



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



In the matter of:)	
)	
)	ISCR Case No. 08-10045
SSN:)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Julie Mendez, Esquire, Department Counsel
For Applicant: Ronald S. Rossi, Esquire

July 17, 2009

Decision

HENRY, Mary E., Administrative Judge:

Based upon a review of the case file, pleadings, exhibits, and testimony, I conclude that Applicant's eligibility for access to classified information must be granted.

Applicant submitted his Electronic Questionnaires for Investigations Processing (e-QIP) on June 2, 2008. On February 11, 2009, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F. 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 the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant acknowledged receipt of the SOR on March 30, 2009. He answered the SOR in writing through counsel on March 31, 2009, and requested a hearing before

an administrative judge. DOHA received the request on April 1, 2009. Department Counsel was prepared to proceed on April 24, 2009, and I received the case assignment on April 27, 2009. DOHA issued a notice of hearing on May 8, 2009, and I convened the hearing as scheduled on June 9, 2009. The government offered five exhibits (GE) 1 through 5, which were received and admitted into evidence without objection. Applicant testified on his own behalf. He submitted seven exhibits (AE) A through G, which were received and admitted into evidence without objection. DOHA received the transcript of the hearing (Tr.) on June 16, 2009. I held the record open until June 23, 2009, for Applicant to submit additional matters. On June 16, 2009, he submitted five exhibits, AE H through AE L, without objection. The record closed on June 16, 2009.

Procedural and Evidentiary Rulings

Motion to Amend SOR

Department Counsel advised that the debt amount in allegation ¶ 1.d of the SOR was incorrect. Department Counsel indicated that the debt amount should be \$631, not \$1,631 and asked that the SOR be corrected. Applicant's counsel did not object. Allegation ¶ 1.d of the SOR is corrected to reflect a debt of \$631.

Findings of Fact

In his Answer to the SOR, Applicant admitted the factual allegations in ¶¶ 1.b, 1.d and 1.e of the SOR, with explanations. He denied the remaining factual allegations of the SOR. He also provided additional information to support his request for eligibility for a security clearance.

Applicant, who is 51 years old, works for a Department of Defense contractor as an electronics technician. He has worked for this company for many years. Applicant graduated from high school, then completed a four-year apprenticeship in navigational systems. The federal government granted him a security clearance in 1970 or 1971. He has held a security clearance continuously since this time without any violations of the rules and regulations for handling classified information. Applicant is not married and has no children.¹

Applicant worked for his company or its predecessor for 18 years in the East. In 2002, he accepted a work transfer offered by his company and moved west. In 2004, the government contract held by his company came up for bid. To retain his employment through the contract bidding process, his company transferred him to the Midwest. His company lost the contract bid and Applicant remained in the Midwest for nearly three years.²

¹GE 1; Tr. 28-30.

²GE 1; Tr. 31-34, 37.

Applicant did not have financial problems until he moved to the Midwest at his own expense and took a \$30,000 pay cut. He exhausted his savings paying bills, and he curtailed his expenses, including cancelling his cable TV service and internet access at home. While living in the Midwest, family emergencies required him to fly East several times. As a result, he incurred additional expenses beyond his budget. He met with a financial counseling service and retained the company when he still lived in the Midwest. He later discovered that this company was not paying his usual bills, such as his car payment, as he had expected. He discontinued this company's services and worked on his own to resolve his debt issues.³

In June 2007, Applicant transferred to the East and received a substantial increase in salary. Once he settled into his new job and home, Applicant contacted his creditors and started paying his debts.⁴

After reviewing the credit reports dated June 12, 2008, October 7, 2008, March 29, 2009, June 8, 2009, and the SOR, I have compiled a list of the total debts owed, excluding any duplicate entries. I find that Applicant's actual debts are as follows:⁵

SOR ¶	TYPE OF DEBT	AMOUNT	STATUS	EVIDENCE
1.a	Utility bill	\$ 205.00	Paid	AE F, page 37
1.b	Credit card	\$ 3,311.00	Paying \$200 month, Balance \$1,310	AE D; Tr. 37
1.c	Loan account	\$14,711.00	Disputes balance; Paying \$200 month	AE G; AE H; AE I; AE K; Tr. 46-50
1.d	Credit card	\$ 631.00	Unpaid; Creditor has no record of debt	Tr. 50-51
1.e	Credit account	\$ 1,325.00	Paid	AE E; AE G; AE H; AE I; Tr. 51-52
1.f	Collection account	\$ 986.00	Settled for \$600; Paid \$400; Balance to be paid in June 2009	AE I; Tr. 54-56

³Tr. 30-36.

⁴*Id.* at 37.

⁵GE 2 (Credit report, dated October 7, 2008); GE 3 (Credit report, dated June 12, 2008); AE E (Credit report, dated June 8, 2009); AE F (Credit report, dated March 29, 2009).

1.g	Collection account	\$ 1,720.00	Paying \$100 month, Balance \$1,120	AE I; Tr. 58-60
1.h	Collection account	\$ 779.00	Settled and Paid	AE J; Tr. 60-61
1.i	Collection account	\$ 100.00	Paid	Tr. 61-62
1.j	Store Account	\$ 601.00	Paid	GE 4; AE C; Tr. 62-63

Applicant currently earns \$69,500 a year. His gross monthly income totals \$5,795 and his net monthly income totals \$3,837. His usual monthly expenses include rent, food, utilities, automobile expenses, car payment, and insurance, for a total of \$1,848. He uses his remaining income to repay his old debts. He pays three creditors a total of \$500 each month, and he also pays smaller loans. His landlord verified he timely pays his rent.⁶

Applicant acknowledged the debts in allegations 1.c and 1.d. He borrowed up to \$3,000 from the creditor identified in 1.d when he lived in the West and Midwest, not the amount listed in his credit reports. He filed a dispute with the credit reporting company, challenging the balance of this debt. Concerning the credit card debt in 1.c, Applicant contacted the creditor, who has no record of an account in his name. The creditor advised the account had been sold, but could not provide any information about who currently owns the account. As no other information exists on this account, Applicant cannot resolve this debt.⁷

In February 2009, Applicant suffered a stroke, received hospital treatment and underwent physical therapy. During his illness, Applicant paid all his bills, including his debt repayment. He has also paid all his medical bills. Applicant developed a plan for financial recovery and followed it.⁸

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.

⁶GE 4 (Response to interrogatories with attachments); AE A; Tr. 93.

⁷Tr. 50-51, 70, 73-75.

⁸Tr. 67-69.

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

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. Applicant accumulated delinquent debt following a significant decrease in income. He was unable to pay some obligations for a period of time. 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. Under AG ¶ 20(a), the disqualifying condition 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." This mitigating condition is not applicable.

Under AG ¶ 20(b), it may be mitigating where "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." Applicant accepted a job transfer in 2002 and a second job transfer in 2004. He moved in 2004 to preserve his employment. The move, however, cost him \$30,000 in income loss and resulted in debt accumulation. Applicant eventually obtained a better paying job. Once he settled in his new location, he contacted his creditors and began repaying his debts. He acted responsibly under the circumstances. This mitigating condition applies.

Evidence that "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 potentially mitigating under AG ¶ 20(c). Similarly, AG ¶ 20(d) applies where the evidence shows "the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts." Applicant retained a counseling service several years ago, but discontinued the service when he learned this company was not paying his bills properly. This decision shows sound judgment on his part. Once his financial circumstances improved, he contacted his creditors and began the long process of paying his delinquent debts. He has resolved many of his delinquent debts, either by payment or settlement. He pays the remaining debts through monthly payment plans. He is now financially sound. I conclude these mitigating conditions apply.

Finally, an applicant may mitigate security concerns under AG ¶ 20 (e) if "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 disputed the

debt listed in SOR allegation ¶ 1.c as he believed the balance on this account is incorrect. He acknowledged owing money to this creditor; but, he believed the balance was excessive. His decision to dispute this debt is reasonable based on his knowledge of the actual amount of money borrowed from the creditor. The credit reporting agency has not responded to his notice of dispute nor resolved the conflict in information about this debt. This mitigating condition has some applicability to this one 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 common sense 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. Applicant incurred delinquent debts when he accepted a much lower paying job in order to continue working. He initially believed this position would be temporary, but it lasted three years and significantly impacted his ability to pay his monthly expenses. He decided to find better paying employment, which he obtained in 2007. His new job again required him to move a significant distance. Once he settled in his new job and new location, he initiated contacts with his creditors about repayment of his debts. He developed a plan to resolve his debts and has followed his plan.

Over the last five years, Applicant has exercised good judgment in the management of his financial resources, especially during difficult circumstances. He discontinued his internet access and cable television when his bills became unmanageable. He looked for ways to pay his debts on his reduced income, including retaining a debt counseling service. When this service failed to properly manage his finances, he stopped it and assumed full responsibility for his debt repayment. He is a responsible individual who found himself in circumstances beyond his control. He developed a track record for resolving his old debt. Most significantly, he has taken affirmative action to pay or resolve most of the delinquent debts raising security

concerns. (See AG ¶ 2(a)(6).) His debts cannot be a source of improper pressure or duress. Of importance in this case is the fact that he has held a security clearance for nearly 40 years without incident. Of course, the issue is not simply whether all his debts are paid---it is whether his financial circumstances raise concerns about his fitness to hold a security clearance. While some debts remain unpaid, the debts are insufficient to raise security concerns. (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, 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
Subparagraph 1.i:	For Applicant
Subparagraph 1.j:	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.

MARY E. HENRY
Administrative Judge