



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ISCR Case No. 08-11537
SSN:)
)
Applicant for Security Clearance)

Appearances

For Government: Candace Le'l, Esquire, Department Counsel
For Applicant: *Pro Se*

September 30, 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 May 29, 2008. The Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing security concerns under Guideline F on April 22, 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 April 29, 2009. He answered the SOR in writing on May 28, 2009, and requested a hearing before an administrative

judge. DOHA received the request on May 29, 2009. Department Counsel was prepared to proceed on June 9, 2009, and I received the case assignment on June 11, 2009. DOHA issued a notice of hearing on June 29, 2009, and I convened the hearing as scheduled on July 23, 2009. The government offered five exhibits (GE) 1 through 5, which were received and admitted into evidence without objection. Applicant testified on his own behalf. He submitted nine exhibits (AE) A through I, which were received and admitted into evidence without objection. DOHA received the transcript of the hearing (Tr.) on July 31, 2009. I held the record open until August 14, 2009, for Applicant to submit additional matters. He timely submitted three exhibits, AE J through AE L, without objection. Applicant also submitted four additional exhibits, AE M through AE P on August 19, 2009. Department Counsel objected to the admission of these documents because the documents were submitted after the close of the record. Although Applicant did not request additional time, Department Counsel has not articulated how the government would be prejudiced by the admission of these records. The Department Counsel's objection is overruled and AE M through AE P are admitted into the record. The record closed on August 24, 2009, the date Department Counsel filed the objection to Applicant's last submission.

Findings of Fact

In his Answer to the SOR, Applicant admitted the factual allegations in ¶¶ 1.a - 1.d, and 1.f - 1.j of the SOR. He denied the factual allegation in ¶ 1.e of the SOR.¹

Applicant, who is 45 years old, works in information technology (IT) support and system analysis for a Department of Defense contractor. He has worked in this position since June 2004. He retired from the United States Navy as an E-6 in September 2003. Applicant held a secret clearance without incident during his 21 years of Naval service.²

Applicant graduated from high school and earned college credits, but no degree. He married in 1986. He and his wife separated in late 2005 and their divorce became final in August 2009. Applicant has five children from his marriage. He has two daughters, ages 22 and 14, and three sons, ages 20, 19 and 16. His older daughter graduated from college in May 2009. His two oldest sons are in college. His youngest son and younger daughter live with their mother.³

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 at 4 (App. Bd. Feb. 18, 2009), (concurring and dissenting, in part) (citations omitted).

²GE 1; Tr. 21, 28, 43.

³GE 1; Tr. 21, 35-36.

About six months after he and his wife separated, Applicant's wife presented him with a separation agreement. He initially declined to sign it. When he continued to refuse to sign it, his wife threatened to move and take his children away from him. He signed the separation agreement, and then he met with an attorney.⁴

Under the terms of the separation agreement, Applicant assumed all the marital debts. He agreed to pay \$550 a month on the mortgage until the house is sold, which will not occur until his youngest child reaches age 18, and \$1,129 a month in child support. Under the child support guidelines, the child support decreases when a child reaches 18. Applicant agreed to pay, as a stipend to the newly emancipated child, the difference between the child support guidelines payment and \$1,129. When his oldest daughter reached 18, his monthly child support obligation declined by \$100 a month. He then paid this amount to his oldest daughter. He made similar payments to his two older sons, who are now emancipated. He also paid the health insurance premiums for his children until age 23 or working full-time, and 50% of their college education costs (tuition, room and board, and books).⁵

By late summer in 2006, Applicant encountered financial difficulties with paying all his bills. In December 2006 and early 2007, Applicant contacted a debt consolidation company. The company required him to take a financial counseling course prior to enrolling him in their program. After carefully reviewing the terms of his contract with this company, Applicant decided not to retain the company's services because its fees were extremely high. As his bills increased, Applicant spoke with an attorney on several occasions about filing bankruptcy. By early 2008, he had decided to file a Chapter 13 bankruptcy petition as he wanted to pay his debts. His attorney required him to take a debt management course. He planned to file the bankruptcy action after his divorce hearing in May 2008. However, his wife requested and received a continuance of the hearing. She successfully continued the divorce hearing three more times. Her actions significantly increased his attorney fees.⁶

Two creditors filed garnishment actions against Applicant. Thus, as a result, he paid two debts through garnishment. When his final divorce hearing continued to be delayed, Applicant again contacted a debt consolidation company in February 2009. He decided to retain the services of this company. He initially thought that the company would contact his creditors and establish a payment plan for each. He learned that he was incorrect. Under this company's plan, Applicant pays \$328 a month. For the first four months, the company retained \$190 for administrative and maintenance fees and placed the remaining money in a savings account. After four months, the company retained \$148 for these fees, and after 20 months, the company will retain only \$19.50 a month for maintenance fees. The company holds Applicant's money and contacts his

⁴AE O; Tr. 22.

⁵AE O; Tr. 23, 36-37.

⁶Tr. 33, 45, 55-57.

creditors when it believes the creditors will accept a settlement of 40% or 50% of the debt. Applicant began his payments to this company in February 2009 and since then he has made the payment every month. At the time of the hearing, his savings account totaled \$891. The debt consolidation company had not paid any of his debts.⁷

Applicant works four jobs. He works 40 hours a week for the Department of Defense contractor. He earns \$65,000 a year. He works one day a week cleaning houses, earning \$150 a week, and 15-20 hours a week delivering pizza, earning \$300 to \$400 a month. From Memorial Day weekend through Labor Day weekend, he cleans rental property, earning \$250 a week. He receives \$450 a month in retirement benefits. His wife receives \$720 a month of his retirement benefit, which includes medical and dental insurance payments. His gross monthly income in the summer is approximately \$7,350 and his estimated net income is \$4,900. His net monthly income decreased in the winter.⁸

Applicant's monthly living expenses include \$600 for rent, \$300 for a truck payment, \$100 for truck insurance; \$100 for gasoline, \$100 for a time share, \$300 for food, \$25 for telephone, and \$328 for debt repayment. In addition to his regular monthly living expenses, Applicant pays \$1,129 in child support or stipend payments, \$550 in alimony (mortgage to wife), and \$1,000 for college expenses. Applicant did not estimate other expenses such as car repairs, clothing, haircuts, dry cleaning, and small living expenses, which I find average \$150 a month. His monthly expenses total \$4,682. Applicant does not have any additional money at the end of the month.⁹

After reviewing the credit reports dated August 9, 2008, April 7, 2009, June 4, 2009, and the SOR, I have compiled a list of the total debts owed, excluding any duplicate entries. I find that Appellant's actual debts are as follows:¹⁰

SOR ¶	TYPE OF DEBT	AMOUNT	STATUS	EVIDENCE
1.a	Judgment	\$2,144.00	Paid	AE G; Tr. 9, 46-47
1.b	Judgment	\$3,726.00 ¹¹	Payment plan	AE H; Tr. 48.
1.c	Utility bill	\$ 437.00	Payment plan	AE H; Tr. 49
1.d	Jewelry store	\$ 504.00	Paid	AE H; AE M

⁷AE H; AE I; Tr. 24-26, 56-57, 60.

⁸GE 2, at 8; Tr. 29-33.

⁹GE 2; Tr. 34-42.

¹⁰GE 3 (Credit report, dated June 4, 2009); GE 4 (Credit report, dated April 7, 2009); GE 5 (Credit report, dated August 9, 2008); AE N (Credit report, dated July 24, 2009).

¹¹Applicant disagrees with the amount of this debt, but has not filed a formal dispute.

1.e	Credit card	\$ 126.00	Paid	GE 2; AE J; Tr. 51
1.f	Car repairs	\$2,607.00	Payment plan	AE H; Tr. 52
1.g	Credit card	\$6,550.00	Payment plan	AE H; Tr. 52-53
1.h	Credit card	\$4,923.00	Payment plan	AE H; Tr. 52-53
1.i	Store account	\$3,013.00	Payment plan	AE H; Tr. 53
1.j	Store account	\$3,284.00	Payment plan	AE H; Tr. 53

Applicant paid two other debts, totaling \$2,658, prior to the issuance of the SOR. His truck was repossessed in January 2007. He regained possession of his truck after paying the overdue balance. He has also paid his attorney over \$10,000 to represent him in his divorce. He still owes his attorney \$5,000. He pays his attorney periodically, when he has enough money for a meaningful payment. He paid his attorney \$1,500 in May 2009.¹²

Applicant appeared in court on July 30, 2009 for his divorce hearing. He anticipated that he would receive household furniture, which he could sell to pay debts. He did not. The court concluded that the stipend payable to his children when they reached age 18 was unenforceable. The court did not specifically articulate how his child support payments would change. In the future, he will pay child support for two children, which should provide him with additional funds.¹³

While in the Navy, Applicant received two Navy and Marine Corps Achievement Medals, two National Defense Service Medals, and multiple other medals, ribbons, and commendations. Upon his retirement, his Commanding Officer wrote a glowing employment letter of recommendation, highlighting his work skills, both managerial and organizational, and his dedication to duty. He opined that Applicant was completely trustworthy. His current supervisor and second level supervisor also praised his work skills and work ethic. They also opined that he is trustworthy.¹⁴

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 used in evaluating an applicant's eligibility for access to classified information.

¹²GE 2; AE K; Tr. 41-42.

¹³AE L.

¹⁴AE B; AE B; AE C; AE D; AE F.

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.

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 guidelines note 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 delinquent debt following his divorce. He has been unable to repay some his obligations for a period of time. The evidence is sufficient to raise these potentially disqualifying conditions.

The guidelines also include 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 problems began in 2006, shortly after he and his wife separated. His financial problems continue. This mitigating condition does not apply.

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." Applicant's financial problems arose when he and his wife separated and he signed a separation agreement, which placed heavy financial burdens on him. When it became apparent that his debts were unmanageable, he sought assistance from debt consolidation companies. He also considered filing for Chapter 13 bankruptcy. He rejected several consolidation company service contracts because their fees were excessive. As he could, he paid his debts. Since signing the separation agreement, he has complied with the payment terms outlined in it. In February 2009, he finally decided to retain a debt consolidation company and against filing bankruptcy. He has acted reasonably under the circumstances. He has mitigated the government's security concerns under AG ¶ 20(b).

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). Through the first consolidation company he contacted, he participated in credit counseling before he decided not to use its services. His bankruptcy attorney also required him to take a debt management course. His debts are being resolved and his finances are under control. This mitigating condition applies.

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 hired a debt management company eight months ago for the purpose of helping him resolve his debts. His unpaid debts are included in the plan with this company. He has complied

with the terms of this agreement. The company paid one small debt recently. Applicant also paid several debts prior to receiving the SOR. He works four jobs in an effort to pay his bills. I conclude this mitigating condition applies.

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.

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 this conclusion, I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant signed a separation agreement without first talking to an attorney. As a result, he incurred additional bills. In a short time, his debts increased significantly, as he lacked sufficient income. For the last three years, despite the egregious terms of the separation agreement, Applicant has made the payments required. He recognized that the income from his full-time job and his retirement benefit would not be sufficient to pay his obligations under the separation agreement and his usual living expenses. He obtained two part-time jobs, which he continues to work. In the summer, he works a fourth job to help meet his significant expenses. Applicant has been honest about his debts and his actions to resolve them. He has not avoided his debts; rather, he has paid those he can and sought a way to resolve the remaining debts. By working several jobs, Applicant has demonstrated his intent to assume responsibility for his debts, not avoid them. Most

significantly, he has taken affirmative action to pay or resolve most of the delinquent debts that raise security concerns. (See AG ¶ 2(a)(6).) His obligations under the separation agreement limit how quickly he can resolve his debts. Even though debts remain unpaid, his 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. The SOR lists ten debts, totaling less than \$25,000. He paid three debts and the remaining seven debts are in an established payment plan. His financial problems do not raise security concerns. He has demonstrated responsibility and integrity in the management of the financial situation created by his divorce. His track record reflects financial stability and debt resolution. (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
Subparagraph 1.g:	For Applicant
Subparagraph 1.h:	For Applicant
Subparagraph 1.i:	For Applicant
Subparagraph 1.j:	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