



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)	
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)	ISCR Case No. 08-11883
SSN: -----)	
)	
Applicant for Security Clearance)	

Appearances

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

August 9, 2010

Decision

WHITE, David M., Administrative Judge:

Applicant accrued about \$30,000 in delinquent debt between 2002 and 2005 while founding and working in a start-up technology company. Once the company began earning enough money for him to draw a regular salary, he began paying off his debts. All but two minor debts are fully resolved, and he has taken all possible steps to resolve them. His company was bought by a major defense contractor, for whom he now works with a substantial salary. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

Applicant submitted his security clearance application (SF 86) on September 3, 2008. On November 20, 2009, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) 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 effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant acknowledged receipt of the SOR on December 18, 2009. He answered the SOR in writing on January 28, 2010, and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on February 27, 2010, and the case was assigned to me on March 10, 2010. DOHA issued a Notice of Hearing on March 25, 2010, and I convened the hearing as scheduled on April 9, 2010. The Government offered exhibits (GE) 1 through 9, which were admitted without objection. Applicant offered exhibits (AE) A through H, which were also admitted without objection, and testified on his own behalf. I granted Applicant's request to leave the record open until April 23, 2010, to permit submission of additional evidence. DOHA received the transcript of the hearing (Tr.) on April 16, 2010. On April 19, 2010, Appellant submitted AE I, which was admitted without objection and the record was closed.

Findings of Fact

In his answer to the SOR, Applicant admitted that he formerly owed some of the SOR-listed debts, but denied that he presently owes any of them for the reasons discussed below. Applicant's admissions are incorporated into the following findings.

Applicant is a 47-year-old program director, employed by a major defense contractor since September 2007. He is married for the second time, with three adult children. He served one enlistment in the Army, from 1980 to 1984, during which he held a Top Secret security clearance. (AR; GE 1; Tr. 10, 25, 84, 94-96.)

Applicant and his first wife divorced in 2000. In 2002, he left his job and moved across country to the state where she and their three children had relocated. He and two former colleagues founded a technology company. He planned to live on his accumulated savings until the company became profitable. That process took longer than anticipated and, although he moved in with his former wife and surrendered his car to the bank in a voluntary repossession to minimize his expenses, he accumulated some debts that became delinquent. In 2005, the company became profitable enough that he could begin drawing a regular salary and he began to resolve those debts. In 2007, his current employer purchased the company and hired Applicant and his partners as employees. Since then, his annual salary has increased from \$126,000 to \$177,000, and he has accumulated about \$97,000 in retirement savings. He also has about \$14,000 in regular savings. He recently purchased a home with a 30-year fixed rate mortgage, and has a monthly budget surplus of about \$1,300. (AR; AE A; AE B; AE H; Tr. 27-28, 74-77, 80-83.)

The debt alleged in SOR ¶ 1.a in a \$40 medical bill. The creditor is not identified on any of the record credit reports, and Applicant has been unable to identify who reported this matter to Equifax. No one has contacted him directly about this debt. He submitted internet requests to the credit bureaus seeking the identity of the creditor so he could resolve the matter, but had no reply by the date of his hearing. After the hearing, he

submitted a letter to Equifax, the only credit bureau listing the debt, asking them to identify the creditor or remove the entry from his credit report. If it is valid, he is able and willing to pay it. This is the only delinquent debt reported on Applicant's April 3, 2010 credit report. (AR; GE 2; GE 9; AE I; Tr. 45-46, 52-53.)

The two delinquencies alleged in SOR ¶¶ 1.b and 1.i are duplicate listings of the same debt held at different times by different collection agencies. It originated with the landlord of the apartment Applicant moved out of when he moved into his ex-wife's house to reduce his living expenses. Applicant settled this debt in February 2007. (AR Att. B; GE 2; GE 7; Tr. 53-54, 66-71.)

The debts alleged in SOR ¶¶ 1.c and 1.g were apparently for the final month of electricity and cable television services, respectively, in the apartment mentioned above. Applicant had not received those bills, and had two subsequent accounts with each company without being informed about them. He first learned about them when interviewed concerning his credit report, and began inquiries to determine whether they were valid. When they remained matters of concern on the SOR, he contacted both creditors and just paid them in late January 2010 to resolve matters. (GE 4; AR Att. C; AE B Att. G; Tr. 55-56, 58-61.)

Applicant also first learned about the \$244 medical services account delinquency alleged in SOR ¶ 1.d during his security interview. He had received no prior billing concerning this account. After he was able to identify the creditor through researching his credit report, he paid this amount during January 2010. (GE 4; AR Att. D; Tr. 56-57.)

The \$3,343 debt alleged in SOR ¶ 1.e involved a store credit card that Applicant's ex-wife used. Applicant had no knowledge of this debt until his security interview. He contacted the card-issuing company, who showed the account existed only in his ex-wife's name. That company, however, could not correct the credit bureau report without action by the store that issued the card. Applicant has written to the store to dispute their claim that he owes this debt, but heard nothing in response. After his hearing, he wrote to each of the major credit bureaus explaining the situation and disputing this account. (AR Att. E; AE I; Tr. 46-52.)

SOR ¶ 1.f alleges that a \$9,678 credit card debt remained unpaid as of the date of the SOR. This debt was one on which Applicant fell behind while trying to get his business started. He contacted the creditor and settled this debt on May 20, 2005. It is no longer reflected on his credit report. (AR Att. F; AE B Att. F; Tr. 57-58.)

The debt alleged in SOR ¶ 1.h resulted from the voluntary repossession of Applicant's car discussed above. He settled this account with the collection agency on June 14, 2005. He reported this settlement to the credit bureaus that formerly reported the debt, and succeeded in having it removed from all of his credit reports. (AR Att. H; AE B Att. H & H1; Tr. 61-65.)

The debt alleged in SOR ¶ 1.j was for another credit card account that became delinquent in 2003. He settled this account with the collection agency and made his final payment in August 2007. (AR Att. J; GE 4 at 6; Tr. 71-72.)

Applicant submitted letters and testaments from many friends and professional colleagues praising his integrity, responsibility, and trustworthiness. (AE C through G.) His demeanor and presentation throughout his hearing reflected his complete understanding of his financial situation, his maturity and intention to honorably repay all of his legitimate debts, and his understanding of the importance of security matters.

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are to be used 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 AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶¶ 2(a) and 2(c), the entire process is a conscientious scrutiny of applicable guidelines in the context 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 the 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. 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, "[t]he applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision." Section 7 of Executive Order 10865 provides that "[a]ny determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned."

A person applying for access to classified information seeks to enter 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.

Analysis

Guideline F, Financial Considerations

AG ¶ 18 expresses the security concern pertaining to financial considerations:

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 over-extended 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.

AG ¶ 19 describes conditions that could raise a security concern and may be disqualifying. Department Counsel asserted that the evidence would show the applicability of two of these potentially disqualifying conditions:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

From 2002 to 2005, Applicant accumulated SOR-listed delinquent debts that totaled about \$30,000. He subsequently resolved all but two of these debts. One medical bill for \$40 he can and would gladly repay but the credit bureaus have yet to respond to him with the identity of the alleged creditor. He is also able to repay the other SOR-alleged delinquency that was incurred by his ex-wife if it is shown that he has any responsibility for it. He has done all that he can to communicate with the credit bureaus to attempt resolution of both of these debts. He is fully solvent, with significant excess monthly income over his regular living expenses. Accordingly, he has eliminated the formerly applicable security concerns under AG ¶ 19(a). He is not under continuing financial duress, so he is no longer at risk of having to engage in illegal acts to generate funds. The evidence established a brief history of not meeting some financial obligations while starting a new business from 2002 to 2005, raising potential security concerns under AG ¶ 19(c).

AG ¶ 20 provides conditions that could mitigate security concerns arising from the foregoing financial considerations. The potentially applicable mitigating conditions are:

- (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;
- (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.

Mitigation under AG ¶ 20(a) was fully established. Applicant's delinquencies arose because the new business he started with colleagues was not profitable as quickly as they planned. After it became profitable, he repaid creditors and was subsequently bought out by his current employer. He earns a sufficient salary that recurrence is unlikely. His conduct throughout was honorable, and casts no doubt on his reliability, trustworthiness, or judgment. Some mitigation under AG ¶ 20(b) was also established. Applicant voluntarily left a comfortable employment situation to start a new company and be closer to his children. He thought he had sufficient savings to survive the start-up period, but underestimated what he would need. Once he realized he could not draw a regular salary and still keep the business going, he drastically reduced his living expenses, but still incurred some delinquent debt. As soon as the business became self-sustaining, he began resolving his outstanding debts.

Applicant provided no evidence of financial counseling, but demonstrated his full understanding and capable management of his financial situation. He has fully resolved his earlier delinquencies except one unidentifiable \$40 medical debt, and a credit card debt belonging solely to his ex-wife. He has more than sufficient resources to resolve both of these matters when and if the legitimacy of the debts is determined. These are substantial steps in the right direction, creating substantial mitigation under AG ¶¶ 20(c) and (d). Moreover, Applicant demonstrated his present solvency and ability to avoid additional delinquencies in the future. Applicant has taken all possible steps to dispute his responsibility for the two unresolved delinquencies under AG ¶ 20(e).

As the Appeal Board has ruled concerning the successful mitigation of security concerns arising from financial considerations, “[a]n applicant is not required to show that [he] has completely paid off [his] indebtedness, only that [he] has established a reasonable plan to resolve [his] debts and has ‘taken significant actions to implement that plan.’” ISCR Case No. 06-12930 at 2 (App. Bd. Mar. 17, 2008) (quoting ISCR Case No. 04-09684 at 2-3 (App. Bd. Jul. 6, 2006)). This applicant has established and substantially implemented an effective plan to resolve the debts that could formerly have given rise to security concerns.

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 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 applicable guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all the pertinent facts and circumstances surrounding this case. Applicant’s conduct of security concern was incurring some delinquent debts, which totaled about \$30,000, between 2002 and 2005. He fully resolved all but two of these debts, one of which involves \$40 to an unidentified creditor, and the other of which, for about \$3,000, he legitimately disputes owing. He has more than sufficient resources to pay these debts if shown to be valid, and has contacted the credit bureaus and known creditors seeking the information needed to resolve them. His actions have fully mitigated the formerly applicable security concerns, and he has established a good-faith track record of financial responsibility. The record demonstrates his ongoing ability to avoid any future delinquent debt, and his excellent performance of responsible duties at work. Applicant’s actions have eliminated any continuing potential for pressure, coercion, or duress. He demonstrated that his financial problems are unlikely to recur. Applicant presented sufficient evidence to fully mitigate security concerns arising from his brief history of failing to meet financial obligations, and his former inability to pay some delinquent debts. The record generates significant confidence as to his present eligibility and suitability for a security clearance.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F: FOR APPLICANT

Subparagraph 1.a through 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 interests of national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

DAVID M. WHITE
Administrative Judge