



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



In the matter of:

ISCR Case No. 08-10029

Applicant for Security Clearance

Appearances

For Government: Tovah Minster, Esquire, Department Counsel

For Applicant: *Pro Se*

August 17, 2009

Decision

HEINY, Claude R., Administrative Judge:

Applicant owed six charged off, past due, or placed for collection accounts, which totaled in excess of \$32,000. He has paid three of the debts and is making monthly payments on the remaining three debts. The charged off or placed for collection accounts are now current. 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)

Statement of Reasons (SOR) on February 4, 2009, detailing security concerns under financial considerations.

On March 6, 2009, Applicant answered the SOR and requested a hearing. On June 17, 2009, I was assigned the case. On July 7, 2009, DOHA issued a notice of hearing scheduling the hearing which was held on August 5, 2009.

The government offered Exhibits (Ex.) 1 through 6, which were admitted into evidence. Applicant testified on his own behalf and submitted Exhibits A through EE, which were admitted into evidence. The record was held open to allow additional information from Applicant. On August 6, 2009, additional material was submitted. Department Counsel had no objection to the material, which was admitted into the record as Ex. FF and Ex. GG. On August 11, 2009, the transcript (Tr.) was received. The record closed on August 6, 2009.

Findings of Fact

In Applicant's Answer to the SOR, he denied the amount owed on three of the debts and admitted the remaining factual SOR allegations. Applicant's admissions to the SOR allegations are incorporated herein. The SOR had alleged six past due or charged off accounts totaling a debt in excess of \$32,000. After a thorough review of the record, pleadings, exhibits, and testimony, I make the following findings of fact:

Applicant is a 58-year-old computer support technician who has worked for a defense contractor since 2002, and is seeking to obtain a security clearance. His annual salary is \$58,549. (Ex. GG) His monthly net pay is approximately \$3,000. (Tr. 58) Since 1992, Applicant has an additional part-time job working as a security guard. He currently works 21 hours a week from which his take-home pay is almost \$400 per week. (Ex. EE) Applicant has \$2,584 in his company's retirement plan. (Ex. FF)

From February 1997 to April 1992, Applicant was on active duty in the U.S. Air Force. He retired with an honorable discharge at the grade of E-6. He received a military retirement, but the funds go to his ex-wife. (Tr. 66)

In 1998, Applicant purchased a home, which was later turned into rental property. He incurred debts when he had to make repairs due to mold damage. He was unable to rent the home until February 2009. (Tr. 45, 71) He pays \$1,625 on his first and second mortgage and receives net income of \$1,380, which leaves a \$245 monthly deficit. (Tr. 59) That monthly amount is offset by his tax saving he receives on the rental property. (Tr. 74)

Prior to 2008, Applicant's finances were good. In 2008, he incurred repair debts to his rental property, his daughter separated from her husband resulting in Applicant

promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

making a number of the monthly payments on her mobile home, and his sister needed his assistance with her financial problems. (Tr. 65, 70)

The \$9,111 debt listed in SOR ¶ 1.a was incurred due to home repairs, car repairs, and a combination of credit card purchases. (Tr. 43) The debt has been paid. (Ex. S) He made two payments of \$1,675. (Ex. T, U, V) At the time the debt was incurred, Applicant's home had a fair market value of \$380,000 on which he owed approximately \$150,000. (Tr. 44) Applicant owed \$1,107 (SOR ¶ 1.b) on a charged off account, which has been paid. (Tr. 46, Ex. X) Applicant paid \$720 to settle the debt. (Ex. W)

Applicant is making monthly payments on the \$10,572 credit card debt (SOR ¶ 1.c). (Ex. N, O) In December 2008, Applicant opened a bank account so he could make automatic, monthly, direct payments on his debts. He is paying \$375 monthly on one debt (SOR ¶ 1.c). Applicant has paid the \$4,229 (SOR ¶ 1.d) credit card debt. (Tr. 48, Ex. C) Payment was made to a collection agency. (Ex. D through H) Applicant was at one time past due on an account (SOR ¶ 1.e, \$175) with this same creditor. He makes \$200 monthly payments on this account and the account is current. (Ex. BB) Applicant is also current on an account (SOR ¶ 1.f, \$7,169) that had been placed for collection. (Tr. 49, Ex. A, I, J, K, L, M)

Applicant asserts his current credit is good. (Tr. 69) Applicant has taken steps so that financial problems will not return in the future. (Tr. 73) He is more aware of how to handle his finances.

A summary of the six SOR debts follows:

	Creditor	Amount	Current Status
a	Credit card account charged off.	\$9,111	Paid in full as of April 2009. (Tr. 42, Ex. S, T, U, and V)
b	Credit card account charged off.	\$1,107	Paid in March 2009. (Ex. B, W, and X)
c	Credit card account charged off.	\$10,572	Applicant is paying \$375 each month on this debt. After four months the arrangement will be re-evaluated by the creditor. (Ex. N and O)
d	Credit card account charged off.	\$4,229	Paid. (Ex. C, D, E, F, G, and H)
e	Credit card account was past due.	\$175	Account is current. Applicant pays \$200 monthly on this debt. (Ex. BB)

f	Credit card account placed for collection.	\$7,169	Account is current. Applicant pays \$200 monthly on this debt. (Ex. A, I, J, K, L, and M)
	Total debt listed in SOR	\$32,363.00	

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 must be considered 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.

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 Guideline (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. Applicant owed six charged off, past due, or placed for collection accounts, which totaled in excess of \$32,000. 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; and,

(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.

Applicant has paid or is currently paying all six of the SOR debts. Even though Applicant's financial problems are recent and there were six debts, AG ¶ 20(a) partially applies because Applicant has sufficient funds to meet his financial obligations and his financial problems are unlikely to recur.

Under AG ¶ 20(b), Applicant did not experience loss of employment, unexpected medical emergency, death, divorce, or separation, but he helped his adult daughter make her monthly mobile home payments when she experienced separation and divorce. Additionally, his sister unexpectedly looked to him for help in meeting her financial problems. Because of mold problems, unexpected repairs had to be made to his home. Applicant was unable to rent this property until February 2009. These are factors beyond his control. More importantly, Applicant has acted responsibly by paying his debts, contacting his creditors, and establishing a separate account in order to make direct payments on his remaining debts. AG ¶ 20(b) applies.

AG ¶ 20(c) applies for there are clear indications Applicant's financial difficulties are under control. He is living within his means, paying his debts, meeting his monthly obligations, and funding a retirement account. AG ¶ 20(d) applies to all of his debts. He has paid three of the SOR debts and is making monthly payments on the remaining three debts, which constitutes a good-faith effort to address his past due debts.

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 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 were not the type that indicates poor self-control, lack of judgment, or unwillingness to abide by rules and regulations. Money was not spent frivolously. The debts listed in the SOR were not incurred on luxuries.

Applicant has paid three debts and is making monthly payment on the three remaining debts. These debts cannot be a source of improper pressure or duress. Of course, the issue is not simply whether all his debts are paid or are being paid—it is whether his financial circumstances raise concerns about his fitness to hold a security clearance. (See AG ¶ 2(a)(1).)

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