



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



In the matter of:)
)
) ISCR Case No. 08-10021
)
)
Applicant for Security Clearance)

Appearances

For Government: Tom Coale, Esquire, Department Counsel
For Applicant: *Pro Se*

July 8, 2009

Decision

HEINY, Claude R., Administrative Judge:

Applicant owed eight accounts charged off or placed for collection, which totaled approximately \$39,000. The debts have been or are being paid. Applicant has rebutted or mitigated the government’s security concerns under financial considerations. Clearance is granted.

Statement of the Case

Applicant contests the Defense Department’s intent to deny or revoke his eligibility for an industrial security clearance. Acting under the relevant Executive Order and DoD Directive,¹ the Defense Office of Hearings and Appeals (DOHA) issued a

¹ 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.

Statement of Reasons (SOR) on January 27, 2009, detailing security concerns under financial considerations.

On March 11, 2009, Applicant answered the SOR, and elected to have the matter decided without a hearing. Department Counsel submitted the government's case in a File of Relevant Material (FORM), dated April 27, 2009. The FORM contained 6 attachments. On May 19, 2009, Applicant received a copy of the FORM, along with notice of his opportunity to file objections and submit material to refute, extenuate, or mitigate the potentially disqualifying conditions.

Applicant's response was due on June 18, 2009. In an undated response, prior to the due date, Applicant responded to the FORM. Department Counsel did not object to the material. On June 25, 2009, I was assigned the case.

Findings of Fact

In his Answer to the SOR, Applicant admitted the factual allegations stating the debts had been paid or were currently being paid. Applicant provided supporting documentation with his answer. Applicant's admissions to the SOR allegations are incorporated herein. After a thorough review of the record, pleadings, and exhibits, I make the following findings of fact:

Applicant is a 38-year-old field service representative who has worked for a defense contractor since January 2003, and is seeking to maintain a secret security clearance obtained in June 1990. In October 2007, he was promoted to his current position, which has helped him to address his financial problems. (Ex. A) Applicant served in the United States Air Force from June 1990 through July 2000, and was honorably discharged. Applicant's duty performance is listed as met or exceeded expectations. (Ex. F) His excellent technical skills are tested daily. (Ex. F)

Following his Air Force service, Applicant was employed as an aircraft technician for a civilian firm. In November 2001, he was laid off from his work. In January 2002, he started work as an aircraft technician for a different civilian company at substantially less income. In December 1998, Applicant was divorced. (Answer to SOR) Applicant's ex-wife has not made her required child support payments. Applicant is a single parent raising two daughters. (Ex. A) From June 2001 through October 2001, Applicant had a girlfriend/live-in babysitter who he authorized to use his credit cards. However, that person made purchases, which Applicant states were unauthorized.

Applicant owed the creditor listed in SOR ¶ 1.c \$10,721. Applicant August 8, 2008 credit bureau report (CBR) (item 5) lists two separate accounts with this creditor, one listing a \$10,453 balance due and charged off. The other account lists a zero balance. Applicant made a \$147 payment in November 2007; a \$280 payment in December 2007; and \$1,416 in February 2009. In March 2009, Applicant made a \$4,444 payment to this creditor. (Answer to SOR, Ex. C) Applicant's credit report (Ex. D) indicates that settlement was accepted on this account, which now has a zero balance.

Applicant owed a creditor \$7,475 as of July 2008. This debt is not listed in the SOR. From July 2008 to September 2008, Applicant made four payments of \$467 each on a debt. In February 2009, he made a \$2,161 payment on this debt, which resulted in settlement in full on the account. (Answer to SOR)

Applicant provided a February 2009 letter stating his military exchange service account was paid in full. (Answer to SOR) The debt in SOR ¶ 1.a (\$158) was paid. (Ex. B) This debt was paid in part by an income tax garnishment. (Item 4)

In March 2009, the collection agency listed in SOR ¶ 1.f (\$12,174) offered to settle the matter for \$3,000. Applicant's credit union account (Ex. E) shows a \$3,000 payment having been made on March 9, 2009. The collection agency's letter states the original creditor was the bank listed in SOR ¶ 1.e (\$8,136). The collection agency is also collecting the debt listed in SOR ¶ 1.g (\$1,261), which originated with Sears. Applicant asserts this debt was paid to another creditor and he was waiting for a receipt. (Ex. A)

Applicant owes the creditor listed in SOR ¶ 1. h (\$1,382). He asserts, now that the debt in SOR ¶ 1c has been paid, he has begun a payment plan for the \$1,382 debt. No documentation supporting his assertion was provided. Applicant asserts, but fails to provide documtation, that the \$161 medical debt listed SOR ¶ 1.b. has been paid. He states he is waiting for the receipt showing payment. (Ex. A)

Applicant's August 2008 CBR (Items 5) indicates Applicant is paying as agreed on his six student loans. Applicant owed \$2,700 on the loans, which orginally totaled more than \$12,000.

A summary of the SOR debts follows:

	Creditor	Amount	Current Status
1.a	Medical debt.	\$158	Paid. See Ex. B.
1.b	Medical creditor.	\$161	Applicant asserts he has paid this debt and is awaiting a receipt. (Ex. A)
1.c	Credit card account. CBR list two accounts.	\$10,721	Paid. Applicant's CRB states settlement was accepted on this account. Account is marked paid with zero balance. (Ex. D)
1.d	Military credit card.	\$5,000	Paid. Applicant provided a February 24, 2009 letter (Answer to SOR) indicating the account was paid in full.
1.e	Credit card debt.	\$8,136	Account was transferred to another lender. Account is listed in SOR ¶ 1.f.

1.f	Collection agency.	\$12,174	Paid. Lender offered to accept \$3,000 in full settlement. Payment made on March 9, 2009. (Ex. E)
1.g	Collection agency.	\$1,251	Same collection agency as listed in SOR ¶ 1.f, but is collecting a different debt. Applicant asserts he paid a different creditor and is awaiting the receipt. (Ex. A)
1.h	Credit card debt.	\$1,382	Applicant asserts now he has paid the debt listed in SOR ¶ 1.c he has now begun a payment plan on this debt. (Ex. A)
	Total debt listed in SOR	\$38,983	

The FORM contains neither written interrogatories concerning his debts nor a monthly budget for Appellant.

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 over-arching adjudicative goal is a fair, impartial and common sense 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.

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

Revised Adjudicative (AG) ¶ 18 articulates the security concerns relating to financial problems:

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.

Additionally, an individual who is financially irresponsible may also be irresponsible, unconcerned, negligent, or careless in properly handling and safeguarding classified information. Behaving responsibly or irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life.

A person's relationship with his creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to repay debts under agreed upon terms. Absent evidence of strong extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a position of risk that is inconsistent with holding a security clearance. An applicant is not required to be debt free, but is required to manage his finances so as to meet his financial obligations.

The record evidence supports a conclusion Applicant has a history of financial problems. The SOR listed eight debts which had been placed for collection or charged off, which totaled approximately \$39,000. Disqualifying Conditions AG ¶ 19(a), “inability

or unwillingness to satisfy debts” and AG ¶19(c), “a history of not meeting financial obligations,” apply.

Five Financial Considerations Mitigating Conditions under AG ¶¶ 20(a) – (e) are potentially applicable:

(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.

Under AG ¶ 20(a), Applicant's financial problems were contributed to by his divorce and his ex-wife failing to pay her child support obligation for their two daughters. Additionally, he was laid off from work and when he again found work it was at a substantially lower income. He has been with his current employer since January 2003. He has paid four of the debts and an additional debt was transferred to one of the collection agencies that was paid. These five debts total approximately \$36,000. AG ¶ 20(c), clear indication the problem is being resolved, and AG ¶ 20(d), good faith effort to repay overdue creditors, applies.

Applicant asserts, but provided no documentation, he has a repayment plan paying SOR ¶ 1.h (\$1,382) and has paid two additional debts, SOR ¶ 1.b (\$161) and SOR ¶ 1.g (\$1,251), for which he is awaiting receipts. Normally undocumented asserts have little probative value. However, Applicant has paid \$36,000 of his debt and the remaining three debts, which he asserts have been paid or he is making payment, totals less than \$3,000.

Applicant's CBR indicates his six student loans are being paid “as agreed.” He has reduced the balance on these student loans from more than \$12,000 to less than

\$3,000. Paying one set of obligations often provides insight as to the likelihood an applicant will pay other debt. Having paid his student loan obligation as agreed and addressed \$44,000 of debt, not all of which was listed as being of concern in the SOR. I believe Applicant when he says he has paid two additional debts and is waiting for a receipt and has started a payment plan on the final debt.

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 relevant 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. The debts incurred after Applicant was laid off and took a job at substantially less income before securing his current job. Since getting his current job he has paid his past due obligations.

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 from his 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, financial considerations: FOR APPLICANT

Subparagraph 1.a – 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 interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

CLAUDE R. HEINY II
Administrative Judge