



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



In the matter of:)	
)	
)	ISCR Case No. 08-11947
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Fahryn Hoffman, Esq., Department Counsel
For Applicant: *Pro Se*

September 4, 2009

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant mitigated the Government's security concerns under Guideline F, Financial Considerations. Applicant's eligibility for a security clearance is granted.

On June 8, 2009, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) detailing the security concerns under Guideline F. 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 answered the SOR in writing on June 26, 2009, and requested a hearing before an administrative judge. The case was assigned to me on July 15, 2009. DOHA issued a Notice of Hearing on July 21, 2009. I convened the hearing as scheduled on August 17, 2009. The Government offered Exhibits (GE) 1 through 3.

Applicant did not object and they were admitted. Applicant testified and offered Exhibits (AE) A through H, which were admitted without objection. DOHA received the transcript of the hearing (Tr.) on August 24, 2009.

Findings of Fact

Applicant admitted to the allegations in ¶¶ 1.a, 1.b, 1.c and 1.d. of the SOR. He denied the remaining allegations of the SOR. His admissions are incorporated herein. In addition, after a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is 43 years old and began work with his current employer, a federal contractor, in June 2009. He retired from the Navy in August 2005, after 21 years of service, in the rank of E-7. He married in 1991 and separated from his wife in 1998. They divorced in 2003. They have two children, ages 16 and 14. Applicant remarried in July 2007 to a German national who resides in Germany. They do not currently live together, but visit each other several times a year.¹

Applicant disputed with the credit bureau the debts in SOR ¶¶ 1.e through 1.s. All of these debts have subsequently been removed from his credit report. The debts were listed for a person with a different middle initial, different social security number, a spouse listed that was not Applicant's, and an address in a different state. Applicant was on active duty, living in a different state, when many of these debts were incurred. I find these debts do not belong to Applicant.²

Applicant admits the debts in SOR ¶¶ 1.a through 1.d are his debts. He explained that when he and his first wife separated and later divorced, he assumed all of the debts, totaling approximately \$60,000. He stated she quit work a few months prior to their divorce, so the court would award her half of his income at the time. He slowly whittled away at paying off the debts. When he retired in 2005, he was out of work for approximately two to three months. He used his savings to support himself during this time. He had been earning approximately \$60,000 in gross pay while in the Navy. His new job paid \$39,000. His retirement income was \$1,500 a month and \$800 was used for child support. He got behind in his bills and used credit cards. He also found himself providing money to his mother. He later learned she was using the money to purchase unnecessary items. Upon learning this he ceased providing her money.³

In February 2007, Applicant sought assistance from a debt consolidator. He was advised that they could not help him and he should file for bankruptcy. He met with a lawyer and started the paperwork to file for bankruptcy. His lawyer told him to stop paying all of his delinquent bills. He followed her advice. In April 2007, Applicant

¹ Tr. 37-41.

² Tr. 24-37; AE B.

³ Tr. 38, 47-53, 82.

obtained a better paying job, now earning \$55,000 annually. He withdrew his bankruptcy petition and started to pay some of his smaller delinquent debts. His annual pay increased incrementally to \$68,000 in May 2009. In June 2009, he started a new job with an annual salary of \$85,000.⁴

While still on active duty, Applicant took out a loan (1.c, \$24,000) that had a smaller interest rate than his debts and paid some of the debts with this loan money. He thought he would be able to maintain the loan payments when he retired, but was unable to do so when he did not get a job right away. He set up a payment plan in April 2008 to pay \$150 a month through an automatic withdrawal from his account. By setting up the automatic payment, the creditor agreed to discontinue charging interest on the account. Applicant has been making consistent payments on this debt.⁵

The debt in SOR ¶ 1.a is a credit card debt that carried over from Applicant's divorce. He also used this credit card to take a cash advance to help his mother. He set up a payment plan in February 2009 to have \$200 automatically withdrawn from his account each month. No interest is accruing on the debt based on his arrangement with the creditor.⁶

The debt in SOR ¶ 1.b is from a line of credit that Applicant obtained. He owes approximately \$2,700 and set up a payment plan in June 2009 to have \$100 withdrawn from his account each month. Applicant thought he previously set up an automatic withdrawal, but realized the creditor only withdrew the payment for one month. He intends to contact the creditor and correct the oversight. I find Applicant to be credible in that this was a mere oversight.⁷

Applicant contacted the creditor listed in the SOR ¶1.d. They had a payment agreement that he would make three monthly payments of \$380 to resolve the debt. Applicant later learned from the creditor that the debt was sold to a collection company. When he spoke to the original creditor he was advised that the company was attempting to buy the debt back and resolve it directly with him, but it would take approximately 90 days to complete. Applicant admitted he is somewhat confused about how to resolve the debt, not knowing if he should wait the 90 days and deal directly with the original creditor or attempt to resolve it with the collection company. He thought he had a payment plan, but it was with the original creditor, who no longer owns the debt. He intends to resolve the debt once it is sorted out which company he should deal with.⁸

⁴ Tr. 42-45, 82, 85-86.

⁵ Tr. 44-48, 68-71; AE C and D.

⁶ Tr. 51-54, 64-66; AE E.

⁷ Tr. 54-57, 66-68; AE F.

⁸ Tr. 58-61, 71-72, 74.

Applicant provided information that he has paid other delinquent debts that were not alleged. He also has a credit card that he uses for both business and personal use. He has a balance of approximately \$4,700. He intends to start making larger payments towards this debt. He is current on the payments on this credit card.⁹

Applicant has had minimal financial counseling, which was limited to filing for bankruptcy. Applicant's salary has increased since starting his new job. He intends to use the extra income to expedite paying his delinquent debts. His goal is to have all of his delinquent debts paid off by December 2010. He maintains a budget on a spreadsheet and records his income and expenses.¹⁰

Applicant and his wife take driving trips, visiting different countries in Europe, when they visit each other. They alternate which one pays for the trip. Applicant shares a residence with another person and splits the rents.¹¹

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 common-sense 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.

⁹ Tr. 72, 7-80; AE G. This information was not considered for disqualifying purposes, but is considered when evaluating Applicant's complete financial situation and when analyzing the "whole person."

¹⁰ Tr. 97.

¹¹ Tr. 88-96.

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 conditions that could raise security concerns. I have considered all of them under AG ¶ 19 and especially considered the following:

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

Applicant has been unable or unwilling to pay his debts for a period of time. I find the above disqualifying conditions have been raised.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. I have considered all of the mitigating conditions under AG ¶ 20 and especially considered the following:

- (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.

Applicant successfully disputed the debts in SOR ¶¶ 1.e through 1.s with the credit bureaus because they did not belong to him. The debts were removed from his credit report. I find mitigating condition (e) applies to those debts. Applicant began having financial problems when he went through a divorce and was unemployed and underemployed for a period of time. These were conditions beyond his control. When he obtained a better paying job, he set up payment plans for his delinquent debts and has been making consistent payments. He started the paperwork to file for bankruptcy, but withdrew from it when his income increased and he was able to make payments on the debts. He has consistently paid his child support. Applicant now earns a good income and all but one delinquent debt is presently being paid through a payment plan. Applicant is ready to make payments to the appropriate entity once it is resolved between the original creditor and the collection company. Applicant's debts are recent because he is still resolving them. I find mitigating condition (a) does not apply because he is presently making payments on his delinquent debts and is still resolving one with the creditor. The causes of Appellant's financial problems were his divorce and debts remaining from it, a period of unemployment, and a period of underemployment. He has been paying some of the smaller debts he owed, and once his income increased, he set up payment plans to resolve the larger delinquent debts. I find mitigating condition (b) applies because the conditions that resulted in the financial problems were beyond his control and he acted responsibly under the circumstances. I also find that he initiated a

good-faith effort to pay his overdue creditors and resolve his debts. He has payment plans to resolve his debts. He intends on expediting his payment schedule now that his salary has increased. He is ready to resolve the remaining delinquent debt once it is determined which entity he should pay. I find mitigating conditions (c) and (d) apply.

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 common-sense 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. Applicant served his country in the Navy for 21 years. He went through a divorce that affected his finances negatively. When he was discharged from the Navy he was unemployed and underemployed for a period of time. Since his salary has increased, he has been consistently making payments on all of his delinquent debts except one. He will set up a payment plan on the remaining debt once it is determined who he should pay. I find Applicant is not a security risk. Overall, the record evidence leaves me with no 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 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
Subparagraphs 1.a-1.s:	For Applicant

Conclusion

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

Carol G. Ricciardello
Administrative Judge