



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



In the matter of:)	
)	
-----)	ISCR Case No. 08-08381
SSN: -----)	
)	
Applicant for Security Clearance)	

Appearances

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

March 23, 2009

Decision

LYNCH, Noreen A., Administrative Judge:

Applicant submitted his Security Clearance Application (SF 86), on February 27, 2008. On October 30, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline F for Applicant. 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 acknowledged receipt of the SOR on November 13, 2008. He requested a hearing before an Administrative Judge. I received the case assignment on December 16, 2008. DOHA issued a notice of hearing on February 11, 2009, and I convened the hearing as scheduled on March 4, 2009. The Government offered Exhibits (Ex.) 1-3, which were received without objection. Applicant testified in his own behalf. He submitted Exhibits (AE) A-F, which were admitted into the record. I held the

record open until March 18, 2009 for any documents that Applicant wished to submit. Applicant submitted five documents, which were marked as AE G, H, I, J, and K and admitted without objection. The record closed on March 18, 2009. DOHA received the transcript of the hearing (Tr) on March 13, 2009. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

Findings of Fact

In his Answer to the SOR, dated October 11, 2008, Applicant admitted the factual allegations in ¶¶ 1.a through 1. e of the SOR. He provided additional information to support his request for eligibility for a security clearance.

Applicant is a 52-year-old employee of a defense contractor. He graduated from college in 1978, and received a graduate degree in 1986. He served in the United States Air Force (USAF) from July 1978 until August 1998 (Tr. 13). Applicant has worked for his current employer since January 2007 (GE 1). He has held a security clearance since 1978.

Applicant is married and has four children. He and his wife had difficulty managing credit cards in the past few years due in part to his unemployment from November 2006 until January 2007. He did acknowledge that he wanted to provide for his family and perhaps did not use his credit as wisely as he should have (Tr. 15). Applicant did not have any financial difficulties or delinquent accounts until 2007.

During an earlier time period, he attempted to finance several business ventures with his credit. He unsuccessfully set up a medical claims service, a greeting card sales distribution, and a pharmaceutical sales business (Tr. 29). He estimates that he lost approximately \$20,000 when these businesses failed (Tr. 16). His bills continued to increase and he had no extra cash reserves or savings to pay off the credit amount. He earned approximately \$5,000 less when he was re-employed in 2007 (Tr.16). He could no longer operate under his existing budget. He paid on his accounts but the amounts covered interest only. He was living paycheck to paycheck. He decided that he did not want to file for bankruptcy.

The SOR alleged 5 delinquent debts. The total amount of delinquent debt was \$73,000. Applicant admitted that the accounts in allegations ¶¶ 1.a through 1.e are delinquent accounts.

Applicant retained a debt solution company to help resolve his debts. He entered into a debt solution plan on May 3, 2007 which included two accounts that were not alleged in the SOR (AE B). At the same time and upon their advice, he stopped paying his creditors. The company advised that they would arrange the settlements. After he paid the initial fee (\$11,253.60), he saved funds to settle his accounts. He also borrowed money from his brother in February 2009 to enable him to settle all the delinquent accounts (AE). He used approximately \$14,000 of that loan to settle

accounts and put the rest (\$34,015) into a special savings account to pay remaining bills (Tr. 39).

Applicant has settled the following seven accounts: Chase Bank (\$2,660); GE Money Bank/Arrow (\$3,500); Dillards (\$2,031.15); Capitol One (\$2,000); Bank of America (\$14,300); Washington Mutual (\$2,000); and Discover (\$16,021). The company is in the final phase of settling another Capitol One (pending amount). The seven accounts were settled between November 30, 2007 and March 17, 2009 (AE K).

Applicant's current net monthly income is \$10,956. This includes his military retirement and his wife's income. Under his miscellaneous expenses, he has allocated \$1,520 for an additional payment on his debt. He is also saving \$500 a month and paying on a promissory note to his brother (\$1,000 a month) (AE E). He is current on his monthly expenses and other credit cards. His credit bureau report lists various accounts as "paid as agreed."

Applicant now lives in a more frugal fashion. He and his family have not taken any vacations nor spent money on anything other than essentials. He took a second job as a substitute teacher (AE G). He also plans to umpire during baseball season to supplement his income (Tr. 34).

Applicant's employer highly recommends him for retention of his security clearance. He is punctual, dependable and has a positive attitude. Applicant has a strong commitment to his company and a desire to do his job well. He has the country's best interest at heart (AE G).

Applicant's direct supervisor describes him as one of his most dependable workers. He is the first to volunteer for additional hours to accomplish the mission. He works on detailed, fast paced, must succeed contracts. Applicant would never do anything to jeopardize the Nation's security (AE I).

The Chief Executive Officer of Applicant's company describes him as an outstanding employee (AE H). The company is aware of the credit problems. They are also aware of his payments and intent to repay each creditor in full.

Applicant's military performance reports rate him as an outstanding leader. He mentored young flight commanders and ensured that over 720 aircrew members received the proper training to safely accomplish missions. He managed a \$1.2 million annual budget. He distinguished himself in various assignments and is the recipient of The Meritorious Service Medal (Second Oak Leaf Cluster) (AE J).

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, 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 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 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^o is potentially disqualifying. Similarly under AG & 19(c), a history of not meeting financial obligations^o may raise security concerns. Applicant accumulated delinquent debts on numerous accounts. He admits that since 2007 he has owed \$73,000 in delinquent debts. He could not meet his financial obligations on credit accounts. His credit reports confirm that he has recent debts as well. The evidence is sufficient to raise these potentially disqualifying conditions, requiring a closer examination.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. 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.^o Applicant-s financial worries arose in late 2006 in part from failed businesses. He also accumulated some delinquent debt due to an admitted overuse of credit cards and unemployment in 2006. More importantly, an individual's decision to operate a business, even if it fails, is not evidence of bad judgment, unreliability, or untrustworthiness but shows initiative. This potentially mitigating condition partially applies.

Under AG & 20(b), it may be mitigating where 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.^o As noted above, Applicant reported that he was unemployed in 2006 for a period of months. He also acknowledged that he had several failed business ventures that he attempted with his credit cards. While those circumstances may have precipitated the debt, the inquiry does not end at that point. He has actively addressed and resolved seven of eight delinquent accounts. He borrowed money from his brother recently to help settle accounts. While this is new debt, his recent behavior with creditors does not cast doubt on his judgment or current reliability. When he became gainfully employed, he did act

responsibly in identifying and resolving these debts through a debt resolution plan. I find this mitigating condition partially applies.

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. Applicant has not received formal financial counseling but entered into a debt solution program in 2007. This program gave him financial advice. He has a budget. He has settled seven of eight delinquent accounts. His recent actions with creditors has shown financial reform and resolution of debts. I conclude these mitigating conditions apply.

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 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 and conclude the mitigating conditions and the whole person are sufficient to overcome the government's case. Applicant has held a security clearance for more than 30 years without incident. He retired from the USAF as a Lt. Colonel after 20 years of service. He has spent the last ten years in government contract positions that require a security clearance. He is highly recommended by his employer for retention of a security clearance.

He admitted that he has not used credit wisely in trying to provide the best for his family. He acknowledged that he used credit for convenience and for purchases of things that he really could not afford at the time. When he became unemployed in 2006, he could only pay minimum payments. He also used his credit card to finance several business ventures that failed. He believes this accounts for about \$20,000 of debt. He found that he was living paycheck to paycheck. He took immediate action as soon as he recognized the financial difficulties. In 2007, he contacted a debt consolidation company rather than file bankruptcy. Upon their advice, he stopped making payments on his credit cards. He entered into an agreement with the company for settlement of his debt.

He has settled seven accounts, and one account is near settlement. He borrowed money from his brother recently. While he has taken on a new debt, his brother does not expose him to the same vulnerability or high interest rate that a commercial lender would.

Applicant has changed his attitude toward credit and his lifestyle. He has not made any unnecessary purchases. He is current on his mortgage and other daily expenses. He and his family have not taken any vacations. He took a second job. His wife is working. He has dedicated his entire life to serving his country and protecting

Applicant did not want to file for bankruptcy. He chose to use a debt management company which is a costly method. He paid \$11,000 in fees to the company. He followed their advice. He has made good-faith efforts to pay all his delinquent debt. He was paying all his debt until 2007. At no time was he trying to avoid paying his creditors. He was active in resolving his delinquent debt before he became unemployed in 2006.

At the hearing, Applicant was candid and straightforward in his testimony. He was very well organized and documented his initial attempts to recognize and resolve his debt. He took responsibility for his poor financial decisions in the past. He had some unforeseen events which contributed to his financial problems. To help pay his debts, he has taken on a second job to supplement his income. He has shown resolve and determination to live within a budget. His many prior years of sound financial judgment outweigh the concerns about the 2007 delinquent debt. He has changed his lifestyle and his thinking about 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 has 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
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	For Applicant
Subparagraph 1.e:	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.

NOREEN A. LYNCH
Administrative Judge