For the next three years, he made approximately \$400 per month less than he had earned previously (*Id.*). Since 2006, Applicant's income has gradually risen to the 2003 level.

In 2004, Applicant's wife retired from her federal government job and began training to be an insurance agent. She financed her start-up costs by withdrawing money from her thrift savings plan (Tr. 122). She underestimated the income tax consequences, and incurred a tax debt of approximately \$24,000, as listed in SOR subparagraph 1.g. Because Applicant and his wife filed income taxes jointly, this debt began appearing on his credit reports.

Applicant's wife operated as an independent contractor for several insurance companies. Her income was based solely on commissions. As a fledgling business owner, she continued to struggle with income tax issues over the first two years of the operation (Tr. 53, 111). Consequently, her tax debt grew. Moreover, she struggled to build a client base, and did not begin to earn a profit until approximately 2006.

As Applicant's wife struggled to build her business, he grew increasingly responsible for their debts, and gradually began falling behind (Tr. 111). At or about the time Applicant's pay was cut and his wife's nascent business was struggling, their parents became disabled (Tr. 42). They then had to divert some of their income to assisting their parents with miscellaneous costs and occasional mortgage payments (Tr. 122).

By 2006, Applicant and his wife had accrued approximately \$66,000 of unpaid, delinquent debt (Tr. 38). That same year, however, Applicant's wife's business began to become profitable (Tr. 44). Since then, her success has been extraordinary. She has

earned as much as \$40,000 monthly in commissions. Her client base has expanded to include high-net worth individuals and small business owners (Tr. 113). Her business now includes financial counseling, and she has earned money from speaking engagements. Also, she has published a book. In 2006, her company honored her for being in the top five of its highest-producing insurance agents out of 4,000 nationally (Tr. 111).

As Applicant's wife's business improved, they began addressing their debts. Nearly \$61,000 of their debt is owed to two creditors, the federal government, as described earlier in the Decision, and a bank, as listed in SOR subparagraphs 1.d and 1.f. By the end of 2007, the federal tax debt had reached \$35,000, and the government had begun garnishing Applicant's wages (Tr. 111). In late 2008, Applicant's wife paid \$9,000 toward its satisfaction using a commission earned from retaining a client (Tr. 60). Applicant and his wife then negotiated a release of the lien (Tr. 61). In February 2009, the federal government released the lien and stopped garnishing Applicant's wages (Answer, Attachment 8). Consistent with their agreement, Applicant and his wife pay \$415 monthly toward the tax debt. Applicant's wife now works with an accountant to ensure that her past tax problems do not recur (Tr. 107).

The bank debt as listed in SOR subparagraphs 1.d and 1.f was originally two separate accounts. SOR subparagraph 1.d was a credit card, and SOR subparagraph 1.f was a home equity credit line that Applicant and his wife used, among other things, to finance their son's college education (Tr. 121). After the creditor filed suit, Applicant and his wife negotiated a settlement whereupon they agreed to pay \$33,000 in monthly \$750 increments, beginning in February 2009, to be completed in September 2009. Under the agreement, the last payment will constitute approximately \$27,000. Applicant's wife intentionally structured the settlement to have a disproportionately high final payment. She anticipates receiving a particularly high commission the month the final payment is due (Tr. 99, 110). Applicant and his wife have been making payments as scheduled (Exhibit I at 3).

SOR subparagraph 1.a is a delinquent cell phone bill in the amount of \$633. Applicant satisfied this debt in full in March 2009 (Answer, Attachment 3).

SOR subparagraph 1.b is a credit card account with a delinquent balance of approximately \$3,800, and a past due monthly payment of \$598. In February 2009, Applicant contacted the creditor and arranged a payment plan whereupon he will pay \$200 per month until the entire balance is satisfied. Since then, he has been making payments of between \$200 and \$250 per month (Answer, Attachment 4; Exhibit H; Tr. 84). The account is no longer past due.

SOR subparagraph 1.c is a delinquent debt owed to a credit card company in the amount of \$844. By December 19, 2008, Applicant had satisfied this debt entirely through monthly payments (Exhibit A).

SOR 1.e, a \$2,000 debt owed to a towing company, is not Applicant's responsibility. Instead, his son, who shares his name, accrued this debt. Nevertheless, Applicant contacted the creditor in February 2009, negotiated a settlement, and satisfied the debt, consistent with the settlement terms, by March 2009 (Answer, Attachment 7; Exhibit G).

Both of Applicant's parents, and his father-in-law are now deceased (Tr. 42, 126). Applicant and his wife contacted an elder advocacy group to negotiate a decrease in his mother-in-law's monthly mortgage payments so that she could handle it herself (Tr. 127).

Applicant and his wife earn approximately \$180,000 annually (Tr. 44). They have \$500,000 of equity in their home (Tr. 120).¹ Recently, he inherited a home worth approximately \$80,000 with a remaining \$3,000 mortgage (Tr. 97). Also, his wife recently inherited a home worth approximately \$80,000 that is not encumbered with a mortgage (*Id*).

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 overarching 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."

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.

¹At the height of the real estate market, they had \$750,000 of equity in the home.

Analysis

Guideline F, Financial Considerations

Under this guideline, “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 (AG ¶ 18). Here, Applicant’s history of financial problems triggers the application of AG ¶¶ 19(a), “inability or unwillingness to satisfy debts,” and 19(c), “a history of not meeting financial obligations.”

Applicant’s finances were strained by a 2003 pay cut and difficulties in supporting elderly relatives. Also, his financial struggles corresponded with his wife’s struggle to build a new business at or about the time he experienced the pay cut.

Applicant’s income has returned to the 2003 rate. His wife’s business has become exceedingly profitable. In the past three years, they have either satisfied their delinquencies or negotiated payment plans to which they have been adhering. The following mitigating conditions apply: 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,” 20(c), “. . . there are clear indications that the problem is being resolved, or is under control,” and 20(d), “the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve 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.

Applicant did not accrue the most significant debt, the income tax delinquency. Instead, it was accrued by his wife after she underestimated the income tax consequences of withdrawing money from her thrift savings plan. Now that her business

has grown profitable, she has retained an accountant to ensure that she has no more income tax problems.

Applicant has addressed the financial challenges posed by his elderly relatives by consulting an elder advocacy group to help them manage their finances. He and his wife are satisfying the tax debt and the home equity credit line debt through negotiated agreements. Although Applicant's wife's business is lucrative, I found Applicant's wife's income projections for the remainder of the year to be overly optimistic. Consequently, I am somewhat skeptical of their projected final payment, toward the satisfaction of the home equity line of credit, of between \$25,000 and \$30,000. However, they own three homes with a combined equity of nearly \$700,000. If Applicant's wife's income proves to be less than anticipated, they have ample resources in reserve which they could use to satisfy the debt.

Upon evaluating this case in the context of the whole person concept, I conclude Applicant has mitigated the financial considerations security concern.

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.g:	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.

MARC E. CURRY
Administrative Judge