DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS

In the matter of:	)	
	)	
----------	)	ISCR Case No. 08-08925
SSN: ----------	)	
	)	
Applicant for Security Clearance	)	

Appearances

For Government: Gina L. Marine, Esquire, Department Counsel
For Applicant: *Pro se*

July 29, 2009

Decision

MATCHINSKI, Elizabeth M., Administrative Judge:

Applicant fell behind in his child support and on a credit card account. He also owed past due balances on two utility services accounts. His financial delinquencies are attributable in part to unemployment and low wages, and to the criminal activity of a former employer. The child support issue has been resolved, and he has paid $4,100 toward his delinquent credit card debt. Clearance is granted.

Statement of the Case

Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) on April 2, 2008. On April 24, 2009, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a statement of reasons (SOR) detailing the security concerns under Guideline F that provided the basis for its decision to deny him a security clearance and refer the matter to an administrative judge. 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) effective within the Department of Defense as of September 1, 2006.

On May 18, 2009, Applicant answered the SOR and requested a hearing. The case was assigned to me on May 28, 2009, to conduct a hearing and to determine whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. On June 2, 2009, I scheduled a hearing for June 17, 2009.

I convened the hearing as scheduled. Five government exhibits (Ex. 1-5) were admitted, Exhibits 3 and 4 over Applicant's objections. Applicant represented himself with the assistance of a former supervisor. Applicant, this supervisor, and a state employee familiar with Applicant's child support situation, testified on Applicant's behalf, as reflected in a transcript (Tr.) received on June 26, 2009. Applicant also submitted 20 exhibits (Ex. A-T), which were admitted without any objections.

At Applicant's request, I held the record open until July 1, 2009, for him to submit proof of debt repayment. On July 24, 2009, Applicant submitted through his former supervisor copies of documents pertaining to SOR ¶¶ 1.i and 1.j. On July 26, 2009, Applicant forwarded records pertinent to the closure of his child support case, and evidence of recent money orders showing payments on SOR ¶ 1.h. Department Counsel indicated on July 7, 2009, that the government did not object to the admission of the post-hearing submissions, and the documents were accepted into the record as full exhibits (Ex. U-W).

Findings of Fact

DOHA alleged under Guideline F, financial considerations, that Applicant owed judgment debts of $2,550 entered against him and in favor of child support enforcement in June 2004 (SOR ¶ 1.a) and January 2005 (SOR ¶ 1.b), and that state tax liens or warrants had been entered against him in April 2006 for $2,534 (SOR ¶ 1.c), June 2007 for $2,879 (SOR ¶ 1.d), October 2002 for $3,244 (SOR ¶ 1.f), and August 2003 for $3,150 (SOR ¶ 1.g). DOHA also alleged that Applicant owed $19,110 in delinquent child support (SOR ¶ 1.e), a financial judgment of $9,864 to a consumer debt collection agency (SOR ¶ 1.h), and two delinquent utility debts of $182 (SOR ¶ 1.i) and $163 (SOR ¶ 1.j). Applicant denied the allegations and explained that the child support matter and related judgment and tax liens in SOR ¶¶ 1.a through 1.g had been resolved. He averred that the balance of SOR ¶ 1.h was about half of the amount alleged, and that he had paid the debts in SOR ¶¶ 1.i and 1.j.

After considering the pleadings, transcript, and exhibits, I make the following findings of fact.

Applicant is a 54-year-old janitor who had worked for a defense contractor in state A from April 2008 until mid-May 2009, when he was laid off because of lack of work due to no security clearance (Tr. 109-10, 125). He is subject to being recalled by the defense contractor should his clearance be adjudicated favorably. His supervisors would like to have him back at work (Tr. 112, 161-64). He requires a secret clearance.

Applicant was married in August 1985. He and his ex-wife had three children by December 1987. In 1994, they went through a bitter divorce and, although Applicant was court-ordered to pay child support in state B from October 1995 (Ex. 4), he had no contact with his children (Ex. 1, Tr. 95). Applicant struggled to pay his child support on time due to periods of unemployment (Tr. 137). In about December 2001, his wages were ordered garnished to pay child support (Tr. 137-39). From June 2000 to December 2002, he worked at a local liquor store. In about June 2001, he began working part-time as a security officer at $7 an hour for a local casino in state A while continuing to work weekends at the liquor store (Tr. 90). In May 2004, he was laid off by the casino (Ex. 1).

Shortly after Applicant began working at the casino, a collection agency obtained a $9,864 judgment against him in August 2001 (SOR ¶ 1.h) to recover a delinquent credit card balance (Ex. 4).[1] His wages at the casino were garnished by state B for child support at $125 a week from March 11, 2002, through April 1, 2002 (Ex. A). He made no payments on his child support through the remainder of his employ at the casino. Tax warrants (liens) were filed against him by state B in October 2002 for $3,244.16 and in August 2003 for $3,150 because he was delinquent in his child support (Exs. 3, E). In June 2004, the county child support enforcement division obtained a financial judgment, and state B issued a tax lien against him, for $2,550 (Exs. 4, E).

Applicant worked as a painter for a local building contractor part-time when needed from about June 2004 to December 2005 (Ex. 1, Tr. 91). In January 2005, a tax warrant was issued against Applicant in the amount of $2,550 for failure to pay the child support judgment (Ex. E). In early April 2005, Applicant's federal income tax refund of $794.29 was intercepted and applied to his child support (Ex. M). In early May 2005, Applicant was hired by a local janitorial company at $9.25 per hour, although his wage increased slightly to $10 an hour shortly after he started. As of January 2006, the janitorial company was his only employer. Applicant's wages were garnished at $125 per week for child support from August 5, 2005, through April 21, 2007, with the exceptions of the weeks of October 9, 2005, when $70.98 was taken, and July 2, 2006, and February 25, 2007, when nothing was taken (Exs. 2, B). Applicant's employer was obligated under state law to forward the child support payments to state B (Ex. 2).

Applicant assumed his employer was submitting the full child support payments to state B. On February 22, 2006, Applicant was notified by the child support processing center that a payment issued by his employer on his behalf in early February 2006 for $125 had been returned on the basis of account closed (Exs. 2, A, J). Applicant was assured by his employer that it was a mix-up because she had changed banks, and that payments were being made (Tr. 153).

After issuing three insufficient funds checks to state B in January/February 2006 (Exs. 2, J, Tr. 24), Applicant's employer continued to garnish Applicant's wages but did

[1]On June 2, 2009, the current assignee reported a $6,864.63 balance due, apparently after payment of the $3,000, which was received by the collection agency on May 14, 2009 (Ex. K). Applicant was unaware of the judgment before his background investigation for his security clearance (Tr. 132).

not forward the monies to state B as required. In April 2006, state B issued a tax warrant against Applicant in the amount of $2,534.73 (Exs. 3, E). His federal income tax refund was intercepted in April 2006 and applied to his child support (Ex. M). In November 2006, his employer paid $500 to the child support division on Applicant's behalf, but again failed to comply until April 2007, when the company resumed submitting the $125 weekly child support to state B (Ex. A).

Applicant was laid off by the janitorial company in April 2007 (Ex. 1). He did not pay his child support over the next year because he was unemployed and could not afford to make the payments. He was denied unemployment because his former employer indicated that he had left the job, which he maintains was not true (Tr. 93). His sister helped him out by allowing him to live with her (Tr. 94). In June 2007, state B obtained a judgment against Applicant in the amount of $2,879 for nonpayment of child support (Exs. 3, 4). His income tax refunds were intercepted in 2007 and 2008 and applied to his child support debt (Exs. A, M).

In April 2008, Applicant began working as a janitor for a defense contractor. On July 14, 2008, he paid $1,065.70 to settle a delinquent credit card debt of $2,131.39 (not alleged in SOR) (Ex. 2). From August 15, 2008, through October 23, 2008, Applicant paid state B $75 per week toward his child support (Exs. 2, N). In November 2008, the defense contractor began garnishing his wages for child support, at $125 per week through December 2008, and at $50 per week thereafter (Ex. A). That fall, he also paid a $182 gas services debt delinquent since November 2002 (SOR ¶ 1.i) (Exs. 2, 3, P, U). He obtained a money order of $163 to pay a delinquent electric bill owed since June 2007 (Exs. 2, 3), but it was returned to him by the credit union because the power company could not identify the account to apply the payment (Ex. R). Applicant first learned of these two debts when he reviewed a copy of his credit report during his background investigation (Tr. 131).

Applicant learned from former coworkers that the janitorial services company had withheld wages from them but had not submitted their payments (Tr. 16). In late September 2008, he filed a formal complaint with state A's Department of Labor (Exs. D, I). A wage enforcement agent investigated and determined that the janitorial services company had withheld $8,695.98 in total wages from Applicant's pay for child support but had forwarded only $3,195.98 to state B's support enforcement division (Ex. C. Tr. 17). The investigator filed a complaint in superior court in state A charging Applicant's former employer with failure to pay wages, a felony offense under state law (Ex. C, Tr. 31-32). As of June 2009, Applicant's former employer had been arraigned but had not yet been tried on the charge (Tr. 40).

On March 9, 2009, state B closed his child support account as he no longer owed a balance (Ex. V). On March 23, 2009, the tax warrants issued by state B for nonpayment of child support were all vacated (Ex. E). On April 3, 2009, state B intercepted his federal income tax refund of $1,497 and applied it to his child support (Ex. M). On April 14, 2009, state B refunded Applicant $2,900 in overpayment of his child support (Ex. F). On May 27, 2009, the income tax refund of $1,497 applied to his child support was refunded to him as well (Ex. O). In May 2009, Applicant resolved his

old debt to the electric company (SOR ¶ 1.j) (Exs. G, U). Forgetting that he had already satisfied the debt in SOR ¶¶ 1.i, he paid $183 to the gas company in May 2009 (Exs. G, P).

In May 2009, Applicant negotiated a settlement of the judgement debt in SOR ¶ 1.h with the new assignee. The creditor agreed to accept $5,000 to settle the debt on receipt of $3,000 on or before May 14, 2009, and one payment of $2,000 on or before June 30, 2009 (Ex. K). Applicant paid $3,000 on May 13, 2009 (Exs. G, U), $800 on June 18, 2009, and $300 on June 25, 2009 (Ex. W). As of June 2009, he was collecting unemployment compensation at $380 a week (Tr. 109, 118).

Applicant moved into his current residence in mid-October 2008. He has paid his monthly rent of $750 (Ex. S) on time and his utilities are current as of June 2009 (Ex. T, Tr. 120). He has no active credit card accounts (Ex. 4).

Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security emphasizing, "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). 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." 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 that 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 about finances 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.

Applicant has a history of late child support payments that led to garnishment of his wages beginning in about December 2001. Child support records show no payments were made on Applicant's account between May 2002 and May 2005. Between August 2003 and June 2004, two judgments and four tax warrants (liens) were issued against him for failure to comply with court-ordered child support. Applicant was a victim of criminal activity in that a former employer did not forward more than $5,000 in wages withheld to state B's child support agency, but there were times before 2006 and after April 2007 when Applicant was responsible for paying his child support on time and did not do so. Furthermore, a financial judgment was issued against him in August 2001 because of a delinquent credit card, and two utility debts (gas and electric) were placed for collection. AG ¶ 19(a), "inability or unwillingness to satisfy debts," AG ¶ 19(b), "a history of not meeting financial obligations," apply.

AG ¶ 20(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," applies in mitigation of his child support delinquency when he worked for the janitorial company. Applicant received wage statements showing that his employer was garnishing his wages for child support between August 2005 and April 2007, and he relied in good faith on his employer who indicated she was making the payments.

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," is clearly implicated. The criminal behavior of his former employer was not reasonably foreseeable. AG ¶ 20(b) also applies to the extent that lack of income was a factor in his failure to timely address his child support delinquency from April 2007 to April 2008. Applicant testified that he was out of work for one year after he was laid off from the janitorial company. He was denied unemployment when his former employer claimed he walked off the job. Applicant denies he left the company voluntarily, and his former employer's version is viewed skeptically given its failure to turn over about $5,000 of Applicant's wages to state B's child support agency.

Moreover, the evidence supports AG ¶ 20(d), "the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts." Applicant made $75 child support payments directly to the child support agency from mid-August 2008 through late October 2008, until his employer began garnishing his wages. He was unaware of the debts in SOR ¶¶ 1.h-1.j before the recent clearance investigation. In the fall of 2008, he satisfied the gas debt and attempted to resolve the electric services debt. As of May 2009, the utility debts had been paid. His child support case was closed in March 2009 because he was no longer obligated to pay child support (his children are now adults) and arrearage had been paid. The state vacated the tax warrants.

By the close of the record, Applicant had fully resolved all the issues but for the judgment debt in SOR ¶1.h. On or before mid-May 2009, the creditor agreed to accept $5,000 to settle the debt. Applicant paid $3,000 before he was laid off by the defense contractor because of no clearance. He paid an additional $1,100 toward the debt in June 2009. The creditor is free to reserve the right to modify or revoke the settlement offer, since Applicant fell short of paying the full $2,000, but he has done enough for AG ¶ 20(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."

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 conduct and all the circumstances in light of 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.

The DOHA Appeal Board has addressed a key element in the whole person analysis in financial cases stating, in part, "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.'" ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) (internal citations omitted). Concerns are legitimately raised about Applicant's financial judgment because of nonpayment of his child support obligation for three years. While he may not have known about the outstanding credit card judgment against him, his reliance on credit for purchases enjoyed by him or his family was knowing and willful. Yet his recent behavior has been financially responsible. He has resolved most of his debt and lives within his means on limited income. Since his children are grown, he no longer has the financial burden of child support. He does not have an active credit card account. Under the circumstances, the financial problems are not likely to recur.

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
Subparagraph 1.f:	For Applicant
Subparagraph 1.g:	For Applicant
Subparagraph 1.h:	For Applicant
Subparagraph 1.i:	For Applicant
Subparagraph 1.j:	For Applicant

Conclusion

In light of 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.

ELIZABETH M. MATCHINSKI
Administrative Judge