



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



In the matter of:)	
)	
)	ISCR Case No. 08-09039
SSN:)	
)	
Applicant for Security Clearance)	

Appearances

For Government: D. Michael Lyles, Esquire, Department Counsel
For Applicant: Pro Se

September 22, 2009

Decision

HOGAN, Erin C., Administrative Judge:

Applicant submitted his Electronic Questionnaires for Investigations Processing (e-QIP) on April 17, 2008. On April 30, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the 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.

On June 1, 2009, Applicant answered the SOR and requested a hearing before an administrative judge. Department Counsel was ready to proceed on July 15, 2009. The case was assigned to me on July 24, 2009. On August 3, 2009, a Notice of Hearing was issued, scheduling the hearing for August 25, 2009. The case was heard on that date. The Government offered five exhibits which were admitted as Government Exhibits (Gov) 1 – 5. The Applicant testified and offered six exhibits which were marked as Applicant Exhibits (AE) A - E. The record was held open until September 8, 2009, to

allow Applicant to submit additional documents. No additional documents were submitted. The transcript was received on September 10, 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, Applicant admits SOR allegations 1.a – 1.e, and denies SOR allegations 1.f and 1.g because he did not recognize the debts.

Applicant is a 38-year-old truck driver employed by a Department of Defense contractor who is applying for a security clearance. He has worked for his current employer since July 2007. This is his first time applying for a security clearance. He is a high school graduate. He is married and has one son, age 11. (Tr at 4-5, 23, 35-36; Gov 1.)

Applicant's security clearance background investigation revealed that he had the following delinquent accounts: a \$23,503 debt as a result of a voluntary repossession of a leased 18-wheel semi-truck in 2004 (SOR ¶ 1.a: Gov 4 at 1; Gov 5 at 5); a \$2,633 credit card account placed for collection (SOR ¶ 1.b: Gov 4 at 1, 2; Gov 5 at 3, 6); a \$1,130 credit card account placed for collection (SOR ¶ 1.c: Gov 4 at 1; Gov 5 at 5); a \$1,747 computer account placed for collection (SOR ¶ 1.d: Gov 4 at 2; Gov 5 at 3); a \$773 cell phone account placed for collection (SOR ¶ 1.e: Gov 4 at 2; Gov 5 at 6); a \$128 medical account placed for collection (SOR ¶ 1.f: Gov 5 at 4); and a \$199 medical account placed for collection (SOR ¶ 1.g: Gov 5 at 4).

During 2000 – 2004, Applicant owned his own business. In August 2000, he entered into a lease-to-purchase agreement for a semi-truck in the amount of \$94,000. He used the truck for his business. In 2003, business was slow and he started to have difficulty making several payments, including his truck payments. He leased the truck to another company in order to earn more money. The company never paid Applicant for his services. Applicant claims the company owed him approximately \$20,000. He took the company to court. The court awarded an \$11,500 judgment to Applicant. Although attempts have been made, he has been unable to collect the money from the judgment. (Tr at 27-32; Answer to SOR.) The lack of payment from this company created an additional financial burden on Applicant.

Applicant contacted the finance department of the company with whom he had the lease-to-purchase agreement when he started to have difficulty making payments. The finance department suggested that he turn the semi-truck back in because he owed less than the blue book value of the truck. Applicant owed \$38,000. The semi-truck had low mileage, was in good condition, and was valued at \$40,000 - \$45,000. After Applicant voluntarily surrendered the truck, the truck sold at auction for approximately \$12,000. He has not paid the \$23,503 (SOR ¶ 1.a) because he disputes the amount of the debt. He believes he was misled by the company finance department to turn in the semi-truck. He believes they did not sell the semi-truck for the amount that it was worth.

He hired an attorney pertaining to this debt. His attorney advised him not to contact the company's finance department because the five-year statute of limitations runs in December 2009. (Tr at 29-32; Gov 2 at 5; Answer to SOR) A credit report dated November 19, 2008, indicates Applicant formally disputed the debt with the credit reporting agency. (Gov 4 at 1)

When Applicant owned his own business, he was on the road a large majority of the month. His wife was responsible for paying the bills. He discovered that she is not good at handling the family finances as indicated by some of the delinquent accounts. He took over the responsibility of paying the monthly bills and began to resolve the delinquent accounts. (Tr at 34)

Aside from the debt alleged in SOR ¶ 1.a which is discussed above, the status of the remaining delinquent debts alleged in the SOR are as follows:

SOR ¶ 1.b, \$2,633 credit card account placed for collection: Account settled on April 30, 2009. (Tr at 19, 25-26; AE C) This allegation is found in Applicant's favor.

SOR ¶ 1.c, \$1,130 credit account placed for collection: Applicant contends this is the same debt as the debt alleged in SOR ¶ 1.b. The most recent credit report, dated November 19, 2008, lists a zero balance. (Tr at 25-26, 28; Gov 4 at 1) This allegation is found in Applicant's favor.

SOR ¶ 1.d, \$1,747 computer account placed for collection: Account paid on February 19, 2009. (Tr at 18-19; AE B) This allegation is found in Applicant's favor.

SOR ¶ 1.e, \$773 cell phone account placed for collection: Account paid on May 12, 2009. (Tr at 22; AE F) This allegation is found in Applicant's favor.

SOR ¶¶ 1.f and 1.g, medical bills in the amount of \$128 and \$199: Accounts were paid on August 24, 2009. When Applicant contacted the company he discovered two additional medical bills. All medical bills were resolved. (Tr at 21; AE E) These allegations are found in Applicant's favor.

Applicant's net monthly income is \$2,400. His wife's net monthly income is \$1,100. He estimates that he and his wife's monthly expenses are \$2,400. They have approximately \$1,100 left over each month after expenses. (Tr at 23-24) Applicant is not aware of any additional delinquent accounts. He has no open credit card accounts. He has two loans with a credit union, a car loan and a signature loan. The total balance for both loans is \$3,000. He is current on federal and state taxes. (Tr at 33-34)

A loan officer from the credit union where Applicant does business wrote a letter on his behalf. She indicates Applicant has been a customer since August 1992. He has taken out several signature loans and automobile loans over that period of time. He makes his payments on time and is a very honorable person. (AE A)

Applicant states that he learned a hard lesson when he was running his own business. He has worked for a reputable company during the past two years. He testified that no amount of money would make him do anything against the United States. (Tr at 36, 41-42)

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 commonsense 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.

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 disqualifying conditions that could raise security concerns. I find Financial Considerations Disqualifying Condition (FC DC) ¶19(a) (an inability or unwillingness to satisfy debts); and FC DC ¶19(c), (a history of not meeting financial obligations) apply to Applicant’s case. Applicant had financial difficulties in 2003 due to a business downturn and the default of a significant bill by a business associate. The SOR alleged seven delinquent accounts, an approximate total balance of \$30,113. Of that amount, \$23,503 relates to the voluntary repossession of a semi-truck.

The Government’s substantial evidence and Applicant’s own admissions raise security concerns under Guideline F. The burden shifted to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the security concerns. (Directive ¶ E3.1.15) An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the government. (See ISCR Case No. 02-31154 at 5 (App. Bd. September 22, 2005))

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Financial Considerations Mitigating Condition (FC MC) ¶ 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. Applicant struggled financially in 2003 to 2004 when he was operating his own business. He was unaware that some of the accounts became delinquent when his wife was handling the finances. He took over handling the family finances and has resolved all of the delinquent accounts with the exception of the truck repossession. Based on the record evidence, Applicant may have a valid dispute with regard to this debt. This outstanding debt does not raise doubts about his current reliability, trustworthiness, or good judgment.

FC MC ¶ 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) applies. Applicant's financial problems were caused by a business downturn in 2003. A business associate defaulted on a significant bill owed to Applicant's company. He obtained a judgment against the company but efforts to collect on the debt have been unsuccessful. Circumstances beyond his control created his financial problems. Applicant acted responsibly under the circumstances. Upon gaining employment with a reputable company, he resolved all of his delinquent accounts with the exception of the debt dealing with the truck repossession. He consulted an attorney regarding this debt and disputes the amount of the debt. Under the circumstances, Applicant acted responsibly towards his financial situation.

FC MC ¶ 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) applies. Applicant has not received financial counseling but there are clear indications that his financial problems are under control. He paid six of the seven delinquent accounts.

FC MC ¶ 20(d) (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts) applies. Applicant resolved six of the seven delinquent accounts. He has taken reasonable steps with regard to the remaining debt which is his largest debt. While that debt remains unresolved, he formally disputed the debt on his credit report and has consulted an attorney regarding the debt. Overall, he has made a good-faith effort to resolve his delinquent accounts.

FC MC ¶ 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) applies with respect to the debt alleged in SOR ¶ 1.a which involves the voluntary truck repossession. Applicant disputes the amount of the debt. He consulted an attorney regarding the debt and is following the advice of his attorney. He also formally disputed the debt on his credit report. FC MC ¶ 20(e) applies with respect to SOR ¶ 1.a.

Applicant has mitigated the concerns raised under Guideline F.

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 commonsense 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. I considered that a business downturn in 2003-2004 resulted in Applicant being unable to pay all of his bills. I considered that Applicant resolved six of the seven debts. His largest debt remains. With regards to this debt, I considered that Applicant was unable to pay his truck payments because a business associate defaulted on a significant bill, resulting in his voluntary return of the truck. He responsibly sought a judgment against his business associate but has not been successful in obtaining payment on the judgment. Circumstances beyond his control contributed to his financial problems. Aside from the truck repossession, he only had \$6,610 in delinquent consumer debt indicating Applicant does not live extravagantly. He charged what he needed as opposed to making frivolous purchases. He disputes the amount of the debt owed for the truck repossession. He retained an attorney regarding this debt and is following his attorney's advice. Based on the all of the information in the record, Applicant has proven that he is not a security risk. He mitigated the concerns raised under 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
Subparagraph 1.f:	For Applicant
Subparagraph 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 interests to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

ERIN C. HOGAN
Administrative Judge