



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



In the matter of:)	
)	
SSN:)	ISCR Case No. 08-09622
)	
Applicant for Security Clearance)	

Appearances

For Government: Richard Stevens, Esquire, Department Counsel
For Applicant: *Pro se*

November 30, 2009

Decision

MASON, Paul J., Administrative Judge:

Based on a review of the case file, pleadings, testimony, and exhibits received at the hearing and following the hearing, Applicant's eligibility for access to classified information is granted.

Statement of the Case

Applicant submitted his Security Clearance Application (SCA) on May 31, 2008. The Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) (undated) detailing security concerns under financial considerations (Guideline F). The action was taken pursuant to 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 made effective within the Department of Defense for SORs issued on or after September 1, 2006.

Applicant provided his answer to the SOR on March 27, 2009. DOHA issued a notice of hearing on June 3, 2009 for a hearing on June 23, 2009. The hearing was held as scheduled. At the hearing, three exhibits (GE I through 3) were admitted in evidence without objection to support the government's case. Applicant testified and submitted nine exhibits (AE A through AE I). The record remained open until July 1, 2009, to allow Applicant to submit additional evidence. He submitted seven additional exhibits (AE J through AE P) within the time allowed to submit post hearing exhibits. The exhibits reflect payment receipts showing that certain unlisted debts were completely paid or payments were made. DOHA received the transcript on July 7, 2009. The record closed on July 7, 2009.

Rulings on Procedure

Under E3.1.8. of the Directive, an applicant must be notified at least 15 days in advance of the time and place of the hearing. Applicant believed he may have received the hearing notice on June 10, 2009 (Tr. 5), but was certain of a telephone conversation he had with Department Counsel on May 22, 2009, where he agreed to have the hearing on June 23, 2009 (Tr. 7). After subtracting May 22, 2009 (when Applicant agreed by telephone to the hearing date) from June 23, 2009 (hearing date), I find Applicant was notified of the date of the hearing more than 32 days in advance. Accordingly, I conclude the government complied with the 15-day notice requirement of E3.1.8.

Findings of Fact

Applicant admitted the five delinquent debts listed in the SOR. Applicant is 55 years old and has been married since January 1982. He has three children from his current marriage and two daughters from a previous marriage. He has been employed as an assistant professor of military science since 1997.

Applicant enrolled in college in 1972 and was awarded a bachelor's degree in English in 1976 (Tr. 34). When he could not find a job, he entered the United States Army in 1977 as a noncommissioned officer. In approximately 1986, he applied for and was accepted into Officers Candidate School (OCS) (*Id.*). Upon completion of OCS, he continued serving in the Army as a commissioned officer until he retired in 1997; at the rank of captain. He seeks a security clearance.

SOR 1.a. alleges a delinquent medical account amounting to \$55. This debt was listed on a November 6, 2008, credit report as delinquent (GE 3). Applicant referred to AE I (credit report dated June 2009) and claimed the debt was paid, though AE I showed the debt belonging to a different creditor. Applicant testified that the holder of the account appearing in the SOR was different from the holder appearing in AE I (Tr. 49-50). Though he stated he had documentation to verify the account was paid (Tr. 54), no supplementary information was provided.

SOR 1.b. is a delinquent student loan account for \$246. Applicant obtained this loan and the one described in SOR 1.c. to help his two sons pay college tuition (Tr. 52, 54). He indicated the student loan account was deferred for a year by his wife in March 2009. Their plan is to resume payments on the account in March 2010 (Tr. 50-51). The deferment was granted because of the loss of income of Applicant's wife (Tr. 56). AE I (credit report dated June 19, 2009) lists this account in deferment. AE O, furnished by Applicant to verify both accounts are in deferment, provides different account numbers from the numbers appearing in AE I. Before SOR 1.b. and 1.c. were placed in deferment in March 2009, they had become delinquent in February 2008 (GE 2).

SOR 1.c. lists a delinquent student loan account for \$535. This loan is also in deferment as verified by AE I. As noted under SOR 1.b., Applicant applied for and received the two student loans in the 1980s to enable his sons to attend college (Tr. 52, 54). The sons were not able to keep full-time jobs and Applicant is not confident they will be able to repay the loans (Tr. 55-56). As noted under SOR 1.b., Applicant plans to resume payments on both loans in March 2010.

SOR 1.d. describes a delinquent account placed in collection in September 2007 for approximately \$9,308. In August 2002, Applicant cosigned for his daughter's car so she would have transportation to get to and from work (Tr. 37). For a time, the daughter maintained the payments, but then defaulted in about September 2007, as indicated by the credit report (GE 2). Applicant worked out a repayment plan in March 2009, with the collection agency requiring an immediate \$1,000 payment and then regular payments of \$200 a month (AE E). He claims he paid \$1,000 on this account. The only documentation of payment of this account is a \$200 payment in June 2009, to the collection agency in SOR 1.d. (AE C).

SOR 1.e. is a second installment loan account for approximately \$11,134. Applicant cosigned for his second daughter's car so she would have transportation between home and work (Tr. 37). Applicant worked out an agreement with this creditor (no documentary support) in March 2009 to pay \$1,000 immediately and \$250 a month. However, AE D reflects a payment of \$1,000 to the SOR 1.e. creditor. Applicant claims he is making payments of \$220 a month on this account. AE A does not substantiate a payment was made, but does inform Applicant when the next \$200 payment is due. Having weighed the four exhibits pertaining to SOR 1.d. and 1.e., I find Applicant has established a payment plan with both creditors and is paying on the plans.

In approximately February 2002, one of Applicant's daughters was living with a man who was selling drugs and other paraphernalia (Tr. 59). Applicant was on his way to his church¹ when he received a telephone call recommending he pick up his five grandchildren, ages 8 to 14, from his daughter's house, rather than have the state family services organization place the children in foster care (Tr. 58-59). Though Applicant did not specifically indicate the reason for the removal of the children, the court order (March 5, 2003) providing him long term-custody of the grandchildren,

¹ He became pastor of the church in 1999 (AE G, first character statement).

indicates that his daughter had not complied with a family services case plan (AE F). As a Relative Care Giver, Applicant has been receiving \$1,200 from the state family services organization (Tr. 61). Had his grandchildren not been related to him, the foster care support would have been about four times greater than the \$1,200 figure (*Id.*).

Applicant earns about \$8,400 a month from military retirement, his professor's position, and his church position (Tr. 62). His wife earns about \$4,000 a month as a nurse, though her earnings plunged to about \$1,400 a month in the last 12 months because of the national economy and fewer vacationers visiting the area (Tr. 32).

Applicant's mortgage is \$3,800 (Tr. 29). Because the mortgage is also delinquent, Applicant and his wife are trying to sell the house through a short sale (Tr. 27). They were also approved for a loan modification, but have not been furnished the requirements for the modification (*Id.*).

Applicant had financial counseling several years ago, and learned the importance of paying his bills on time (Tr. 79). Applicant has a budget and conducts budgetary meetings with his wife (Tr. 80-81). While his wife makes most of the financial decisions since she is better at handling the finances, Applicant is determined to take a more active role in the financial decisions because two financial managers are better than one (Tr. 81-83).

Applicant is current on his federal and state taxes (Tr. 67). Applicant received approximately an \$8,000 tax refund from his 2008 taxes. After eliminating some car debt (Tr. 67-68) (no additional information provided), Applicant satisfied or paid on 9 of 10 delinquent debts between March and June 23, 2009. He provided receipts showing he paid \$3,546 in satisfaction of five delinquent accounts (AE K through AE N, and AE P).² As a result of paying off delinquent accounts, Applicant's net monthly remainder is currently about \$1,500 (Tr. 82-83).

Character Evidence

Witness A testified that he was an instructor with Applicant between 1994 and 1997 at the university where Applicant still teaches (Tr. 20-21). Witness A rated Applicant's job performance as outstanding (Tr. 22). Since his return to the area in 2001, Witness A has joined Applicant's church. He has become a deacon (Tr. 19) and a close friend based on their shared desire of helping people (Tr. 23). Witness A is aware Applicant owes for a car and is trying to eliminate the debt (Tr. 23-24).

Applicant's wife testified that one of the two cars identified in SOR 1.d. and 1.e. was repossessed, and the other was damaged and returned before the lease ended (Tr. 29). Applicant's wife also testified that she and Applicant purchased their home in 2006, and began paying a mortgage of \$3,800 a month. Because of the depressed state of

² The only delinquent accounts appearing in GE 3 are the delinquent accounts listed in the SOR, and one credit card account that is 60 days past due.

the economy in the last year caused fewer vacationers to visit the area (Tr. 32-33), his wife's earnings dramatically decreased and the mortgage became delinquent (Tr. 27).

Applicant furnished five character statements (AE G). The first endorsement is from the mayor of the city where Applicant lives. According to the mayor, Applicant has been active in community affairs for the past 15 years. He has been the pastor of one of the city's churches where he has administered several youth programs for the past 10 years.

The second reference comes from a professor at the school where Applicant is employed. He commended Applicant for the latter's devotion to duty and detail (*Id.*). The professor considers Applicant a real leader.

The third character statement is from Witness A's wife. She has known Applicant for 15 years and is a member of his church. She believes he has earned a sterling reputation in the community because of his activities in the church and his devotion to his family, specifically his five grandchildren (*Id.*).

The fourth character endorsement is from a state judge of nearby county. The judge commented favorably on Applicant's honesty and dedication to the community. The judge found Applicant's trustworthiness to be unparalleled (*Id.*).

The fifth character statement was written by a pastor from another church in the city where Applicant resides. The pastor believes Applicant is an effective minister who is well respected by his congregation (*Id.*).

On June 19, 2009, Applicant received an award from the university where he teaches. The award congratulated him for making significant contributions to the goal of developing future leaders for the military (AE H).

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the revised adjudicative guidelines (AG). Each guideline lists potentially disqualifying conditions and mitigating conditions, which are useful in evaluating an applicant's eligibility for access to classified information. These guidelines are flexible rules of law that must take into consideration the complexities of human behavior.

The administrative judge's ultimate adjudicative goal is to reach a fair and impartial decision that is based on common sense. The decision should also include a careful, thorough evaluation of a number of variables known as the "whole person concept." Finally, 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. Reasonable 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 sensible, logical and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

A person who seeks access to classified information enters into a fiduciary relationship with the government predicated upon trust and confidence. This relationship is not restricted to normal duty hours. Rather, the relationship is an around-the-clock responsibility between an applicant and the federal government. 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 the potential, rather than actual, risk of compromise of classified information.

Under Directive ¶ E3.I.14., the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.I.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.

Analysis

Financial Considerations (FC)

Paragraph 18 of the Adjudicative Guidelines (AG) sets forth the security concern related to financial considerations:

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. Compulsive gambling is a concern as it may lead to financial crimes including espionage. Affluence that cannot be explained by known sources of income is also a security concern. It may indicate proceeds from financially profitable criminal acts.

The financial guideline lists two disqualifying conditions that may be applicable to this case:

AG ¶ 19(a) (*inability or unwillingness to satisfy debts*); and

AG ¶ 19(c) (*a history of failing to meet financial obligations*).

Applicant has approximately \$21,000 in delinquent debt for a medical account, student loans, and two cars. He is unable to pay the delinquent accounts. Before the student loans (SOR 1.b. and 1.c.) were deferred, they had become delinquent in February 2008. The installment loans (SOR 1.d. and 1.e.) became delinquent in 2007. Applicant's inability to pay the debts make AG ¶¶ 19(a) and 19(c) applicable.

The financial guideline identifies four mitigating conditions that may apply to the case:

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*); and

AG ¶ 20(b) (*the conditions that resulted in the financial problem were largely beyond the person's control, and the person acted responsibly under the circumstances*); and

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*); and

AG ¶ 20(d) (*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*).

Although the debts became delinquent only recently, I sincerely doubt the circumstances will recur because Applicant comprehends how his altruism has damaged his finances. He will think carefully before he applies his name in a co-signature capacity. Applicant receives limited mitigation under AG ¶ 20(a) based on the resounding character evidence about his trustworthiness, and the positive impact he has had in his community for about 15 years.

Applicant is entitled to considerable mitigation under AG ¶ 20(b). Having a family of 5 in February 2002 suddenly double to a family of 10 was clearly an unanticipated event that Applicant was not ready to handle immediately. Suddenly having to assume the payments on two student loans and two car installment loans in the last two years has clearly complicated Applicant's financial responsibilities. However, Applicant has provided persuasive evidence that he is acting responsibly under the circumstances to tackle these debts. In March 2009, his wife was able to defer payments on the loans.

Applicant's plan is to resume payments in March 2010. Regarding the two cars that were returned to the dealers, Applicant has provided satisfactory evidence he has paid \$1,000 to each creditor, and is paying between \$200 and \$220 a month on both delinquent accounts. AG ¶ 19(b) applies.

Applicant has received financial counseling and meets with his wife regularly to address the debts. Applicant has convinced me that he is going to take a more active role in his finances. AG ¶ 19(c) applies as there are clear indications the delinquent debts are being resolved. Applicant's documentation showing payments to the SOR 1.d. and 1.e. creditors, together with his documented evidence of paying off five of nine unlisted creditors entitles Applicant to mitigation under AG ¶ 20(d). The mitigation Applicant receives under AG ¶¶ 20(a), 20(b), 20(c), and 20(d) overcomes the negative evidence under financial considerations guideline.

Whole Person Concept

I have examined the evidence with the disqualifying and mitigating conditions in my ultimate finding for Applicant under the FC guideline. I have also weighed the circumstances within the context of nine variables known as the whole person concept. In evaluating the relevance of an individual's conduct, the administrative judge should consider the following factors:

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 the participation was 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.

Though Applicant is ultimately responsible for all five debts listed in the SOR, his financial problems were caused by his commendable decision to do the right thing for his daughter and her five children in February 2002. Though he could have simply allowed his five grandchildren to be placed in the state's foster care program, he felt morally obligated to help his daughter and her children by keeping them in the family. This kind of willingness to help others is the primary reason Witness A became Applicant's close friend. I sincerely doubt that he was immediately ready to absorb the added expense of raising five additional children between the ages of 8 and 14. However, it appears he has made the appropriate adjustments.

When Applicant cosigned for his daughters' two cars, he wanted to make sure his daughters had adequate transportation. Rather than avoid his secondary liability for both cars, he demonstrated financial responsibility by working out a plan with both creditors, and is making payments under the plan.

Applicant has had financial counseling, but understands he must participate more in the financial affairs of his household. I am confident he will show the attention to his financial obligations as he has shown in his teaching position at the university, where he recently received an award for outstanding service. After careful consideration of the disqualifying and mitigating conditions in the context of the whole person concept, I conclude Applicant has met his burden of persuasion under the financial considerations guideline.

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 (Financial Considerations, 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

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.

Paul J. Mason
Administrative Judge