



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



In the matter of:)	
)	
XXXXXXXXXXXX, XXXXX)	ISCR Case No. 08-08456
SSN: XXX-XX-XXXX)	
)	
Applicant for Security Clearance)	

Appearances

For Government: John B. Glendon, Esq., Department Counsel
For Applicant: Anthony C. Soviero, Esq.

March 23, 2010

Decision

TUIDER, Robert J., Administrative Judge:

Applicant has mitigated security concerns pertaining to Guideline F (financial considerations). Clearance is granted.

Statement of the Case

Applicant submitted an undated and unsigned Electronic Questionnaire for Investigations Processing (e-QIP).¹ On May 20, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing security concerns under Guideline F (financial considerations) 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.

¹Applicant previously submitted a security clearance application (SF-86) that was also unsigned, but dated June 30, 1997.

Applicant answered the SOR in writing on July 4, 2009, which DOHA received on July 8, 2009. Department Counsel was prepared to proceed on August 31, 2009. The case was assigned to me on September 2, 2009. DOHA issued a notice of hearing on September 4, 2009, scheduling the hearing for October 2, 2009. The hearing was held as scheduled.

The government offered Government Exhibits (GE) 1 through 8, which were received without objection. The Applicant offered Applicant Exhibits (AE) A through P, which were received without objection, and he testified on his own behalf.

I held the record open until October 17, 2009, and subsequently granted an extension until October 30, 2009, to afford the Applicant the opportunity to submit additional documents on his behalf. Applicant timely submitted AE Q through RR, which were received without objection. DOHA received the hearing transcript (Tr.) on October 9, 2009. The record closed on October 30, 2009.

Findings of Fact

Applicant admitted the allegations in SOR ¶¶ 1.a., 1.c., 1.d., 1.f., 1.g., and 1.h. with explanations. He denied the allegations in SOR ¶¶ 1.b. and 1.e. with explanations. His answers with explanations are incorporated herein as findings of fact. After a thorough review of the evidence, I make the following additional findings of fact.

Background Information

Applicant is a 46-year-old senior analyst, who has worked for his defense contractor employer since October 2004. GE 1, Tr.15-16, 85-86. He seeks to renew his security clearance, which is a requirement for his continued employment. Tr. 45-46, 55, 89, AE L.

Applicant graduated from high school in June 1981. Tr. 84-85, GE 1. He has completed numerous service schools while serving in the military. Tr. 85. Applicant married in March 1987. Two daughters were born during that marriage, ages 22 and 18. GE 1, Tr. 86. Applicant and his wife have been separated since the summer of 2002. Tr. 8, 86.

Applicant served in the U.S. Army from March 1983 to December 1987, and was honorably discharged as a sergeant (pay grade E-5). GE 2, AE Q. He served in the U.S. Army Reserve from December 1987 to March 1990, and was honorably discharged as a sergeant. GE 2, AE R. He served in the Army National Guard from March 1990 to March 1992, and was honorably discharged as a sergeant. GE 1, GE 2, AE S. He served in the U.S. Air Force from April 1997 to April 2003, and was honorably discharged as a staff sergeant (pay grade E-5). GE 1, AE T. Applicant has continuously and successfully held a security clearance since he first entered the Army in 1983, a period of 27 years. Tr. 89, AE W.

Financial Considerations

Applicant's background investigation addressed his financial situation and included the review of his undated e-QIP; his June 1997 SF-86; his December 2008 Responses to DOHA Financial Interrogatories; his August 1997, August 2008, and May 2009 credit reports; a Lexis printout of his judgment; and court records from his 1994 bankruptcy proceedings. GE 1 – 8.

Applicant's SOR identified seven separate debts -- one judgment, and six collection accounts, approximating \$27,000. Tr. 7.

The allegation in SOR ¶ 1.a. documents a 1994 Chapter 7 bankruptcy. As noted *supra*, Applicant had been discharged from the Army National Guard in 1992. Applicant was laid off from his company and consequently was unable to remain current on his debts. He consulted with a bankruptcy attorney and was advised to file for bankruptcy protection. Appellant was awarded a discharge in September 1994. Tr. 19-23, 57-58, 76-78, GE 8.

Applicant has settled, paid or made a good-faith attempt to resolve the seven debts alleged. A brief summary of each debt follows. The debt alleged in SOR ¶ 1.b. is a civil judgment in the amount of \$15,372 in favor of a collection agency. That debt was satisfied by a Warrant to Satisfy Judgment filed in August 2007. Applicant paid "almost \$14,000" to satisfy this judgment. Tr. 24-25, 58-62, 78-80, AE B. The debt alleged in SOR ¶ 1.c. is a collection account on behalf of a cable company in the amount of \$584. Although Applicant disputed this debt, he paid it in July 2009. Tr. 25-26, 63, AE C. The debt alleged in SOR ¶ 1.d. is a collection account on behalf of a credit card company in the amount of \$646. Applicant successfully disputed this debt claiming it was a fraudulent transaction and the creditor accepted his explanation and ceased further collection activity in July 2009. Tr. 26-28, 63-65, 80-81, AE D.

The debt alleged in SOR ¶ 1.e. is a collection account on behalf of a cable and internet service company in the amount of \$626. Although Applicant disputed this debt, he paid it in June 2009. Tr. 28-29, AE E. The debt alleged in SOR ¶ 1.f. is a collection account on behalf of a telephone company in the amount of \$51. The record is replete with numerous good-faith attempts by Applicant's attorney beginning in June 2009 to resolve this account. As of the hearing, the telephone company had not responded to Applicant's attorney. Tr. 30-31, 37-39, 64-66, 81-82, AE G-H, AE J-K, AE O. The debt alleged in SOR ¶ 1.g. is a collection account on behalf of an automobile leasing company in the amount of \$9,142. After Applicant and his wife separated, his wife took possession of the vehicle and failed to make the remaining three payments as promised. The vehicle was repossessed and sold at auction. This account was settled for a lesser amount and paid in October 2009. Tr. 31-36, 66-71, 82-83, AE F, AE H-J, AE P, AE PP-RR, AE VV. The debt alleged in SOR ¶ 1.h. is a collection account on behalf of a storage company in the amount of \$162. This debt was paid in July 2009. Tr. 36-37, AE N.

Applicant attributes his financial problems to his inability to remain current on his debts while deployed with the military. As noted *supra*, Applicant and his wife separated during the summer of 2002. Tr. 45-47, 89. Applicant's wife is self-supporting. Tr. 74.

In conclusion, Applicant has paid, settled, made good-faith efforts to repay overdue creditors, or resolved all debts alleged. He submitted a budget with his monthly expenses, which reflects a net remainder of \$1,384. His budget further demonstrates that he is living within his means. Tr. 51-53, 90-91, AE M.

Character Evidence

Applicant provided reference letters from his senior director, logistics manager/team lead, and training/fielding manager. These individuals are senior persons within Applicant's company, who have known him for a lengthy period of time. They verified the importance of the work he is doing on behalf of the nation's defense and his potential for future service. They all spoke of his professionalism, dedication to duty, value as an employee, and recommended him for a security clearance. AE L, AE X-Y.

Applicant submitted performance evaluations for the years 2007 and 2008. These evaluations reflect above average performance and document Applicant's value as an employee. AE U-V. Applicant also submitted copies of numerous awards and training certificates from his military service. AE Z-NN.

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 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

Upon consideration of all the facts in evidence, and after application of all appropriate legal precepts, factors, and conditions, including those described briefly above, I conclude one relevant security concern is under Guideline F (financial considerations). AG ¶ 18 articulates the security concern 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.

AG ¶ 19 provides two Financial Considerations Disqualifying Conditions that could raise a security concern and may be disqualifying in this case, “(a) inability or unwillingness to satisfy debts,” and “(c) a history of not meeting financial obligations.” Applicant’s history of delinquent debt is established by his admissions and evidence presented. As indicated in SOR ¶¶ 1.b. to 1.h., he had seven delinquent debts totaling

about \$27,000 that have been in various states of delinquency. The government established the disqualifying conditions in AG ¶¶ 19(a) and 19(c).

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; and

(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.

Applicant's conduct does not warrant full application of AG ¶¶ 20(a) or 20(b) because he did not act more aggressively and responsibly to resolve his delinquent debt. Because there is more than one delinquent debt, his financial problems are not isolated. The debts were not paid until 2009, and therefore his debt is "a continuing course of conduct" under the Appeal Board's jurisprudence. See ISCR Case No. 07-11814 at 3 (App. Bd. Aug. 29, 2008) (citing ISCR Case No. 01-03695 (App. Bd. Oct. 16, 2002)). He receives partial credit under AG ¶ 20(a) because the debt "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." Applicant's 1994 bankruptcy lacks security significance because of the passage of time. Under AG ¶ 20(b), he receives partial mitigation because of his inability to focus on his finances while in a deployment status and being separated from his wife. However, he did not provide sufficient information to establish that he acted responsibly under the circumstances.²

²"Even if Applicant's financial difficulties initially arose, in whole or in part, due to circumstances outside his [or her] control, the Judge could still consider whether Applicant has since acted in a reasonable manner when dealing with those financial difficulties." ISCR Case No. 05-11366 at 4 n.9

AG ¶ 20(c) is not applicable because there is no evidence of financial counseling. However, there is sufficient information to establish full mitigation under AG ¶¶ 20(d)³ and 20(e). Applicant retained counsel and successfully resolved his debts. Applicant has settled or paid all debts except the debt alleged in SOR ¶ 1.f. Applicant presented substantial evidence documenting good-faith efforts to contact the creditor and for reasons unknown that creditor failed to respond to any of Applicant's overtures.

Furthermore, AG ¶ 20(e) is applicable to mitigate the debt in SOR ¶ 1.d. because the Applicant provided "documented proof to substantiate the basis of the dispute." The creditor closed the account and ceased all further collection efforts. He understands the security implications of delinquent debt and will scrupulously avoid future delinquent debt.

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,

(App. Bd. Jan. 12, 2007) (citing ISCR Case No. 99-0462 at 4 (App. Bd. May 25, 2000); ISCR Case No. 99-0012 at 4 (App. Bd. Dec. 1, 1999); ISCR Case No. 03-13096 at 4 (App. Bd. Nov. 29, 2005)). A component is whether he maintained contact with his creditors and attempted to negotiate partial payments to keep his debts current.

³The 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)).

exploitation, or duress; and (9) the likelihood of continuation or recurrence.

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. AG ¶ 2(c).

There is evidence against mitigating Applicant's conduct. The SOR lists seven debts totalling \$27,000 that were at one time or another in various states of delinquency. He failed to keep his accounts current and negotiate lesser payments, showing some financial irresponsibility and lack of judgment. His lack of success resolving delinquent debt raises sufficient security concerns to merit further inquiry.

The mitigating evidence under the whole person concept is more substantial. Applicant's record of military service and good employment weighs in his favor. There is no evidence of any security violation during the 27 years Applicant held a security clearance. He is a law-abiding citizen. His debts are current and his SOR debts are all paid. His monthly expenses are current. The Appeal Board has addressed a key element in the whole person analysis in financial cases stating:

In evaluating Guideline F cases, the Board has previously noted that the concept of "meaningful track record" necessarily includes evidence of actual debt reduction through payment of debts." However, 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.' The Judge can reasonably consider the entirety of an applicant's financial situation and his actions in evaluating the extent to which that applicant's plan for the reduction of his outstanding indebtedness is credible and realistic. See Directive ¶ E2.2(a) ('Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination.') There is no requirement that a plan provide for payments on all outstanding debts simultaneously. Rather, a reasonable plan (and concomitant conduct) may provide for the payment of such debts one at a time. Likewise, there is no requirement that the first debts actually paid in furtherance of a reasonable debt plan be the ones listed in the SOR.

ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) (internal citations omitted). Applicant is making a significant contribution to the national defense. His supervisors fully support him and recommend him for a security clearance. He made mistakes, and debts became delinquent. There is, however, simply no reason not to trust him. He has paid his debts. Furthermore, he has established a "meaningful track record" of debt payments. These factors show responsibility, rehabilitation, and mitigation. After weighing the disqualifying and mitigating conditions, and all the facts and

circumstances, in the context of the whole person, I conclude he has mitigated the financial considerations security concerns.

I take this position based on the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), my careful consideration of the whole person factors and supporting evidence, my application of the pertinent factors under the Adjudicative Process, and my interpretation of my responsibilities under the Guidelines. Applicant has mitigated or overcome the government's case. For the reasons stated, I conclude he is eligible for access to classified information.

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. to 1.h.: For Applicant

Conclusion

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue Applicant's eligibility for a security clearance. Eligibility for a security clearance is granted.

Robert J. Tuidor
Administrative Judge