



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



In the matter of:)	
)	
-----)	ISCR Case No. 08-11887
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Nichole Noel, Esquire, Department Counsel
For Applicant: *Pro se*

February 28, 2011

Decision

MARSHALL, Jr., Arthur E., Administrative Judge:

On January 8, 2010, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) enumerating security concerns arising under Guideline F (Financial Considerations). DOHA took action under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (DOD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the DOD on September 1, 2006.

In a March 23, 2010, response, Applicant admitted nine of the ten allegations raised in the SOR under Guideline F. He also requested a hearing before a DOHA administrative judge. DOHA assigned the case to me on October 20, 2010. The parties proposed a hearing date of December 16, 2010. A notice setting that date for the hearing was issued on November 5, 2010. I convened the hearing as scheduled.

Applicant gave testimony, introduced four witnesses, and offered three documents, which were accepted into the record without objection as exhibits (Ex.) A-C. He was given through December 27, 2010, to submit any additional documents. The

Government introduced 8 documents, which were accepted into the record without objection as Exs. 1-8. The transcript (Tr.) of the proceeding was received on December 29, 2010. In the interim, on December 16, 2010, Applicant forwarded two additional documents to Department Counsel. On December 29, 2010, Department Counsel forwarded those documents to me without objection. On December 30, 2010, they were accepted into the record as Exs. D-E and the record was closed. Based on a review of the testimony, submissions, and exhibits, I find Applicant met his burden of mitigating security concerns related to financial considerations. Clearance is granted.

Findings of Fact

Applicant is a 36-year-old proposal developer who has worked for the same government contractor since June 2007. He is completing a bachelor's degree in business and program management and is a certified motorcycle repairman. Applicant has one minor child with a former spouse. He is currently separated from his present wife, with whom he also has a young child.

Applicant joined the U.S. Army in 1995. In 1998, he married his first wife. The couple ultimately had a child. While serving abroad in 2001, he contracted tuberculosis and was sent back to the United States for medical treatment. In 2002, he prepared for deployment, but he did not have the lung capacity to adequately support operations at his projected post. The decision was made to have Applicant medically separated from the Army. He received a medical discharge in March 2003 at the rank of staff sergeant.¹ In the interim, in June 2002, Applicant divorced his first wife and married his present spouse. At the time of his discharge, Applicant and his new wife earned approximately \$50,000 per year, plus military benefits.

By April 2003, Applicant was enrolled in a 14-month motorcycle mechanics certification program while his new wife was serving at a post in another state. They relied on his wife's income, while Applicant was only receiving his GI Bill benefits and earning about \$20,000 a year doing motorcycle repair work when jobs were available. In retrospect, Applicant concedes that he did not adjust well to their reduced income. In 2005, his wife separated from the military, joined Applicant, and, after four or five months of unemployment, enrolled in college. Later that year, the couple had a child, which further stressed their finances. Applicant also attended college from 2006 until 2007. Between 2003 and 2007, the couple acquired some debts.²

In June 2007, Applicant accepted a position with his current employer. Regular employment helped stabilize Applicant's finances. In 2008, the couple separated and decided to live apart. Applicant's wife kept primary custody of their child and Applicant provided for the child regularly. In the summer of 2009, Applicant prepared to go overseas for a work assignment after receiving a promotion and a significant pay raise. With this increase, he was able to meet all of his financial obligations without undue

¹ Tr. 48. Applicant does not receive medical or disability payments for his condition.

² *Id.*

hardship. He worked with his estranged wife to devise a strategy to address their delinquent debts.³

In December 2009, Applicant arrived at his overseas office. Before going abroad, his parents agreed to receive wire transfers of money from him and make payments to his various creditors on his behalf. In this manner, he hoped to “start the road to recovery” on his delinquent debts.⁴ As noted below, many of the debts at issue in the 2010 SOR were included in the list of debts to be paid on his behalf by his parents. In this manner, progress was made on many of Applicant’s delinquent debts and his credit has improved significantly. Applicant recently replaced a failing truck with another vehicle on favorable loan terms.⁵

The SOR was issued in January 2010 and received by Applicant in March 2010. In the SOR, the following debts are at issue:

1.a – Collection for \$100 – Paid.⁶ This county utility account was satisfied in February 2010.

1.b – Collection for \$25 – Paid.⁷ This debt was for a returned check. The Government accepted evidence excised from Applicant’s bank statement that this debt was satisfied in February 2010.⁸ It is no longer reflected on Applicant’s credit report.⁹

1.c – Collection for \$272 – Paid.¹⁰ This utility bill was posted as paid by February 1, 2010.

1.d – Collection for \$801 – Paid.¹¹ This debt was disputed. It was ultimately settled in March 2010 by payment of \$640.92.

1.e – Collection for \$4,020 – Unaddressed.¹² This debt was incurred for tax preparation services used by both Applicant and his estranged wife. The couple is working at

³ Tr. 30.

⁴ *Id.*

⁵ Tr. 31. In previous years, Applicant would have needed a co-signer on a car loan.

⁶ Tr. 32-33; Ex. 5 (Credit report, dated Sep. 10, 2010).

⁷ Tr. 33-34; Applicant’s Answer to the SOR, dated Mar. 23, 2010.

⁸ Tr. 34-35.

⁹ Tr. 35.

¹⁰ Tr. 35; Ex. 5, *supra*, note 6.

¹¹ Tr. 36; Ex. 8 (Payment letter, Sep. 13, 2010).

¹² Tr. 37.

reconciliation and Applicant hopes they will soon develop a plan to address this debt together. If the couple cannot agree to a method for paying this debt jointly, Applicant will make payments on the debt when he has satisfied the debt noted at 1.h, below.¹³

1.f – Collection for \$299 – Paid.¹⁴ This debt was incurred because of an accidental overpayment of Applicant's GI Bill benefits in January 2010. It was repaid by March 2010.¹⁵

1.g – Collection for \$5,324 – Unaddressed.¹⁶ This debt was incurred for mechanic's tools. Applicant plans to satisfy this debt after repayment of the debts noted at 1.e and 1.h.¹⁷

1.h – Collection for \$18,239 – In repayment.¹⁸ This account is for student loans. Applicant has been in timely repayment under a student loan rehabilitation program since August 2010, when he initiated monthly payments through automatic payroll deduction.¹⁹

1.i – Collection for \$4,252 – Favorably addressed.²⁰ This debt was incurred for an apartment rented and maintained by Applicant's estranged wife during their separation.²¹ Applicant submitted a notarized roommate release form on the apartment entity's letterhead, dated January 21, 2010, showing that Applicant had relinquished possession of the unit in June 2008 and forfeited his lease responsibilities and security deposit to his estranged wife.²² He also provided evidence that the apartment declined to prosecute the issue, and that the court was poised to dismiss the matter against him absent good cause shown.²³

1.j – Collection issue with health club resulting in Contempt of Court arrest warrant for failure to provide financial records (debt satisfied in October 2008) – Issue

¹³ Tr. 38-39.

¹⁴ Tr. 37-38; Ex. 5, *supra*, note 6.

¹⁵ *Id.*; see also Applicant's Answer to the SOR, dated Mar. 23, 2010.

¹⁶ Tr. 38-39.

¹⁷ *Id.*.

¹⁸ Tr. 39-41.

¹⁹ Ex. A (Student loan materials, 2009-2010); Ex. E (Additional student loan materials, 2010).

²⁰ Tr. 41-43, 46-47.

²¹ Tr. 42.

²² Release form attachment, Answer to the SOR, dated Mar. 23, 2010.

²³ Ex. B (Court document, dated Jul. 2, 2010).

resolved/debt satisfied. Applicant and a former gym had a dispute over a balance allegedly owed after Applicant's pulmonary issues led him to quit his membership. The matter went to court, but Applicant missed his court appearance because he was on temporary military duty away from his home.²⁴ When he was informed as to why an arrest warrant was issued, he paid the outstanding January 2008 debt.²⁵

Applicant provides timely child support for his two children.²⁶ He is on amicable terms with both mothers and there have never been any financial issues with his spouses. Applicant adheres to a flexible budget that permits him to meet his needs and debts.²⁷

Applicant's student loan rehabilitation program ends in May 2011, at which point his monthly student loan payments (for SOR allegation ¶ 1.h) will be reduced significantly. He plans on using the differential funds to satisfy the two debts referenced in the SOR that have yet to be paid (SOR allegations ¶¶ 1.e and 1.g).²⁸ In order to maximize his ability to pay his debts, Applicant is not currently maintaining a savings account or contributing to his company's 401k. He received financial counseling in 2010, both formally and from professional peers. He sought to consolidate his remaining debts under one repayment schedule with one counseling group. Through no fault of his own, he was deemed ineligible to participate in its program.²⁹

In addressing his debts, Applicant used a specific strategy.³⁰ The debt owed for the apartment (SOR allegation ¶ 1.i) and the gym (SOR allegation ¶ 1.j) were addressed in 2008. He turned his attention to the rest of his debts when he received his late-2009 pay raise. The majority of the remainder of his debts were addressed in 2010, with about half addressed prior to Applicant's receipt of the SOR in March 2010. Applicant specifically planned to initially pay those debts he could first afford to pay, then apply the amounts used on the satisfied debts toward his remaining debts. In the interim, he entered the student loan rehabilitation program to get a better interest rate on those loans and to reduce his monthly payments. Most of his progress was made after December 2009, when he went abroad for work and began directing his mother to make payments from his salary on his behalf.³¹ Having successfully addressed eight of

²⁴ Tr. 43.

²⁵ Ex. C (Court document, dated Oct. 30, 2008).

²⁶ Tr. 54-55.

²⁷ Tr. 55-56.

²⁸ Tr. 38-39, 57.

²⁹ Tr. 60; Ex. D (Consolidation plan paperwork, 2010).

³⁰ Tr. 61.

³¹ *Id.*

the 10 debts noted in the SOR between 2008 and 2010, he is resolved to satisfy his two remaining debts (SOR allegations ¶¶ 1.e and 1.g) as expeditiously as possible.

Policies

When evaluating an applicant's suitability for a security clearance, an administrative judge must consider the AG. In addition to brief introductory explanations for each guideline, the AG list potentially disqualifying conditions and mitigating conditions. 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. Under AG ¶ 2(c), this process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all 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.

The Government must present evidence to establish controverted facts alleged in the SOR. 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. . . ." ³² The burden of proof is something less than a preponderance of evidence. The ultimate burden of persuasion is on the applicant. ³³

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 safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about 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). "The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of

³² See *also* ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

³³ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

denials.”³⁴ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.³⁵

Based upon my consideration of the evidence, Guideline F (Financial Considerations) is the most pertinent to this case. Conditions pertaining to this AG that could raise a security concern and may be disqualifying, as well as those which would mitigate such concerns, are set forth and discussed below.

Analysis

Guideline F - Financial Considerations

Under Guideline F, “failure or an 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.”³⁶ It also states that “an individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.”³⁷ Following Applicant’s medical discharge from the Army, a period of underemployment, a reduction in his wife’s salary, childbirth, and an inability to adjust to his reduced income led to Applicant’s acquisition of delinquent debt between 2005 and 2009. While the majority of those debts have since been paid, addressed, or put into repayment, two debts remain unaddressed. Such facts are sufficient to raise Financial Considerations Disqualifying Condition (FC DC) AG ¶ 19(a) (inability or unwillingness to satisfy debts) and FC DC AG ¶ 19(c) (a history of not meeting financial obligations). With such conditions raised, it is left to Applicant to overcome the case against him and mitigate security concerns.

The debts at issue are multiple in number. The majority of those debts were addressed within the past year. Applicant concedes that many of his earlier financial problems were the result of his inability to adjust to his reduced income. Although Applicant is now more mature and in better financial circumstances, there is insufficient evidence to raise Financial Considerations Mitigating Condition (FC MC) AG ¶ 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).

Applicant concedes that he did not adjust well to his reduced financial situation after he was medically discharged from the Army for a pulmonary issue. His finances were further hindered through a period of underemployment as a mechanic, his

³⁴ *Id.*

³⁵ *Id.*

³⁶ AG ¶ 18.

³⁷ *Id.*

estranged wife's period of unemployment after she was discharged from the military in 2005, childbirth, 2008 separation, and the maintenance of separate residences. Each factor contributed to Applicant's financial difficulties. Notwithstanding these obstacles, Applicant was able to address two debts in 2008, then start an aggressive strategy to address the remainder of his debts in December 2009, after he received a pay raise that enabled him to pay for more than his monthly essentials. Such facts are sufficient to raise FC MC AG ¶ 20(b) (the conditions that resulted in the behavior 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 has received financial counseling, both formally and through working with professional peers to help address his debts. He devised a strategy to address those debts. He also adopted a flexible budget that permitted him to make progress on his debts while staying within budget. Eight of the 10 debts at issue have been addressed, and there is a clear plan for addressing the remaining two debts in a similar fashion. His credit score has improved and he is currently living within his means. He has both the resolve and the resources to complete his strategy to address his debts. FC MC AG ¶ 20(c) (the person has received or is receiving counseling for the problem and there are clear indications that the problem is being resolved or is under control) and FC MC AG ¶ 20(d), (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts) apply. None of the other FC MCs apply.

The burden for mitigation in these proceedings is placed squarely on Applicant. This case is not one of an individual investing in risky ventures or indulging in luxuries. In his 20s, he contracted tuberculosis, a condition that unexpectedly led him to be medically discharged from the Army. Unprepared for the workforce and with little training, he tried to make a living as a motorcycle mechanic, then attended college in order to pursue a career. Meanwhile, his marriage soured and debts were incurred. Since 2008, Applicant has worked diligently to rise in his area of expertise. Consequently, his salary has also risen. Two debts were addressed in 2008, with the majority of the remainder of his delinquent debts addressed through a strategy first employed in December 2009. By the time he received the SOR, he had begun work on over half of the debts at issue. Continuing with that strategy today, he has made significant progress on his debts and articulated a viable plan for addressing the balance of the debt owed. The AG does not require that all one's delinquent debts must be paid. It only requires that an applicant establish a reasonable plan to resolve the debts, and that the applicant has taken meaningful actions to implement the plan. Here, Applicant has shown a workable and successful approach to addressing his debts that is suitable to his income and circumstances. I find that financial considerations security concerns are mitigated.

Whole-Person Concept

Under the whole-person concept, an administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of an applicant's conduct and all the circumstances. An administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2 (a). Under AG ¶ 2(c), the ultimate

determination of whether to grant a security clearance must be an overall commonsense judgment based on careful consideration of the guidelines and the whole-person concept. In addition, what constitutes reasonable behavior in such cases, as contemplated by FC MC ¶ 20(b), depends on the specific facts in a given case.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case, as well as the “whole-person” factors. Applicant is a highly credible and candid 36-year-old proposal developer who has worked for the same government contractor for over three years. His goal of serving this country through military service was cut short by a medical condition beyond his control. Medically discharged, divorced, and without a career to fall back on, he sought training to become a certified motorcycle mechanic, but the work proved to be insufficiently lucrative. He attended college, then accepted a job with his current employer, where he has risen in rank and salary over the past three years. During that period, he worked to address his delinquent debts as best he could within his income. Domestically, he has remained on amicable terms with his ex-wife and his estranged second wife. He has made timely child support a priority, and there is no indication that spousal assistance or child support has ever been an issue.

Using knowledge gained from financial counseling and more seasoned peers, Applicant developed a strategy to address his delinquent debts. With the help of his parents, who acted on his behalf while he was working abroad, Applicant has addressed all but two of the 10 debts at issue. Most of those debts were addressed before he received the SOR. He has been timely in his student loan rehabilitation program and he has a workable strategy to satisfy his two remaining debts. While he may have been somewhat lackadaisical about his finances when he was freshly discharged from the military, he has matured and shown an increasing appreciation of the need for good credit. Having recently reaped the rewards of his improved credit with a necessary automotive purchase, he is resolved to complete his plan successfully.

Overall, Applicant has demonstrated a rising sense of responsibility commensurate with personal maturation and increased resources. His success over the past year has been impressive. He showed that he has established and executed a reasonable and methodical plan to resolve his debts successfully. I conclude that Applicant is exhibiting responsible behavior and I have no concerns that he will fail to similarly honor his two remaining debts. Given all these considerations, there is sufficient evidence to mitigate Guideline F security concerns. Clearance is granted.

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

Subparagraphs 1.a-1.j: For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with national interest to grant Applicant a security clearance. Clearance granted.

ARTHUR E. MARSHALL, JR.
Administrative Judge