



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



In the matter of:)	
)	
-----)	ISCR Case No. 08-10734
SSN: -----)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Melvin A. Howry, Esquire, Department Counsel
For Applicant: *Pro se*

June 10, 2010

Decision

CURRY, Marc E., Administrative Judge:

Applicant mitigated the financial considerations security concern. Clearance is granted.

Statement of the Case

On June 30, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns 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 adjudicative guidelines (AG).

Applicant answered the SOR on August 17, 2009, denying all of the allegations except SOR subparagraph 1.a. He requested a hearing, and the case was assigned to

another administrative judge on September 24, 2009. DOHA originally scheduled the hearing for December 11, 2009. It was continued and the case was reassigned to me. On January 13, 2010, a notice of hearing was issued rescheduling the hearing for February 2, 2010. The hearing was conducted as rescheduled. I received 11 Government exhibits, 15 Applicant exhibits, and Applicant's testimony. I left the record open at the conclusion of the hearing, at Applicant's request, to allow him to submit additional exhibits. Within the time allotted, he submitted 11 additional exhibits that I marked and received as Applicant's Exhibits (AE) P through Z. The transcript was received on February 12, 2010.

Findings of Fact

Applicant is a 44-year-old married man with one child, age 20. After graduating from high school in 1983, Applicant joined the U.S. Marine Corps where he served for the next 13 years. He was honorably discharged. While in the Marines, he earned several medals and citations including the Meritorious Unit Citation and the Good Conduct Medal. (Tr. 17)

Since leaving the Marines in 1997, Applicant has worked for a defense contractor as a systems engineer. (Tr. 17) Specifically, he assists with flight control services for an aircraft system.

Applicant is highly respected on the job and in the community. According to a coworker, he is "dedicated to the task, insightful, industrious, and committed to doing the job right." (AE Q) A longtime friend with whom Applicant served in the Marines characterizes him as "one of the most hard working, dedicated, and honest people that [he] know[s]." (AE P)

At or about the time Applicant was transitioning from the Marine Corps, his wife was struggling with multiple physical and emotional problems stemming from five failed pregnancies. (GE 1 at 2) She subsequently was diagnosed with clinical depression. During this period, she became increasingly unable to maintain a steady job. Because Applicant was dependent on both incomes to maintain the family finances, their debts grew delinquent. (*Id.*)

By 2002, Applicant had accrued a \$5,000 federal income tax delinquency for tax years 1993, and 1995 through 1997, as listed in SOR subparagraph 1.m. In 2002, Applicant's car was repossessed, as listed in SOR subparagraph 1.i. (Tr. 45)

In 2003, Applicant relocated to another state. The cost of living in the state where they relocated was much higher than that of the state from where they had moved. (Tr. 45)¹ Also, Applicant's wife was unable to obtain full-time, steady employment after they moved.

¹Applicant's rent tripled. (Tr. 44)

In May 2003, the IRS obtained a lien against Applicant's property and garnished his wages. (AE 2 at 2) By early 2006, Applicant had satisfied the IRS delinquency through a combination of payments through the garnishment and the application of tax refunds to the delinquency from subsequent tax years. (AE Z at 2, 5 - 6, 16, and 19)

Approximately \$14,000 of debt, however, remained delinquent. In 2008, Applicant's wife's grandmother died. After probate, they inherited \$71,330, which they received in July 2009. (AE A) The following month, Applicant began satisfying his delinquencies, as follows:

Debt	Amount	Description and date satisfied	Record
b.	\$140.00	cable tv - 8/17/09	AE D at 1.
c.	\$192.90	phone - 8/17/09	AE D at 2.
d.	\$386.00	water - exact date unknown. 2/12/10 letter from creditor reflects \$0 balance.	AE U.
e.	\$379.00	satellite tv - 8/17/09	AE D at 1.
f.	\$289.00	phone - 8/14/09	AE E.
g.	\$267.00	gas - 12/17/09	AE F.
h.	\$273.00	veterinarian - exact date unknown. Credit report indicates bill satisfied by 1/10	AE G.
i.	\$754.00	phone - 8/17/09	AE D at 1.
j.	\$248.00	phone - 8/14/09	AE H.
k.	\$100.00	utility - 8/12/09	AE I.
l.	\$2,216.00	deficiency from 2002 car repossession - 8/13/09	AE J.
n.	\$652.00	credit card - 8/14/09	AE D at 2.
o.	\$532.00	credit card - 8/14/09	AE D at 2.
p.	\$617.00	checking account loan - 12/16/09	AE L.
q.	\$742.00	dentist 08/16/09	AE M.
r.	\$189.00	cable tv - exact date unknown	AE V.
t.	\$50.00	medical bill - 8/14/09	AE D at 2.

Applicant disputes the delinquencies listed in SOR subparagraphs 1.s and 1.u, medical bills collectively totaling \$132. Applicant contacted the creditor listed in SOR subparagraph 1.s. It could not locate any record confirming that he owed this debt. (Tr.

28) I find that this debt is not his responsibility. Applicant successfully disputed the debt listed in SOR subparagraph 1.u, and it was removed from his credit report. (AE N)

The delinquency listed in SOR subparagraph 1.a, in the amount of \$8,018, is the deficiency remaining from a repossessed car in 2005. (Tr. 46) Approximately 18 months ago, the creditor offered to close the account in exchange for a \$2,500 lump-sum payment. (Tr. 37) Applicant could not then afford it. After receiving the inheritance, Applicant contacted the creditor to attempt to settle the account consistent with the original offer. The creditor, however, had withdrawn the offer. Currently, they are negotiating a settlement. Applicant prefers to pay the total over a 120-month period, whereas, the creditor wants a lump-sum payment.

Applicant and his wife have spent all of the money received through the inheritance.² (Tr. 35) Applicant has \$5,100 in savings and \$7,000 in a 401k account. (Tr. 34). If he cannot negotiate an agreement with the creditor listed in SOR subparagraph 1.a, he will satisfy it entirely using money from his savings or by borrowing money from his 401k account. (Tr. 36)

Applicant maintains a budget. (Tr. 47) He earns \$83,000 annually. (Tr. 34) Although Applicant's wife's income has remained sporadic over the years, they are no longer dependent on her income to make ends meet. (Tr. 48)

Applicant has not attended financial counseling. (Tr. 49) However, both he and his wife have read books on money management. Also, both "understand where the money's going and what [they] have to spend." (Tr. 49)

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 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.

²Applicant's wife spent the remainder of her inheritance on attorney fees related to a lawsuit against her stepmother involving the right to visit her father, an invalid. (Tr. 35)

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.”

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.

Analysis

Guideline F, Financial Considerations

Under this guideline, “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 (AG ¶ 18). Applicant’s history of financial problems triggers the application of AG ¶¶ 19(a), “inability or unwillingness to satisfy debts,” and 19(c), “a history of not meeting financial obligations.”

The following mitigating conditions under AG ¶ 20 are potentially applicable:

(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’s financial problems were not caused by extravagant spending. Instead, they were caused by the difficulties his wife had in maintaining steady employment. Because they were dependent on both incomes to make ends meet, they were unable to maintain financial solvency when she was not working.

Since Applicant's wife received her inheritance, they have either satisfied or successfully disputed all of their delinquent debts except for one, an automobile deficiency, which they are attempting to settle in good faith.

Before Applicant's wife received the inheritance, he had done little to address his financial delinquencies. Although his wife's struggles maintaining steady employment exacerbated his financial difficulties, they do not entirely outweigh the negative security inference created by having two cars repossessed within five years.

Nevertheless, the receipt of the inheritance has enabled Applicant to pay nearly all of his delinquencies and reorganize the family finances such that he can manage them with his income solely. Also, the savings he has accrued over the last two years minimize the possibility of recurrence, and enhance the credibility of his assertion that he will satisfy the last outstanding debt. I conclude that all of the mitigating conditions, as listed above, 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 the 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.

I evaluated the whole-person factors when I addressed the applicability of the mitigating conditions. I conclude Applicant has rehabilitated his financial situation.

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
Subparagraphs 1.a - 1.u:	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.

MARC E. CURRY
Administrative Judge