



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



In the matter of:)
)
-----) ISCR Case No. 08-09381
SSN: -----)
)
Applicant for Security Clearance)

Appearances

For Government: Jeff Nagel, Esquire, Department Counsel

For Applicant: *Pro se*

September 4, 2009

Decision

ROSS, Wilford H., Administrative Judge:

The Applicant submitted his Questionnaire for Sensitive Positions (SF86) on March 10, 2008, (Government Exhibit 1). On February 2, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to the Applicant, which detailed security concerns under Guidelines F and E stating why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant, and recommended referral to an administrative judge to determine whether a clearance should be denied or revoked. 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 President Bush on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

The Applicant answered the SOR in writing on March 2, 2009, and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on March 23, 2009. This case was assigned to me on March 26, 2009. DOHA issued a notice of hearing on April 8, 2009, and I convened the hearing as scheduled on May 21, 2009. The Government offered Government Exhibits 1 through 7, which were received without objection. The Applicant testified on his own behalf, and submitted Applicant's Exhibits A through J, also without objection. The record was left open at the Applicant's request for the submission of additional documentation. The Applicant submitted Applicant's Exhibit K on June 2, 2009. This exhibit was also received without objection. DOHA received the transcript of the hearing on May 29, 2009. The record closed on June 2, 2009. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

Findings of Fact

The Applicant is 43, married, and has an Associate's degree. He is employed by a defense contractor and seeks a security clearance in connection with his employment in the defense industry. In his Answer to the SOR, Applicant admitted allegations 1.a., 1.b., 1.d., 1.f., 1.g., 1.k., 1.l., and 1.n. under Paragraph 1 of the SOR. Those admissions are hereby deemed findings of fact. He denied allegations 1.c., 1.e., 1.h., 1.i., i.j., 1.m., and allegation 2.a. under Paragraph 2. He also provided explanations with his responses.

Paragraph 1 (Guideline F - Financial Considerations)

The Government alleges in this paragraph that the Applicant is ineligible for clearance because he is financially overextended and therefore at risk of engaging in illegal acts to obtain funds.

The Applicant is a retired chief petty officer in the United States Navy. He retired in November 2004. (Applicant's Exhibit H.) The Applicant's financial difficulties began after he married his current wife in 1998. The Applicant and his family were living in State One. His wife was from State Two, which is where her ex-husband lived. The wife brought her children from her prior marriage to State One after the marriage, but one of the children was actually supposed to be with her ex-husband. The ex-husband threatened to sue to get his child back in State Two. To keep the entire family together, the Applicant elected to move his wife and children to State Two, while he finished his tour in State One. Part of the reason for doing this was because the Applicant owned a house in State One. He quickly found the cost of maintaining two houses was impossible, and he declared bankruptcy in 2000. (SOR 1.n.) (Transcript at 21-23, 68-72; Government Exhibit 3 at 12.)

As stated earlier, the Applicant retired from the Navy in November 2004, to help his family stay together. From then until August 2007, the Applicant attempted to make a living as a commission mortgage broker. He found the work difficult, and the earnings

slim. Eventually, he decided the work was not for him and found salary work, first as a credit analyst assistant, and then a field service representative. He then began working for his current employer in October 2008, making more money. However, because of his extended period of underemployment, the Applicant had a lot of past due debts. It was in October 2008 that he began to make payments on his past due indebtedness. (Transcript at 24-27; Government Exhibit 3.)

The Applicant's debts will be discussed in the order they are alleged in the SOR:

1.a. The Applicant admitted that he owed \$2,500 for a used car to a collection agency. He has also consistently disputed the validity of the debt. According to the Applicant, the driver's side door would not work on the car, and after several attempts to fix it, he returned the car due to this safety issue. He filed a dispute with the credit reporting agencies and, after an investigation, they have deleted this item from his credit report. (Transcript at 31-33; Applicant's Exhibit E at 3.)

1.b. The Applicant admitted this allegation, which stated he owed another \$2,500 debt to the same collection agency. However, he also states that it is a duplicate of the debt set forth in 1.a., above. This allegation is for the same amount, to the same creditor, though the account numbers are different. The Applicant filed a dispute with the credit reporting agencies concerning this debt as well and, after an investigation, they have also deleted this item from his credit report. (Transcript at 37-38; Applicant's Exhibit E at 3.)

1.c. The Applicant denied that he owed a debt to a collection agency in the amount of \$530 for a utility bill. The Applicant showed that he paid \$358.13 to this utility in November 2008. (Applicant's Exhibit B at 5.) The Applicant filed disputes with the credit reporting agencies concerning two accounts allegedly owed to this utility, numbers 5293606 and 5894430. After the required investigation these accounts were deleted with the notation, "No record of account." (Transcript at 38-39, 67; Government Exhibit 4 at 9, 13; Applicant's Exhibit E at 4.)

1.d. The Applicant admitted that he owes a collection agency at least \$2,503 for a past due credit card bill. This debt had not yet been paid as of the date of the hearing. The Applicant indicated that his financial situation would allow him to begin paying this debt in June 2009. (Transcript at 41-42, 50-51; Government Exhibit 3 at 10.)

1.e. The Applicant denied that he owed a past due debt to a collection agency in the amount of \$250. He submitted evidence showing that this debt was settled in full in January 2008. (Transcript at 51-52, 75-76; Applicant's Exhibit C, and Exhibit E at 4.)

1.f. The Applicant admitted that he owed a collection agency \$1,418 for a past due debt. He testified that he was negotiating with the creditor and would have them paid off before the end of May 2009. Subsequently, the Applicant submitted Applicant's Exhibit K, which shows on page 3 that the Applicant paid \$882.50 on this account on May 28, 2009. (Transcript at 52.)

1.g. The Applicant admitted that he owes this account, but not for the reason stated in his Answer. The evidence shows that this was a returned check for \$2,500. This check was used as the down payment for the automobile loan set forth in allegation 1.h., below. The Applicant has not paid this debt, but intends to pay it as soon as possible, hopefully by January 2010 if not sooner. (Government Exhibit 4 at 8; Transcript at 53-55.)

1.h. The Applicant denied that he is indebted to Ford Motor Credit Company in the amount of \$5,740 for an automobile that was repossessed. The documentary evidence in the record confirms that this debt is actually with Triad, the creditor in 1.i., below. The Applicant has not paid the debt in this subparagraph, but intends to pay it in the near future. (Transcript at 35-36, 55-56; Government Exhibit 4 at 15.)

1.i. Th Applicant denied owing a debt to Triad in the amount of \$250. A review of all of the available credit reports fails to show a debt of this amount to this creditor. (Transcript at 56-57; Government Exhibit 3 at 15-40, Exhibit 4, Exhibit 5, Exhibit 6, Exhibit 7; Applicant's Exhibit E.)

1.j. The Applicant denied owing a debt to a collection agency in the amount of \$2,043. He supplied evidence that this debt was paid on or before February 23, 2009. (Transcript at 57-59; Applicant's Exhibit A.)

1.k. The Applicant admitted owing this debt to a collection agency in the amount of \$1,721. He testified that his plan was to pay this debt off before the end of June 2009. (Transcript at 59-60.)

1.l. The Applicant admitted owing a credit union \$10,064 for a charged off account. He has not paid anything on this debt, but hopes to pay this debt through a debt resolution company in the near future. (Transcript at 60-62.)

1.m. The Applicant denied owing a utility company \$311 for a past due account. He provided documentary evidence that this debt was paid in full in December 2008. (Transcript at 62-63; Applicant's Exhibit K at 4.)

The Applicant's current financial situation is stable. He provided evidence that he had paid other past due debts that, while referred to in the Financial Interrogatory he received from DOHA, were not part of the SOR. (Transcript at 64-67; Government Exhibit 3; Applicant's Exhibit B.)

Paragraph 2 (Guideline E - Personal Conduct)

The Government alleges in this paragraph that the Applicant is ineligible for clearance because he has made false statements to the Department of Defense during the clearance screening process.

The Applicant filled out a questionnaire for sensitive positions in March 2008 in which he stated that, within the past seven years, he had not been over 180 days delinquent on any debts. (Government Exhibit 1 at question 28(a).) This answer was incorrect, as all the debts set forth in subparagraphs 1.a. through 1.m., above, were over 180 days delinquent.

The Applicant testified at length on this issue. (Transcript at 72-75, 79-82.) He was apologetic for not discussing these debts on his questionnaire, but also consistently and credibly testified that he did not intentionally provide false information about them. The Applicant did not know the extent of his debts when he filled out the questionnaire, but he also knew that his credit report would be part of the investigation. He stated that, as a Sailor with a 20 year career and a security clearance:

I wouldn't seriously consider insulting anybody by thinking I could put "no" and that wouldn't have any - - I mean, that's not a good - - that is absurd. . . . It was a mistake. A genuine mistake. It wasn't meant to mislead anybody involved in the security process. (Transcript at 81.)

Supporting the Applicant's statement that he did not intend to deceive the Government regarding his debt situation is the fact that, in question 27, he did admit that he had filed for bankruptcy in 2000. This put the Government on notice that he had financial issues. Under the particular facts of this case, I find that while his answer was incorrect, he did not intend to mislead the Government.

Mitigation

The Applicant's current position mirrors the one he held in the Navy. He submitted documents from his career that show he is a highly respected person in his field. (Transcript at 26-27; Applicant's Exhibit G, Exhibit H, and Exhibit J.)

The Applicant also submitted a statement from his current supervisor, the operations manager. This person states, "[The Applicant] has always displayed personal accountability in our interactions." (Applicant's Exhibit K at 5-6.)

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. In addition, the Administrative Judge may also rely on his own common sense, as well as his knowledge of the law, human nature, and the ways of the world, in making a reasoned 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.

Finally, as emphasized by President Eisenhower in Section 7 of Executive Order 10865, “Any determination under this order . . . shall be a determination 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

It is the Government's responsibility to present substantial evidence to support the finding of a nexus, or rational connection, between the applicant's conduct and the continued holding of a security clearance. If such a case has been established, the burden then shifts to the applicant to go forward with evidence in rebuttal, explanation, or mitigation that is sufficient to overcome or outweigh the Government's case. The

applicant bears the ultimate burden of persuasion in proving that it is clearly consistent with the national interest to grant him or her a security clearance.

In this case the Government has met its initial burden of proving by substantial evidence that the Applicant had financial difficulties (Guideline F), and that the Applicant made false statements in the clearance screening process (Guideline E.) The Applicant, on the other hand, has successfully mitigated the Government's case.

Paragraph 1 (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* is potentially disqualifying. Similarly under AG ¶ 19(c), *a history of not meeting financial obligations* may raise security concerns. The Applicant failed to pay many debts for a period of years. 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. Mitigating Condition ¶ 20(a) states that the disqualifying conditions 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*. Under AG ¶ 20(b), the disqualifying conditions may be mitigated where *the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment. . .), and the individual acted responsibly under the circumstances*. The Applicant retired from the Navy for important personal reasons. He found the transition difficult, as he attempted to work in a field outside of his expertise. Once he returned to the field of his expertise, and was making good money, he began immediately working to resolve his debt situation. The evidence raises these potentially mitigating conditions.

The Applicant's current financial situation is stable, in that he can pay his current indebtedness and work steadily at reducing his past due debts. This brings his conduct within the purview of 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*. Evidence that *the individual initiated a good-faith effort to repay overdue*

creditors or otherwise resolve debts is also mitigating under ¶ 20(d). The Applicant showed that he has successfully paid off or otherwise resolved over \$9,800 of the debts alleged in the SOR. Adding in the payments to past due bills not alleged in the SOR, the amount rises to \$11,259. I conclude these potentially mitigating conditions apply.

As shown above, the Applicant has been paying many of his bills. Where he there has been a legitimate question concerning the validity of a debt, he has been proactive in filing disputes with the credit reporting agencies. This conduct brings him within the purview of AG ¶ 20(e), which states it is mitigating where “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.”

The Applicant began working on his debts long before the SOR was issued, he continues to work on them diligently. The Applicant realizes the importance of resolving his debt situation, and has the ability and drive to make sure he accomplishes this task. Most of all, he realizes that he must do this to retain his security clearance. For all the foregoing reasons, Paragraph 1 is found for the Applicant.

Paragraph 2 (Guideline E - Personal Conduct)

The Applicant did provide incorrect information on his questionnaire concerning the past due debts alleged in the SOR. However, the evidence is clear that the Applicant did not intentionally falsify his questionnaire. He is a knowledgeable retired Sailor and his credible testimonial evidence on this point was very persuasive. He made a bad assumption about how the investigation would go, but in the prior question he had put the Government on notice about his financial difficulties. As stated earlier, he freely disclosed that he had filed for bankruptcy in 2000. Here, the Applicant made a mistake, but was not intentionally deceptive. Guideline E is found for the Applicant.

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. 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 Administrative Judge should consider the nine adjudicative process factors listed at AG ¶ 2(a) in making such a decision:

- (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.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case, in particular the extent of his past due indebtedness, his payment or resolution of eight of the debts alleged in the SOR, the fact that he credibly testified he will continue to make payments on his other debts, and his unintentionally false statement to the Government. Three of the factors have the most impact on this case. First, I find that there is the “presence or absence of rehabilitation and other permanent behavioral changes,” as set forth under AG ¶ 2(a)(6). The Applicant has shown that his failure to pay his debts was a temporary situation brought about by his employment situation and that it is being corrected. Under the particular facts of this case, there is little or no “potential for pressure, coercion, exploitation, or duress” as set forth in AG ¶ 2(a)(8). Finally, there is little to no “likelihood of continuation or recurrence” as discussed in AG ¶ 2(a)(9).

On balance, it is concluded that the Applicant has successfully overcome the Government's case opposing his request for a DoD security clearance. Accordingly, the evidence supports a finding for the Applicant as to the factual and conclusionary allegations expressed in Paragraphs 1 and 2 of the Government's Statement of Reasons.

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 THE APPLICANT
Subparagraphs 1.a. through 1.n.:	For the Applicant
Paragraph 2, Guideline E:	FOR THE APPLICANT
Subparagraph 2.a.:	For the 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.

WILFORD H. ROSS
Administrative Judge