



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



In the matter of:)	
)	
SSN:)	ISCR Case No. 08-11195
)	
Applicant for Security Clearance)	

Appearances

For Government: Eric Borgstrom, Esquire, Department Counsel
For Applicant: Rodney L. Knier, Lay Representative

September 8, 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 is granted.

Applicant submitted his Security Clearance Application (SF 86) on July 11, 2008. The Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing security concerns under Guideline F on March 19, 2009. 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 24, 2009. He answered the SOR in writing on April 8, 2009, and requested a hearing before an administrative

judge. DOHA received the request shortly thereafter. Department Counsel was prepared to proceed on May 14, 2009. DOHA assigned the case to another judge on May 15, 2009 and reassigned the case to me for case load considerations on May 26, 2009. DOHA issued a notice of hearing on June 22, 2009, and I convened the hearing as scheduled on July 13, 2009. The government offered eight exhibits (GE) 1 through 8, 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 July 23, 2009. I held the record open until July 31, 2009, for the submission of additional matters. Applicant timely submitted four additional documents, AE H through AE L, which are received and admitted without objection. The record closed on July 31, 2009.

Procedural and Evidentiary Rulings

Notice

At the hearing, Applicant indicated he received the hearing notice less than 15 days before the hearing on July 13, 2009. (Tr. 7.) I advised Applicant of his right under ¶ E3.1.8 of the Directive to 15 days notice before the hearing. After consulting with his representative, Applicant affirmatively waived his right to 15 days notice. (Tr. 7-8.)

Findings of Fact

In his Answer to the SOR, Applicant admitted the factual allegations in ¶¶ 1.a, 1.b, 1.d, and 1.f of the SOR, with explanation. He denied the factual allegations in ¶¶ 1.c and 1.e of the SOR.¹

Applicant, who is 45 years old, works as an electronics test coordinator for a Department of Defense contractor. His supervisor describes him as knowledgeable and hard working with a willingness to learn new information. Applicant began work for his current employer in May 1987, one month after the United States Marine Corps honorably discharged him. He served four years in the Marine Corps. He first held a security clearance in the Marine Corps and has continuously held a clearance since 1984. He always complied with the rules for handling classified documents.²

Applicant married in 1984 and divorced in 1992. He has two sons, ages 24 and 18. His older son lives with him and his younger son lives with his former wife in another

¹When SOR allegations are controverted, the government bears the burden of producing evidence sufficient to prove controverted allegations. Directive, ¶ E3.1.14. That burden has two components. First, the government must establish by substantial evidence that the facts and events alleged in the SOR indeed took place. Second, the government must establish a nexus between the existence of the established facts and events and a legitimate security concern. See ISCR Case No. 07-18525 (App. Bd. Feb. 18, 2009), (concurring and dissenting, in part).

²GE 1; AE A; Tr. 16-17, 30, 53.

state. His fiancée lives with him and has for a significant period of time. Applicant coaches high school football and basketball.³

At the conclusion of his divorce, Applicant assumed responsibility for the debts of his marriage, including credit cards which he paid monthly. He also paid alimony and child support for his younger son for a period of time. In 2001, he decided to purchase a house. Based on his income and his fiancée's projected income, he qualified for a mortgage. Because he did not have money for a down payment, he financed the purchase through a primary mortgage and a secondary mortgage. He also acquired a loan and a line of credit for this purchase. At that time, he paid his bills, including his credit card payments, and had a good credit history.⁴

In 2001, when football season began, his fiancée offered to manage the household finances, as he was working two jobs. He agreed. By the end of 2002, he learned that his bills were not being paid and the bank had started foreclosure procedures on the house. When he discussed the problem with his fiancée, he learned that she had mismanaged the household finances. She failed to pay bills; she bounced checks; and she hid the problem from him. Applicant assumed control of his finances and checkbook in 2002. His fiancée is not allowed to access the checkbook.⁵

When he realized the bank intended to foreclose on his house, he contacted the bank and worked out a repayment arrangement for his past due payments. Within one year, he repaid his arrearage and this debt remains current. He also learned that his second mortgage, line of credit and personal loan were in arrears. He developed a repayment plan on these debts. He repaid the arrears on these debts. His second mortgage is paid in full; his line of credit is almost paid; and his personal loan is current and will be paid in full within two years. He also paid several smaller debts in full, but did not pay his long standing credit cards.⁶

In late 2002, his fiancée developed pneumonia and pleurisy, which required expensive prescription drugs to treat. She did not have health insurance. Applicant paid for her medications, which impacted household finances at the time. To pay for her medications, he did not pay his credit card payments.⁷

Doctors diagnosed Applicant's fiancée with lupus in late 2004 or early 2005. Because she did not have medical insurance, he paid her medical bills for her treatments. In late 2007, the Lupus Foundation started paying the medical bills for her

³GE 1; Tr. 18, 30-31.

⁴Tr. 18-19, 47.

⁵*Id.* at 20, 38.

⁶*Id.* at 20-21, 45-47; GE 3; GE 5 through GE 8; AE E through AE G: Response to SOR.

⁷Tr. 21, 32.

lupus treatments. Her disease prevented her from working. She applied for Social Security disability at least two years ago. Just prior to the hearing, her attorney notified her that Social Security approved her request for disability benefits. Applicant believed that she would received a lump sum payment for back benefits. He did not know when the lump payment would occur nor did he know when her benefits would begin.⁸

Applicant initiated repayment with his creditors in 2008. He contacted his creditors, one at a time, and arranged a resolution to his old, outstanding debts. As a result of his efforts, he paid and resolved three debts, including the debts listed in allegations 1.c and 1.e, one at a time. He recently developed a repayment plan for the debt identified in allegation 1.d. He made his first payment in July 2009. Under his repayment plan, he will make six payments, which will fully resolve the debt by January 2010.⁹

Applicant has not developed a repayment plan for the two judgments and one additional debt. He contacted his employee assistance program for guidance on resolving his debts. This program suggested he pay his delinquent debts before the debts are reduced to judgment because the judgment impacts his credit rating. Applicant acknowledged responsibility for these debts, and indicated that he plans to repay 7ach debt, one at a time.¹⁰

Applicant earns \$19.58 an hour plus shift work differential pay. His employer reduced the work hours for the employees in the spring of 2009; he is now working full-time. His gross bi-weekly pay for a full bi-weekly work schedule is approximately \$1,760 and his bi-weekly net pay is approximately \$1,175. His net monthly income is \$2,350. He also earns \$3,500 a year from coaching. His usual monthly expenses total approximately \$1,700, including his mortgage, personal loan, utilities, cable, internet, food, insurance, home telephone, and a car payment. He currently pays \$275 a month for his 2008 property taxes and \$150 a month on one delinquent debt. He owns the car he drives, but did not include gasoline as an expense, which is estimated at \$100 a month.¹¹ After all his expenses are paid, he has approximately \$125 a month for all other unlisted expenses. Because of her illness and an old car with 180,000 miles, he purchased a used car for his fiancee to ensure reliable transportation to her medical appointments. His son pays the cell phone bill and purchases groceries for the house. In addition, his son performs many tasks around the house.¹² Applicant filed his federal

⁸Tr. 21-22, 29, 32-34, 52.

⁹AE C; AE D; AE H; AE J; Tr. 22-23.

¹⁰Tr. 37.

¹¹He pays his property taxes for eight months in the year.

¹²AE K; Tr. 31, 38-42.

and state tax returns for 2008. He used his \$1,800 federal tax refund to pay some bills and for a down payment on his fiancée's car. He has not paid his 2009 property taxes.¹³

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. 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, 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. . . ." An 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 an 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.

¹³Tr. 51-53.

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 significant delinquent debt in 2002 and 2003. He could not resolve all the debts for a period of time. Some debts remain unresolved. 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.” Applicant’s financial worries arose between 2002 and 2003. He accumulated delinquent debt when his fiancée mismanaged the household funds from 2001 through 2002. He assumed control of the finances and slowly worked to pay the unpaid bills. Except for this time, he has regularly paid his bills. Given he now has control over his finances and his fiancée does not have access to the checking account, the circumstances leading to his debt problems are not likely to recur, and they do not raise concerns about his current reliability, trustworthiness, or good judgment. This mitigating condition applies.

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. His debt problems arose when his fiancée improperly managed the household finances for a year. When he learned about the financial problems, he assumed responsibility for paying the bills and

managing the household finances. He contacted and worked with the bank to repay the arrearage on his mortgages and personal loans. He successfully repaid the mortgage arrearage by January 2004. His fiancée became ill in 2003 with pneumonia and pleurisy. Because she did not have medical insurance and could not work, he paid the bills. He also paid her medical bills for her lupus treatment, which left him without sufficient funds to pay his credit card debt. When the Lupus Foundation agreed to pay for her medical treatment, he began resolving his credit card debts. His recent loss of work hours impacted his ability to proceed with his repayment plans. Now that he is again working full-time, he is paying one old debt. He acted responsibly in identifying and resolving these debts. I find 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). Applicant has not received financial counseling. He did contact his employee assistance program which provided him with some guidance on how to approach his debt resolution. He has paid many debts since 2003 and continues to work on a resolution of all his debts. His finances are under control. This mitigating condition has some applicability.

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 initiated a repayment plan in 2003 for his mortgage arrearage and personal loans. He successfully repaid his arrearage for these debts. When the Lupus Foundation accepted responsibility for his fiancée’s medical bills, he began to resolve his credit card debts, one at a time. He paid three debts and has a payment plan in place for a fourth debt. His current bills are paid. I conclude this mitigating condition applies.¹⁴

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 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.

¹⁴AG ¶¶ 20(e) and 20(f) are not applicable in this case.

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. The decision to grant or deny a security clearance requires a careful weighing of all relevant factors, both favorable and unfavorable. In so doing, an administrative judge must review all the evidence of record, not a single item in isolation, to determine if a security concern is established and then whether it is mitigated. A determination of an applicant's eligibility for a security clearance should not be made as punishment for specific past conduct, but on a reasonable and careful evaluation of all the evidence of record to decide if a nexus exists between established facts and a legitimate security concern.

The evidence in support of granting a security clearance to Applicant under the whole person concept is more substantial than the evidence in support of denial. In reaching a conclusion, I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant's financial problems first began when he allowed his fiancée to manage the household finances without any oversight by him. He has not resolved all of his debts alleged in the SOR and is paying his 2008 property taxes, not his 2009 property taxes. However, these unpaid debts do not raise a security concern. When he learned in late 2002 that his bills were not being paid and he was about to lose his house, he assumed immediate control of the household finances. He developed a systematic repayment plan for his mortgages and personal loan delinquencies. He resolved these past due debts and some smaller debts. His fiancée required extensive and expensive medical treatment, which he paid. This expense interfered with his ability to pay his credit card debt until much later. He began working to pay his credit card debt in 2008. As a result, he resolved three credit card debts and has a payment plan for a fourth credit card debt. He is systematically paying his debts. Given his long track record for resolving unpaid debts, his intent to repay the remaining debts is credible. For the last six years, Applicant has worked towards resolving all his debts, one at a time. He does not live beyond his financial means, and his debts are not the result of an extravagant lifestyle; rather, his debts occurred during a specific period of time. Since that time, he has taken affirmative action to pay or resolve much of the delinquent debts raising security concerns. (See AG ¶ 2(a)(6).) His 25 years of holding a security clearance without incident is a factor to consider. In reviewing all of the above factors in totality, his unpaid debts cannot be a source of improper pressure or duress. 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, they 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 finances.

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

MARY E. HENRY
Administrative Judge