



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



In the matter of:)	
)	
)	ISCR Case No. 08-11188
SSN:)	
)	
Applicant for Security Clearance)	

Appearances

For Government: D. Michael Lyles, Esquire, Department Counsel
For Applicant: Pro Se

September 23, 2009

Decision

HOGAN, Erin C., Administrative Judge:

Applicant submitted his Electronic Questionnaire for Investigations Processing (e-QIP) on June 12, 2008. On June 26, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the 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 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.

On July 15, 2009, Applicant answered the SOR and requested a hearing before an administrative judge. Department Counsel was ready to proceed on August 6, 2009. The case was assigned to me on that same date. On August 7, 2009, a Notice of Hearing was issued, scheduling the hearing for August 26, 2009. The case was heard on that date. The Government offered six exhibits, which were admitted as Government Exhibits (Gov) 1 – 6. The Applicant testified and offered three exhibits, which were marked as Applicant Exhibits (AE) A - C. The record was held open until September 8,

2009, to allow Applicant to submit additional documents. Applicant timely submitted a two-page document, which was admitted as AE D without objection. The transcript was received on September 10, 2009. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

Findings of Fact

In his Answer to the SOR, Applicant admits all of the SOR allegations.

Applicant is a 57-year-old structural engineer technician employed by a Department of Defense contractor who is applying for a security clearance. He has worked for his current employer for approximately four months. He has held a security clearance since 2000. He also held a security clearance when he was on active duty in the United States Air Force. In January 1998, he retired from the United States Air Force after 21 years at the rank of Staff Sergeant. He is a high school graduate and has earned some college credits. He is married but has been separated from his wife since 1987. They have two adult children. Applicant has two adult children from previous relationships. He lives with his girlfriend and their 13-year-old son. (Tr at 4-6, 26, 28, 31, 35-36; Gov 1.)

Applicant's security clearance background investigation revealed that he has the following delinquent accounts: a \$2,384 judgment for a delinquent credit card account entered against Applicant in March 2008 (SOR ¶ 1.a: Gov 4 at 1; Gov 5 at 3); a \$2,927 credit card account placed for collection in October 2006 (SOR ¶ 1.b: Gov 4 at 2; Gov 5 at 6); a \$1,929 credit card account that was charged off in November 2006 (SOR ¶ 1.c: Gov 4 at 2; Gov 5 at 4); a \$3,367 credit card account placed for collection in June 2008 (SOR ¶ 1.d: Gov 4 at 2; Gov 5 at 4); a \$1,544 credit card account placed for collection in December 2006 (SOR ¶ 1.e: Gov 5 at 5); and a \$1,573 military exchange account placed for collection (SOR ¶ 1.f: Gov 3 at 52).

Applicant experienced difficulty with his finances after retiring from the military. He briefly attempted to reconcile with his wife. It did not work and Applicant moved across the country. He had difficulty paying bills, child support, and student loans. On February 8, 2007, Applicant entered into an agreement with a debt-repayment company. He made monthly payments to the company. In turn, the company negotiated settlements on his behalf. All of the debts alleged in the SOR were included with the exception of the military exchange account alleged in SOR ¶ 1.f. (Tr at 33-34; Gov 1; Gov 3 at 35-43)

Applicant's military retirement check was garnished to pay the debt alleged in SOR ¶ 1.f. At some point, the allotment stopped, unbeknownst to Applicant. He contacted the military exchange and agreed to take a \$130 allotment out of his military retirement check each month. The allotment has started again and payments are being made towards the debt. (Tr at 15-16; Gov 3 at 52-62; AE C at 2)

The current status of the delinquent debts alleged in the SOR are as follows:

SOR ¶ 1.a. \$2,384 judgment for a delinquent credit card account: The account was settled on September 30, 2008, by the debt-repayment company. (TR at 17-18; AE A at 3)

SOR ¶ 1.b. \$2,927 credit card account placed for collection: Debt is included in Applicant's debt repayment plan. Debt-repayment company is negotiating a settlement. (Tr at 18; Gov 3 at 39; Answer to SOR)

SOR ¶ 1.c. \$1,929 credit account that was charged off in November 2006: The account was settled on May 29, 2009, by the debt-repayment company. (Tr at 19, 23; AE A at 4; Answer to SOR)

SOR ¶ 1.d. \$3,367 credit card account placed for collection: During the hearing, Applicant indicated the debt-repayment company was negotiating a settlement. After the hearing, Applicant provided proof the account was settled for \$859.53 on August 27, 2009. (Tr at 16; AE B; AE D)

SOR ¶ 1.e. \$1,544 credit card account placed for collection: Debt is included in Applicant's debt-repayment plan. Debt-repayment company will negotiate a settlement. (Tr at 23-24; Gov 3 at 39; Answer to SOR)

SOR ¶ 1.f. \$1,573 debt owed to a military exchange placed for collection: The debt was originally \$3,142. The balance is currently \$1,573. Applicant restarted an allotment out of his military retirement check on August 1, 2009. (Tr at 15-16; AE C at 2; Gov 3 at 52-62; Answer to SOR)

Applicant resolved another credit card account (\$1,132) that was not alleged in the SOR through his debt-repayment program. (Gov 3 at 45) He no longer has child support obligations. His and his wife's expenses are not commingled because they have lived apart for over 20 years. He anticipates that his wife will file for divorce soon. (Tr at 26-28)

Applicant's net monthly income is \$2,350. His military retirement check is \$900 a month. His net monthly income is \$3,250. After the allotments are deducted from his military retirement check, he receives \$332.40. His rent is \$1,050; groceries are \$380; car expenses \$350; necessities \$200; utilities are \$150; and cable \$100. After expenses are paid, he has approximately \$1,000 left over each month. (Tr at 24-28) He has no open credit accounts. He has one debit card. He is current on his federal and state tax obligations. (Tr at 30-33) He took a financial counseling course while on active duty but has not recently attended a financial counseling course. (Tr at 34)

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.

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.

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 disqualifying conditions that could raise security concerns. I find Financial Considerations Disqualifying Condition (FC DC) ¶19(a) (an inability or unwillingness to satisfy debts); and FC DC ¶19(c), (a history of not meeting financial obligations) apply to Applicant's case. Applicant's financial difficulties started after his retirement from the military. Primarily, he had difficulty paying his credit cards. The SOR alleged six credit card accounts, an approximate total of \$13,724.

The Government's substantial evidence and Applicant's own admissions raise security concerns under Guideline F. The burden shifted to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the security concerns. (Directive ¶E3.1.15) An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the government. (See ISCR Case No. 02-31154 at 5 (App. Bd. September 22, 2005))

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Financial Considerations Mitigating Condition (FC 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 current reliability, trustworthiness, or good judgment) applies. Applicant started to resolve his financial problems in February 2007 when he entered into a debt-repayment program. He resolved three of the debts as well as a debt that was not alleged in the SOR. The debt-repayment program will negotiate settlements for the two accounts that remain in the program. He established an allotment from his military retirement check towards the debt owed to the military exchange. The efforts taken towards resolving his delinquent debts diminish doubts about his current reliability, trustworthiness, or good judgment.

FC MC ¶ 20(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) does not apply. Applicant has been

continuously employed. No circumstances beyond his control contributed to his financial situation.

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) applies. While Applicant has not received recent financial counseling, he started to resolve his delinquent debts by entering into an agreement with a debt-repayment company in February 2007. He has resolved four delinquent accounts. Two accounts are pending settlement in his debt-repayment program. He started an allotment and is making payments towards his debt owed to the military exchange. He has sufficient income to pay his expenses. His financial situation has stabilized.

FC MC ¶ 20(d) (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts) applies. Over the past two-and-a-half years, Applicant has steadfastly worked towards resolving his delinquent accounts. Only two debts remain in his debt-repayment plan. He is making monthly payments towards the military exchange debt that was not included in his repayment. He initiated a good-faith effort to resolve his delinquent accounts.

Applicant has mitigated the concerns raised under Guideline F.

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.

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. I considered that Applicant struggled financially after retiring from the military. In February 2007, he established a plan to resolve his delinquent accounts. He has resolved a majority of his delinquent accounts. He established an allotment for the military exchange debt and his debt-repayment

company will negotiate settlements for the two remaining debts included in his debt-repayment plan. While Applicant's past financial irresponsibility resulted in several delinquent debts, he has been proactive in resolving his financial situation. Applicant mitigated the concerns raised under 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

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interests to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

ERIN C. HOGAN
Administrative Judge