



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
)  
) ISCR Case No. 08-09127  
)  
)  
Applicant for Security Clearance )

For Government: Pamela Benson, Esquire, Department Counsel  
For Applicant: *Pro Se*

July 30, 2009

Decision

DAM, Shari, Administrative Judge:

Based upon a review of the record evidence as a whole, eligibility for access to classified information is granted.

On May 12, 2008, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP). On February 24, 2009, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) 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.

On March 31, 2009, Applicant answered the SOR in writing and requested a hearing before an administrative judge. On June 4, 2009, DOHA assigned the case to

me. On June 16, 2009, DOHA issued a Notice of Hearing. The case was heard on July 9, 2009, as scheduled. Department counsel offered Exhibits (GE) 1 through 4 into evidence without objection. Applicant testified and offered Exhibits (AE) A through S into evidence without objection. DOHA received the hearing transcript on July 20, 2009.

### **Findings of Fact**

In his Answer, Applicant admitted all allegations contained in the SOR except those contained in ¶¶ 1.b, 1.d, 1.e, and 1.g.

Applicant is 26 years old and married. His wife is 22 years old. They have a 15-month old son. He completed an associate's degree in computer information in 2006 and will finish a bachelor's degree in business management in December 2009. His wife begins student teaching in the fall and will graduate with a degree in education next spring.

In 2001, Applicant received his first credit card. At the time, he was 19 years old and living on his own. He used the card for living expenses while attending college because his part-time job did not cover all of his debts. He admits that from 2001 until 2004, he mismanaged his money and had no financial understanding of the ramifications of accruing delinquent debt through credit cards. (Tr. 24-27)

Based on credit bureau reports (CRB) dated June 2008 and February 2009, the SOR alleged seven delinquent debts, totaling \$14,652. The status of the debts is as follows.

1. SOR ¶ 1.a alleges a \$6,747 judgment owed to a university credit union. This debt was a personal loan for an automobile he purchased in December 2004. The debt remains unpaid, but Applicant has been in contact with the creditor. He intends to pay it when money becomes available. (Tr. 32-33; AE H)
2. SOR ¶ 1.b alleges a \$373 debt owed to a cell phone company. This debt was paid on May 22, 2009. (Tr. 33; AE C)
3. SOR ¶ 1.c alleges a \$2,584 debt owed to a credit card company. The original debt was \$500. This was Applicant's first credit card, which he received in 2002. He has made two offers to the company for settlement. AE I is a summary of those offers. He is waiting for a reply. (Tr. 33-36; AE K)
4. SOR ¶ 1.d alleges a \$78 debt owed to an insurance company. This debt was paid on March 31, 2009.
5. SOR ¶ 1.e alleges a \$775 debt owed to a credit card company. This debt was paid in May 2009. (Tr. 37; AE E)

6. SOR ¶ 1.f alleges a \$3,389 debt owed to a university for room and board for the year of 2005. This debt was paid on May 15, 2009. (Tr. 38; AE F)
7. SOR ¶ 1.g alleges a \$706 debt owed to a storage company. This debt was paid on March 30, 2009. (Tr. 39; AE G)

In summary, Applicant paid five of the seven debts since March 2009. He has contacted one of the two remaining unpaid creditors and will pay the debt when he reaches a settlement. He intends to contact the other creditor and start making small monthly payments if acceptable by the creditor. (Tr. 49) He anticipates that the remaining debt of \$9,461 will be resolved and paid within the next nine months. (AE K)

Applicant has not participated in a formal credit counseling course, but has received financial advice from his father. He has also taken accounting and finance courses in conjunction with his business management program. (Tr. 57-78)

In May 2008, Applicant started his current full-time position as a head server at a restaurant. He also attends school full time. He and his wife are managing on their tight budget through frugal spending. (Tr. 44-45) He has not incurred any additional debt since 2004 other than his car loan, which he pays regularly. (Tr. 55) If he obtains a security clearance, he will begin work as a team leader for a federal contractor and many of his financial problems will be resolved with a higher salary. His prospective employer has held a position open for Applicant over the last year. (Tr. 30, 47; AE L) He also intends to continue working at the restaurant on a part-time basis to help pay his two outstanding debts. (Tr. 55)

Applicant testified candidly and credibly. He presented his case in a very organized manner and demonstrated a commitment to achieving financial solvency. He was an impressive 26-year-old man who will have a successful career in the future.

### **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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

According to Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an “applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department counsel and has the ultimate burden of persuasion to obtain a favorable security decision.”

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.”

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.

## **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.

AG ¶ 19 describes two conditions that could raise a security concern and may be disqualifying:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

Between 2001 and 2004, Applicant accumulated approximately \$14,652 of delinquent debt that he was unwilling or unable to pay until sometime in March 2009. The evidence is sufficient to raise these potentially disqualifying conditions.

After the Government produced substantial evidence of those disqualifications, the burden shifted to Applicant to produce evidence and prove a mitigating condition. AG ¶ 20 includes six conditions that could mitigate security concerns arising from financial difficulties:

- (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;
- (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; and,
- (f) the affluence resulted from a legal source of income.

Applicant accumulated several debts between 2001 and 2004 that were the result of poor financial management and imprudent use of credit cards. He did not begin resolving them until 2009. Because the debts are not isolated and have been ongoing for several years, AG ¶ 20(a) does not apply. Applicant admitted that he mishandled his finances during that period of time. Hence, AG ¶ 20(b) does not apply. Applicant has not taken a formal financial counseling course, but has spoken to his father and completed college courses in accounting and finance as part of his business management curriculum. Based on that and other evidence, there are clear indications that the debts are being resolved and his finances are under control, triggering the application of AG ¶

20(c). Applicant paid five of the seven debts and is negotiating with another creditor. Those actions are evidence of his good-faith effort to resolve the debts and warrant the application of AG ¶ 20(d). There is no evidence to support the application of AG ¶ 20 (e) or AG ¶ 20(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 circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a). They include the following:

- (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.

According to AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must include 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. Applicant is a 26-year-old man who mismanaged his money and credit when he was 19-years-old and attending college. Since learning of the Government's security concerns, he has demonstrated a commitment to resolving those debts. Given his awareness of the importance of financial responsibility and effect similar problems could have on future employment, along with a frugal budget, I do not believe similar financial problems will recur. The Appeal Board noted in ISCR Case No. 06-12930, "that an applicant is not required to show that she has completely paid off her indebtedness, only that she has established a reasonable plan to resolve her debts and has taken 'significant actions to implement that plan.' ISCR Case No.04-09684 at 2-3 (App. Bd. Jul.6, 2006).'" In this case, Applicant has taken steps to resolve his delinquent debts and establish a track record of responsible financial management.

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 mitigated the security concerns arising 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

Subparagraphs 1.a through g:      For Applicant

## **Conclusion**

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the interests of national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

---

SHARI DAM  
Administrative Judge