



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



In the matter of:)	
)	
SSN:)	ISCR Case No. 08-09646
)	
Applicant for Security Clearance)	

Appearances

For Government: James Duffy, Esquire, Department Counsel
For Applicant: *Pro se*

May 29, 2009

Decision

MASON, Paul J., Administrative Judge:

Based on a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

Statement of the Case

Applicant submitted his Security Clearance Application (SCA) on April 21, 2008. On February 4, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) 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 submitted his answer to the SOR on February 14, 2009. DOHA issued a notice of hearing on March 23, 2009 for a hearing on April 7, 2009. At the hearing, three exhibits (GE 1 through 3) were admitted in evidence without objection to support the government's case. Applicant testified and submitted nine exhibits (AE A-AE I). In the time allowed for him to furnish additional documentation, he submitted AE J through Q. DOHA received the transcript on April 15, 2009.

Findings of Fact

Applicant is 32 years old and single. He is employed as a senior systems engineer, and has held that position since he was hired by a defense contractor in October 2007. As a senior systems engineer, Applicant designs visual systems, locates trouble in the system, and repairs the systems. He seeks a security clearance

The SOR alleges eight delinquent accounts totaling \$23,309 under the financial considerations guideline. All but SOR 1.g. became delinquent in 2005 and 2006. SOR 1.g. fell delinquent in June 2007. Applicant's denial of SOR 1.b., 1.e., 1.f., and 1.g., is based on the debts being paid or settled through his credit negotiating firm. He admitted the other debts in the SOR have not been resolved. Applicant's admissions shall be included in the following factual findings.

Applicant was employed as a sales manager in 2004. He was misusing a company credit card to purchase personal items. After his employer discovered the credit card misuse, Applicant made restitution, then he was fired (Tr. 35; GE 1).¹

Applicant immediately found another job, though the earnings were markedly lower. He fell behind on credit card payments, and tried unsuccessfully to sell his house. The creditors did not want to negotiate with him. Then, he decided to keep paying his mortgage, and let the credit card payments lapse until he could obtain a better paying job. He kept looking for employment that paid more, and eventually found a job in January 2007 that allowed him to begin addressing his delinquent debts.

In April 2007, Applicant entered into a contract with a debt negotiating firm, and began paying \$370 a month to the firm for payment of his debts (Tr. 32; GE 2). The firm maintains Applicant's monthly payments in an account until it is determined enough money has been collected to settle a delinquent account. Then the firm contacts the creditor/collection agency to negotiate a settlement. Applicant paid off four creditors before receiving the SOR. He settled a bank credit card in November 2007 for \$570, a delinquent account from a home improvement store in January 2008 for \$477, a golf equipment account for \$624 in April 2008, and, a listed account for \$236 in May 2008 (GE 2). He began paying the SOR 1.a. collection firm about \$100 a month in January 2008 (Tr. 38; GE 2, AE A, AE Q4-Q13).

¹ The job termination is not alleged in the SOR.

■ SOR 1.a. \$6,904, bank credit card. This is the only account that is not included in the debt firm plan. Applicant has been paying the collection firm \$100 a month since early 2008 (AE A, Q4-Q 13). He has made 11 payments, but does not know the balance owing.

■ SOR 1.b. \$1,050, credit card. Applicant's debt firm negotiated a settlement of \$734 that was to be paid over three payments of \$149, \$435, and \$149 (AE B). Applicant's debt negotiating firm made the payments, and the debt is extinguished (AE J1, J2, J3).

■ SOR 1.c. \$3,991, credit card. The debt firm has taken no action on this account because it has probably not collected enough funds to negotiate with the creditor.

■ SOR 1.d. \$3,323, credit card.²

■ SOR 1.e. \$517, discount clothes credit card. As noted in GE 2 and AE J4, this account was settled on May 12, 2008 for \$236.

■ SOR 1.f. \$2,434, bank credit card. First, a stipulation was entered on September 1, 2008 to settle the account in three payments (AE H). After Applicant met the payment schedule, an Order for Dismissal was entered on October 17, 2008, removing him from further obligations under the stipulation (*Id.*).

■ SOR 1.g. \$169, insurance premium. Applicant was notified on February 24, 2009 that he paid the delinquent premium in full (AE D).

■ SOR 1.h. \$4,921, home improvement store credit card. Applicant's debt firm has taken no action on this account.

Applicant's monthly remainder after subtracting his expenses (\$1,400) and debt payments (\$1,967) from his monthly net income (\$3,807) is \$440. He owns his home that is currently valued at about \$150,000 (Tr. 46), with a mortgage of \$1,249 a month (Tr. 48). He owns a 2003 vehicle, and is currently making monthly payments of \$280 (Tr. 46-47). He has no other outstanding debts, and is current on his federal and state taxes (Tr. 47).

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.

² There has been no action taken on this account either for the reason furnished in SOR 1.c.

These guidelines are flexible rules of law. Recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The Administrative Judge's ultimate adjudicative goal is a fair, impartial and common sense decision. According to the AG, the entire process is a careful, thorough evaluation 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. 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 in 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 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 potential, rather than actual, risk of compromise of classified information.

Analysis

Financial Considerations (FC)

¶18. The Concern. "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."

Applicant's job loss in 2004 caused him to fall delinquent to several creditors. He developed a history of debt problems that totaled \$23,309 by the time the SOR was published in February 2009. FC disqualifying condition (DC) ¶ 19.a. (*inability or unwillingness to satisfy debts*) and FC DC ¶ 19.c. (*a history not meeting financial obligations*) apply.

Evidence of financial problems may be mitigated by FC mitigating condition (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 reliability, trustworthiness, and good judgment*). FC MC ¶ 20.a. applies even though Applicant's firing occurred less than five years ago, and involved a breach of trust between Applicant and his former employer. Applicant has convinced me with his conduct since October 2004 that he will not commit this kind of poor judgment in the future. He wasted no time in securing another job, and then launching a plan in April 2007 to pay off the delinquent accounts. After six months of regular payments to the debt settlement firm, Applicant resolved an unlisted, delinquent bank account for \$570. He settled this account and three additional accounts before the SOR was published in February 2009. FC MC ¶ 20.a. applies.

Applicant's financial misfortune was due to conditions within his control. His misuse of the company credit card was a voluntary choice leading to his termination from his sales position. FC MC ¶ 20.b. (*the conditions that resulted in the financial problem were largely beyond the person's control and individual acted responsibly under the circumstances*) applies where the financial problems were caused by unanticipated rather than anticipated events. Applicant knew or should have known when he used the company credit card for personal needs that he risked severe disciplinary action. Applicant receives no mitigation under FC MC ¶ 20.b., even though he exercised good judgment in steadily eliminating his financial problems since April 2007.

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*) is inapplicable as far as financial counseling is concerned. The record is silent on the subject. However, Applicant's enrollment in the debt negotiation plan in April 2007, and the documented progress he has made in repaying delinquent creditors constitutes persuasive evidence Applicant is gaining control over his financial problems. FC MC ¶ 20.c. applies.

Applicant also receives considerable credit under FC MC ¶ 20.d. (*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*) for successfully settling obligations to the creditors in SOR 1.b., 1.e., 1.f., 1.g., and also four unlisted creditors. See, AE P. He has made 11 payments of \$100 to the SOR 1.a. creditor since early 2008, and intends to continue with his plan until all past due debts are resolved. Applicant's evidence in mitigation prevails over the adverse evidence of financial irresponsibility.

Whole Person Concept (WPC)

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.

In 2004, Applicant took advantage of his relationship with his employer by converting a company credit card for his own purposes. He was caught and dismissed after providing restitution. Losing a job under these circumstances raises unavoidable questions about Applicant's trustworthiness and reliability. However, as indicated in his SCA (GE 1), Applicant did not attempt to hide his termination. At the hearing, he was unequivocal about his firing. Given his forthrightness during the security investigation, and his documented efforts in repaying the listed and unlisted creditors, while regularly accumulating the necessary funds through the debt firm since April 2007 to pay off the remaining creditors, he has demonstrated his suitability for security clearance access.

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
Subparagraph 1.f.	For Applicant
Subparagraph 1.g.	For Applicant
Subparagraph 1.h.	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