



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



In the matter of:)	
)	
-----)	ISCR Case No. 08-10543
SSN: -----)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Tovah A. Minster, Esq., Department Counsel
For Applicant: *Pro Se*

August 31, 2009

Decision

MARSHALL, Jr., Arthur E., Administrative Judge:

Applicant completed an Electronic Questionnaire for Investigations Processing (e-QIP) on February 27, 2008. On April 13, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) enumerating security concerns arising under Guideline F (Financial Considerations). 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 for SORs issued after September 1, 2006.

In a response notarized on May 6, 2009, Applicant admitted three of the seven allegations set forth in the SOR and declined to request a hearing on the record. Department Counsel submitted a File of Relevant Materials (FORM), dated June 26, 2009, that included 11 attached items. Applicant received the FORM on July 7, 2009. He responded to the FORM within the 30 days provided by submitting a letter and two documents. On August 18, 2009, the Director, DOHA, forwarded the case for assignment to an administrative judge for administrative determination. I was assigned

the case on the following day. Based upon a review of the case file, submissions, and exhibits, I find Applicant met his burden regarding the security concerns raised. Security clearance is granted.

Findings of Fact

Applicant is a 52-year-old lead repair and refurbishment technician. He has worked for the same defense contractor since 2006. He retired from the military after 20 years of service and is currently an inactive reservist. Married for over 30 years, he and his wife have three adult children. He did not attend school beyond the high school level.

In about March 1995, Applicant and his wife jointly filed for Chapter 13 bankruptcy protection. Their case was brought to a successful close and their trustee discharged the case in January 2001. Later that year, in about July 2001, he took out a loan and purchased a vehicle for approximately \$17,500.

In 2003, Applicant was laid off from his job. He collected unemployment for about nine months. During this time, he became late on his car payments, the interest rate was raised, and the automobile was ultimately repossessed. Shortly thereafter, in January 2004, Applicant's son was killed in an automobile accident. As his son lacked insurance, Applicant fell behind on his own bills while paying for his son's funeral-related costs.

In 2007, the creditor sold or transferred Applicant's automobile loan account with an approximate balance of \$10,000 remaining. When completing an e-QIP during a periodic reinvestigation in 2008, Applicant disclosed the repossession of the automobile and the balance owed on the loan. He also disclosed that he had been subject to wage garnishments by the Internal Revenue Service (IRS). No other financial difficulties were noted.

In the late spring or summer of 2009, Applicant and the holder of the automobile loan account entered into an agreement under which a \$2,350 down payment and monthly payments of \$300 would ultimately satisfy a settlement account balance of \$4,275.34. The promised due date for the down payment was June 29, 2009. Applicant submitted a copy of this agreement in his response to the FORM. He also submitted copies of checks written between June 21, 2009, and July 29, 2009, amounting to approximately \$2,650.¹

Aside from the bankruptcy action noted in SOR allegation ¶ 1.a and car repossession noted in ¶ 1.f, the SOR notes four delinquent accounts:

¹ These checks constitute the down payment and first month's payment under the agreement.

¶ 1.b, a \$515 indebtedness placed for collection. Applicant provided evidence that this account was settled and paid in January 2009.²

¶ 1.c, a \$116 indebtedness placed for collection. A check for \$116 was drafted and sent to the creditor on February 9, 2009.³

¶ 1.e, a \$127 indebtedness placed for collection. Payment of \$126.91 was paid by credit card by telephone at some time prior to August 3, 2009. Applicant detailed both the telephone number and a confirmation number for the transaction.

¶ 1.g, a \$309 indebtedness placed for collection. A check for \$123.71 was drafted and sent to the creditor on or about February 9, 2009.⁴

Finally, SOR allegation ¶ 1.d states that there is a past due balance of approximately \$1,568 owed to Applicant's mortgagor. The total mortgage amount is about \$83,200. Applicant showed that the account is now current with no past due balance owed.⁵

Applicant concedes he has "made some poor judgments on [his] finances in the past and just want[s] a fresh start. In the past, [he has] signed for government equipment worth millions of dollars and never even considered engaging in illegal acts to generate funds to pay [his] debts. [He is] a very honest and trustworthy person on the job and [his] everyday life."⁶ He concludes by noting that he "made a promise to [him]self that [he] will never live beyond [his] means and never let this happen again."⁷

Policies

When evaluating an applicant's suitability for a security clearance, an 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. 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. An administrative judge's over-arching adjudicative goal is a fair, impartial and common sense decision. Under AG ¶ 2(c), this process is a conscientious scrutiny of a number of variables known as the "whole person concept." An administrative judge must

² Response to SOR at 4/9.

³ *Id.* at 5/9.

⁴ *Id.* at 8/9.

⁵ *Id.* at 6-7/9.

⁶ Response to FORM, Cover letter, dated Aug. 1, 2009.

⁷ *Id.*

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.

The United States Government must present evidence to establish controverted facts alleged in the SOR. An applicant is responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . .”⁸ The burden of proof is something less than a preponderance of evidence.⁹ The ultimate burden of persuasion is on the applicant.¹⁰

A person seeking access to classified information enters into a fiduciary relationship with the United States Government based on trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The United States 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). “The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”¹¹ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such information.¹² The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of an applicant.¹³ Nor does it reflect badly on that person’s character. It is

⁸ See *also* ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

⁹ *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

¹⁰ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

¹¹ *Id.*

¹² *Id.*

¹³ Executive Order 10865 § 7.

merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Based upon consideration of the evidence, I find Guideline F (Financial Considerations) to be the most pertinent to the case. Conditions pertaining to this adjudicative guideline that could raise a security concern and may be disqualifying, as well as those which would mitigate such concerns, are set forth and discussed below.

Analysis

Guideline F – Financial Considerations

Under Guideline F, failure or an inability to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or an 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.¹⁴ The Directive sets out several potentially disqualifying conditions under this guideline.

Applicant admitted he filed for bankruptcy protection in the 1990s and that he more recently incurred some delinquent debts. Such facts are sufficient to raise security concerns under financial considerations disqualifying condition (FC DC) AG ¶ 19(a) ("inability or unwillingness to satisfy debts") and FC DC AG ¶ 19(c) ("a history of not meeting financial obligations"). With such conditions raised, the burden shifts to Applicant to overcome the case against him and mitigate security concerns.

In relying on an administrative determination, an applicant restricts review of his or her case to the FORM and the applicant's own submissions. Here, Applicant supplied significant information concerning his protracted period of unemployment in 2003 and the death of his son in 2004. The facts show that these events gave rise to a significant portion of the debt at issue, the automobile loan balance, and that Applicant otherwise tried to stay current on his obligations. Consequently, financial considerations mitigating condition (FC MC) 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 FC MC AG ¶ 20(b) ("the conditions that resulted in the behavior 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") apply.

Although Applicant failed to provide information as to whether he has received financial counseling, he has clearly shown that his mortgage is now current, that he negotiated a settlement concerning his automobile loan balance, and that he has paid the largest of the four remaining, relatively minor, obligations. Evidence of far lesser weight, such as copies of checks which reveal no signs of having been negotiated or

¹⁴ Revised Adjudicative Guideline (AG) ¶ 18.

confirmation numbers for telephonic payments purportedly made, suggest, but do not necessarily prove, that he also paid most of the approximately \$552 represented by the remaining three obligations and has made progress in repaying his automobile loan balance.¹⁵ FC MC 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 FC MC AG ¶ 20(d) (“the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts”) apply. No other FC MCs apply.

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 an applicant’s conduct and all the 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. As noted above, the ultimate burden of persuasion is on the applicant seeking a security clearance.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case, as well as the “whole person” factors. Applicant is a mature man who has raised a family and devoted the majority of his adult life to military service. Applicant lacks both a high school diploma and a background in finance. His written argument, however, is plain and straightforward.

Multiple facts speak in Applicant’s favor. He refrained from filing for Chapter 7 bankruptcy in favor of Chapter 13 protection when he faced financial problems in the early 1990s. He successfully paid off his share of those debts in under six years. Despite the clean slate provided by the discharge of his 1995 bankruptcy petition, a protracted period of unemployment and a sudden family tragedy struck in the mid-2000s, helping to create most of the financial issues set forth in the SOR. He has made

¹⁵ Copies of checks and money orders which have not been negotiated do not, by themselves, demonstrate actual payment. Similarly, contact telephone and payment confirmation numbers do not establish actual payment.

considerable progress on those issues and has vowed to live within his means in the future. In requesting an administrative determination, however, he chose to carry his burden regarding the allegations by presenting limited facts and often imperfect supporting documentation.

In issuing the SOR, DOHA relied upon seven derogatory entries on Applicant's credit reports. Three of those entries are significant in terms of the amounts of money potentially at issue: a 15-year-old bankruptcy petition, an auto loan balance, and a past due amount on a mortgage of approximately \$83,200. Combined, they are sufficient to raise security concerns. Applicant provided clear evidence, however, that his bankruptcy petition was successfully discharged, that he negotiated a settlement on his automobile loan balance, and that his mortgage payments are now current with no past due amounts owed. With regard to the four remaining debts, which cumulatively represent only about \$1,000, he provided solid proof that payment on one of those debts was successfully completed. These facts alone demonstrate significant progress, particularly in light of Applicant's line of work.

Applicant also endeavored to prove that he paid the three remaining nominal creditors and made significant progress on the automobile loan settlement. With a limited education and unaware of the exacting standards of proof expected by the Appeal Board, he introduced copies of drafted checks and confirmation numbers for telephonic payments, seemingly unaware that such documentation cannot establish actual receipt and payment without process for verification well beyond the scope and resources of this review.¹⁶ While there are no allegations of fraud or dubious personal conduct, such documents can do little more than fortify his written expression of resolve to honor his debts and live within his means.¹⁷ When taken in tandem with the circumstances giving rise to these debts, the significant progress noted above, and the "whole person" analyzed herein, however, Applicant has substantially mitigated financial considerations security concerns. Therefore, I conclude it is clearly consistent with national security to grant Applicant a security clearance. Clearance is granted.

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

¹⁶ A more financially savvy applicant could have provided a receipt from the creditor or a copy of either his bank statement or ATM screen showing that the checks referenced successfully cleared his bank.

¹⁷ Had Applicant not submitted these documents, I conclude the result would remain the same given the Applicant's honesty, diligence, and significant progress, as discussed above.

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

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 a security clearance. Clearance is granted.

ARTHUR E. MARSHALL, JR.
Administrative Judge