



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



In the matter of:)
)
) ISCR Case No. 08-10822
SSN:)
)
Applicant for Security Clearance)

Appearances

For Government: Caroline H. Jeffreys, Esquire, Department Counsel
For Applicant: *Pro se*

April 29, 2009

Decision

MASON, Paul J., Administrative Judge:

Based on a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

Statement of the Case

Applicant submitted his Security Clearance Application (SCA) on May 18, 2007. On January 9, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing security concerns under financial considerations (Guideline F). The action was taken pursuant to 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 made effective within the Department of Defense for SORs issued on or after September 1, 2006.

Applicant submitted his answer to the SOR on January 30, 2009. DOHA issued a notice of hearing on March 3, 2009 for a hearing on March 24, 2009. At the hearing, four exhibits (GE 1 through 4) were admitted in evidence without objection to support the government's case. Applicant testified and submitted nine exhibits (AE A-AE I).¹ In the time allowed for him to furnish additional documentation, he submitted AE J through O. DOHA received the transcript on April 10, 2009.

Findings of Fact

Applicant is 50 years old and married. Applicant has one child from his current marriage and four children from a previous marriage. He served in the United States Navy from June 1977 to June 1997, receiving an honorable discharge (AE J). He has worked as a field service representative with his current employer since October 2006. He seeks a security clearance. He has held a security clearance for about 32 years. In his SCA (GE 2), Applicant listed all six debts identified in the SOR.

The SOR has six allegations under the financial considerations guideline, totaling more than \$16,000. The debts became delinquent in 2004 and 2005 (GE 3, 4). In his answer, he denied SOR 1.a. and 1.b., claiming both accounts were settled. The two accounts have been forgiven and are subject to a claims procedure by a receiver for the state court. The law firm handling the two accounts went into receivership, and Applicant is trying to recover his payments from a receiver. Applicant essentially acknowledged by implication he owed SOR 1.c., 1.d., and 1.f., until he settled the accounts in January 2009. Regarding SOR 1.e., Applicant indicates he tried to settle the account but the creditor would not oblige.

SOR 1.a. (\$1,325), 1.b. (\$2,322). The last activity on the SOR 1.a. account was in August 2005. The last activity of the SOR 1.b. account was in July 2004. On October 22, 2008, the state court entered a settlement agreement between the SOR 1.a./1.b. creditor and the receiver on behalf of the receivership entities (including law firm where Applicant had been making payments) and about 20,000 customers. Under the terms of the settlement, the SOR 1.a./1.b. creditor agreed to forgive all amounts owed, and to request the credit agencies remove the entries from the credit reports of each customer. The receiver advised customers that they would have to file a claim for the return of payments made to the receivership entities. On November 25, 2008, Applicant filed a proof of claim to the receiver (GE 2). As of March 21, 2009, no final decision had been made regarding Applicant's claim of \$3,296. Projected payments of claims were delayed from the original date of April 2009 to December 2009 (AE I).

SOR 1.c. (\$1,758). The last activity on this account was in August 2005. The account was settled in January 2009 (AE A).

¹ Earlier in the hearing, AE I was not admitted in evidence on relevancy grounds. After a careful examination of the exhibit, the testimony and other documents related to the exhibit, I reversed my ruling (Tr. 71), finding the exhibit to be relevant to the status of delinquent debts identified in SOR 1.a. and 1.b.

SOR 1.d. (\$565). The discount department store account was settled in late February or early March 2009 (AE H, M).

SOR 1.e. (\$10,686). The account became delinquent in June 2004. Applicant indicates he attempted to work out a settlement with the creditor on many occasions. The creditor, according to Applicant, chose to write the account off, and submit pertinent tax forms to Applicant (AE N).

SOR 1.f. (\$3,184). The account became delinquent on June 2004. Applicant was notified on February 20, 2009 that his payments of \$1,931 were sufficient to settle the account (AE F).

Applicant provided two principal explanations for his inability to pay the delinquent creditors in 2004 and 2005. He referred to AE B (Social Security Earnings statement) to show his earnings went from about \$76,000 in 2003 to \$53,000 in 2005; his earnings returned to approximately \$67,000 for 2007. Applicant has never encountered any periods of unemployment (Tr. 35-36).

Applicant's second reason for not paying his delinquent debts is related to a state judge located in the midwestern United States. Applicant testified:

[A]nd my child support was also supposed to be reduced by one-quarter of the total of \$600 when my first son graduated, which happened in 2005. The judge at that time refused to reduce the child support stating that I was currently paying less than the state of [midwestern state] mandated and he would not entertain reducing the child support. If I wished him to consider further, I would not be happy with the outcome (Tr. 40).²

Between 2004 and 2008, Applicant attempted to resolve his financial problems by enrolling in a debt settlement service in June 2004. Applicant avers he paid \$250 a month for six months, but discontinued his enrollment when the creditors continue to harass him (Tr. 34). Other than AE C (the contract signed by Applicant), there is no evidence to show where the payments went.

To keep expenses down, Applicant indicated that the family did not dine out (Tr. 39). Also, with the objective of keeping expenses down, Applicant remained at home to care for their child while his wife worked at a local outlet of a national discount store (Tr. 38).

Attached to Applicant's answers to interrogatories (GE 2) is a personal financial statement (PFS, December 2008) showing that Applicant's net monthly income is \$5,536. Subtracting his expenses and debts from the net monthly income leaves a monthly remainder of \$1,994 (*Id.*) Applicant testified he was using the monthly

² No additional information was provided. It should be noted that Applicant did not begin receiving his military retirement (\$600) until about 2007. See, DD 214 (AE J).

remainder to pay down his four current credit cards (Tr. 47-49). AE 3 (credit report dated October 27, 2008) shows that Applicant has no other accounts falling delinquent after 2005.

During the hearing, Applicant indicated he opened a signature loan for \$5,000 in January 2009. He used the loan to settle the delinquent accounts identified in SOR 1.c., 1.d., and 1.f. (Tr. 64).

Character Evidence

Applicant's military performance evaluation for 1996 was above standards (AE K). In his performance evaluation for 2007 and 2008, Applicant exceeded expectations of his supervisors (AE L).

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 flexible rules of law. Recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The Administrative Judge's ultimate adjudicative goal is a fair, impartial and common sense decision. According to the AG, the entire process is a careful, thorough evaluation 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. Reasonable 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 sensible, 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

is not restricted to normal duty hours. Rather, the relationship is an-around-the-clock responsibility between an applicant and the federal government. 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.

Analysis

Financial Considerations (FC)

¶18. The Concern. "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. Compulsive gambling is a concern as it may lead to financial crimes including espionage. Affluence that cannot be explained by known sources of income is also a security concern. It may indicate proceeds from financially profitable criminal acts."

FC disqualifying condition (DC) ¶19.a. (*inability or unwillingness to satisfy debts*) and FC DC ¶19.c. (*a history not meeting financial obligations*) are applicable to the circumstances of this case. Applicant has been unable to pay more than \$16,000 in delinquent debt to six creditors. The four to five-year period of delinquency of each of the debts demonstrates a history of not meeting financial obligations.

Evidence of financial problems may be mitigated by FC mitigating condition (MC) ¶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 reliability, trustworthiness, and good judgment*). This condition applies in part as Applicant has settled with five of six creditors, even though he has created new debt (the \$5,000 loan) to pay off old debt.

FC MC ¶20.b. (*the conditions that resulted in the financial problem were largely beyond the person's control and individual acted responsibly under the circumstances*) may apply in those circumstances where events outside the person's control contributed to the financial difficulty. Applicant's loss of some income in 2004 is self-explanatory. But, his earnings improved within a short period of time. In addition, his wife was working too. On balance, his declining income claim is not persuasive.

Applicant's \$600-child support obligation to his children from his first marriage is a more persuasive reason for his inability to pay his delinquent accounts. The child support ended in 2007, giving Applicant a chance to turn his attention to his delinquent debts. Applicant's enrollment in the debt firm in 2007, and his settlement of three

additional creditors in January 2009, afford Applicant some mitigation under both prongs of FC MC ¶20.b.

FC MC ¶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*) is applicable although Applicant has had very little financial counseling. He exercised good judgment in seeking financial assistance through the two debt settlement organizations. His efforts have resulted in the settlement of five of the six listed creditors.

Applicant also receives some credit under FC MC ¶20.d. (*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*) for the successful resolution of five of six creditors, notwithstanding the fact he has increased his debt by 500%. Given Applicant's favorable job performance evidence and success in settling with five of six creditors, I am confident Applicant will continue to work out a resolution for the account in SOR 1.e. Accordingly, I find for Applicant under the FC guideline.

Whole Person Concept (WPC)

I have examined the evidence with the disqualifying and mitigating conditions in my ultimate finding for Applicant under the FC guideline. I have also weighed the circumstances within the context of nine variables known as the whole person concept. In evaluating the relevance of an individual's conduct, the administrative judge should consider the following factors:

- (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 the participation was 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. AG ¶ 2(a)

I have considered the disqualifying and mitigation conditions in light of all the facts and circumstances surrounding the case. Applicant was in the United States Navy for 20 years. He received an honorable discharge in June 1997. He has held a security clearance since 1977. The credit reports show that six debts became delinquent in 2004 and 2005. To Applicant's credit, the reports also show no additional delinquent debt after 2005. He signed on with the first debt settlement plan in 2004, but stopped his affiliation when the creditors continued to call. In 2007, Applicant enrolled in another debt settlement service that encountered financial problems in October 2008. Given Applicant's net monthly remainder of almost \$2,000 in December 2008, he could have saved three or four months and paid the delinquent accounts in SOR 1.c, 1.d, and 1.f. However, Applicant testified he has been using the remainder to pay down his four other creditors. I find his testimony credible.

Judging by the totality of the circumstances, Applicant exercised poor judgment in not addressing the delinquent accounts at an earlier point in time. He compounded his poor judgment by taking out a loan when a better choice was available through his monthly, discretionary income. On the other hand, Applicant provided documented evidence that he was addressing two of the listed delinquent accounts in 2004 and definitely in 2007, a long time before he received the SOR. For this reason, I find for him under the FC guideline.

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, 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

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 eligibility for a security clearance. Eligibility for access to classified information is granted.

Paul J. Mason
Administrative Judge