



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



In the matter of:)	
)	
)	ISCR Case No. 09-00210
SSN:)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Daniel F. Crowley, Esq., Department Counsel
For Applicant: *Pro Se*

February 23, 2010

Decision

LOUGHRAN, Edward W., Administrative Judge:

Applicant mitigated the Financial Considerations security concerns. Eligibility for access to classified information is granted.

Statement of the Case

On May 26, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant 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 revised adjudicative guidelines (AG) promulgated by the President on December 29, 2005, and effective within the Department of Defense (DoD) for SORs issued after September 1, 2006.

Applicant answered the SOR in an undated response, and requested a hearing before an administrative judge. The case was assigned to me on September 30, 2009.

DOHA issued a notice of hearing on November 9, 2009, and the hearing was convened as scheduled on December 7, 2009. The government offered Exhibits (GE) 1 through 6, which were received without objection. Applicant testified on his own behalf, called four witnesses, and submitted Exhibits (AE) A through C, which were received without objection. I granted Applicant's request to keep the record open to submit additional information. Applicant submitted two documents, which were marked AE D and E and admitted without objection. Department Counsel's memorandum is marked Hearing Exhibit (HE) I. DOHA received the transcript of the hearing (Tr.) on December 15, 2009.

Procedural Rulings

I advised Applicant of his right under ¶ E3.1.8 of the Directive to 15 days notice before the hearing. Applicant affirmatively waived his right to 15 days notice.

Findings of Fact

Applicant is a 57-year-old employee of a defense contractor. He is seeking to retain his security clearance. He has worked for his current employer since March 2007. He served on active duty in the United States Marine Corps from 1971 to 1975. He served in the National Guard from 1981 to 1990. He served in the United States Army Reserve/National Guard from 1990 until he retired as a sergeant first class in 2006. He attended college for a period but did not obtain a degree. He was married from 1972 until his divorce in 1984. He was married again from 1986 until 2002. He married his third wife in 2003. He has three adult children.¹

Applicant's finances were in order prior to his marital separation in 2001 and divorce in 2002. The court pronounced the judgment of divorce in open court on April 24, 2002, but the court order was signed on June 28, 2002. The divorce decree ordered that Applicant's ex-wife receive their home and 53 acres of land, all household furnishings and personal effects in her possession or subject to her sole control, and 35% of his military retirement pay. The decree ordered that Applicant's ex-wife pay the remainder of the \$10,000 promissory note on the real property awarded to her. The court did not divide the other liabilities by name. Instead, the divorce decree ordered that each party be responsible for all obligations incurred solely by either party after April 18, 2001, as well as all debts outstanding on the property that was awarded to them. The court had Applicant and his ex-wife go to a room in the courthouse and decide which debts each would take as their responsibility. The court then verbally approved the division of liabilities. Applicant credibly testified that he paid the debts which he agreed to pay. He believed he was no longer legally responsible for the debts for which his ex-wife accepted responsibility. Several of the delinquent debts in the SOR were debts which his ex-wife agreed to pay, but did not.²

¹ Tr. at 39-41, 57-61; GE 1, 2.

² Tr. at 39, 53-54, 61-63; Applicant's response to SOR; GE 4; AE E.

The SOR alleges nine delinquent debts, with balances totaling \$26,145. Applicant denied all the debts alleged in the SOR, with explanations. Individual debts are discussed below.

Applicant denied owing the delinquent debt of \$350 to a collection company on behalf of a cellular telephone company, as alleged in SOR ¶ 1.a. The debt is listed on credit reports obtained in April 2008, May 2009, and December 2009. The 2008 credit report indicates that the account was opened in March 2005. Applicant was serving in Iraq when the account was opened in 2005. He called the cellular telephone company and they told him they did not have any information about the debt. He speculated that the account may have been opened without his authorization by his ex-wife. The 2008 and May 2009 credit reports list another \$350 debt to a collection company. The 2008 credit report indicates the original creditor was a cellular telephone company. It has a different name than the cellular company alleged in SOR ¶ 1.a, but that is because the company operated under different names. The debt to this collection company was not listed on the December 2009 credit report. This debt, which was alleged in SOR ¶ 1.c, is a duplicate of the SOR ¶ 1.a debt.³

SOR ¶ 1.b alleges a delinquent debt of \$3,030 to a collection company on behalf of a bank's credit card. Applicant denied owing this debt, stating it was one of the debts that his ex-wife agreed to pay. The debt is listed on credit reports obtained in April 2008 and May 2009. The 2008 credit report indicates that the account was an individual account that was opened in April 1999, with a date of last action as April 2002. The debt is not listed on the December 2009 credit report.⁴

Applicant denied owing the delinquent debt of \$3,057 to an automobile financing company, as alleged in SOR ¶ 1.d. This was a car loan for his son's truck. Applicant's ex-wife received custody of their son in the divorce. The truck went with the son and the ex-wife. Applicant indicated that the loan was his ex-wife's responsibility. The debt is listed on the April 2008 and May 2009 credit reports, but not the December 2009 report. The 2008 credit report indicates that it was a joint account that was opened in August 2000. The date of last action was October 2002.⁵

The delinquent debts alleged in SOR ¶¶ 1.e (credit card-\$2,551) and 1.f (credit card-\$6,074) are listed on the April 2008 credit report as joint accounts. Both accounts were listed as opened in 1996, with the date of last activity on the SOR ¶ 1.e debt as May 2002, and the SOR ¶ 1.f debt as November 2001. Applicant stated that his ex-wife agreed to pay these debts. The 2009 credit reports do not list either debt.⁶

³ Tr. at 23, 43-50; Applicant's response to SOR; GE 3-6.

⁴ Tr. at 53; Applicant's response to SOR; GE 3-6.

⁵ Tr. at 55-56; Applicant's response to SOR; GE 3-6; AE E.

⁶ Tr. at 56-57; Applicant's response to SOR; GE 3-6.

Applicant admitted owing the delinquent debt of \$141 to a collection company on behalf of a telephone company. He paid the debt on December 12, 2009. This debt was alleged in SOR ¶ 1.g.⁷

SOR ¶ 1.h alleges a delinquent debt of \$2,595 to a collection company on behalf of a bank. The debt is listed on the April 2008 credit report as an individual account that was opened in July 2007, with a date of last action as April 2008. SOR ¶ 1.i alleges a delinquent debt of \$7,997 to a different collection company on behalf of what appears to be the same bank as alleged in SOR ¶ 1.h. That debt is listed on the April 2008 credit report as a joint account that is in collection status. It was reported in June 2007, and the activity date is June 2007. The 2009 credit reports do not list either debt. Applicant stated that these debts were his ex-wife's responsibility. The 2008 credit report appears to indicate that the accounts were opened after the divorce. Collection companies will sometimes submit the dates they acquired the accounts to the credit reporting agencies. The credit report would then report dates of occurrences that are later than when the actions actually happened. This occurred with the debt alleged in SOR ¶ 1.b. The 2008 credit report indicates that debt under the original creditor and listed that the account was opened in April 1999, and had a date of last action of April 2002. The May 2009 credit report lists the same debt under the collection company. It lists that account as opened in March 2005, and reported in March 2009.⁸

Applicant has not received financial counseling. His credit reports indicate that other accounts have been paid. He indicated those were the accounts which were his responsibility. The only delinquent account remaining on the December 2009 credit report is the \$350 debt alleged in SOR ¶ 1.a, which he disputed. He is not accruing new delinquent debt and is living within his means.⁹

Applicant served in Vietnam when he was in the Marine Corps. He deployed to Iraq from the end of 2004 to November 2005. His military awards include the Meritorious Service Medal and the Army Commendation Medal (2nd award). Four witnesses testified on his behalf, including his former sergeant major and the lieutenant colonel who served as his battalion executive officer in Iraq. The sergeant major has known Applicant for about 15 years, and the lieutenant colonel has known him about 10 years. Applicant has volunteered to be brought back from retirement to deploy again with his unit. His job performance has been outstanding. He is praised for his patriotism, honor, trustworthiness, judgment, and reliability. The sergeant major stated that he would trust Applicant with his life, and he has done so on multiple occasions.¹⁰

⁷ Tr. at 50-53; Applicant's response to SOR; AE D.

⁸ Tr. at 57; Applicant's response to SOR; GE 3-6.

⁹ Tr. at 39, 60-64; GE 6.

¹⁰ Tr. at 18-39, 46; AE B, C.

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 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, administrative judges apply the guidelines 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, the 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." 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 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 EO 10865 provides that adverse 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 Executive Order 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. Two are potentially applicable in this case:

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

Applicant accumulated a number of delinquent debts and was unable or unwilling to pay his obligations for a period. The evidence is sufficient to raise the above disqualifying conditions.

Five Financial Considerations mitigating conditions under AG ¶ 20 are potentially applicable:

- (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; and
- (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.

There are nine delinquent debts alleged in the SOR. Applicant disputed owing two debts for \$350 and paid a \$141 debt. He credibly testified that his ex-wife accepted responsibility for the remaining six debts when they divorced in 2002. He honestly believed that he did not have to pay those debts. He paid the debts which he agreed to take, and expected her to do the same. None of those six debts are listed on his most recent credit report. I find that the behavior happened under such circumstances that it is unlikely to recur and does not cast doubt on Applicant's current reliability, trustworthiness, and good judgment. AG ¶ 20(a) is applicable.

Applicant's financial problems were incident to his separation and divorce. These qualify as conditions that were outside his control. To be fully applicable, AG ¶ 20(b) also requires that the individual act responsibly under the circumstances. Applicant acted responsibly by paying the debts that he took. He could have paid the debts given to his wife, but he honestly believed he was no longer legally responsible for those debts. He was mistaken in that belief. He does not receive full credit under AG ¶ 20(b) because he was operating under an honest, but mistaken, belief about his legal obligations. He has not received financial counseling. Except for the six debts in issue, his finances are in good shape. Those debts are no longer reported on his credit report. Applicant receives partial consideration under AG ¶ 20(c). His actions do not qualify as a good-faith effort to repay overdue creditors or otherwise resolve debts.¹¹ AG ¶ 20(d) is not applicable.

The \$350 debts alleged in SOR ¶¶ 1.a and 1.c are duplicates. Applicant credibly testified that he was not responsible for the underlying cellular telephone debt. The credit reports indicate that the account was opened while Applicant was serving in Iraq. AG ¶ 20(e) is applicable to those debts.

¹¹ The Appeal Board has previously explained what constitutes a "good-faith" effort to repay overdue creditors or otherwise resolve debts:

In order to qualify for application of Financial Considerations Mitigating Condition 6, an applicant must present evidence showing either a good-faith effort to repay overdue creditors or some other good-faith action aimed at resolving the applicant's debts. The Directive does not define the term 'good-faith.' However, the Board has indicated that the concept of good-faith 'requires a showing that a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation.' Accordingly, an applicant must do more than merely show that he or she relied on a legally available option (such as bankruptcy) in order to claim the benefit of Financial Considerations Mitigating Condition 6.

(internal citation and footnote omitted) ISCR Case No. 02-30304 at 3 (App. Bd. Apr. 20, 2004) (quoting ISCR Case No. 99-9020 at 5-6 (App. Bd. Jun. 4, 2001)).

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 commonsense 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. I have incorporated my comments under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment. I considered Applicant's honorable military service and his steady employment record. He is a veteran of two wars, separated by more than 30 years. His finances were in order prior to his divorce in 2002. Applicant and his ex-wife divided their liabilities. He paid the debts which he took. He thought that he was no longer legally responsible for the debts which his wife accepted. While not specifically listed in the divorce decree, the division of liabilities was verbally approved by the court. Applicant is not an overly sophisticated man, but he is an honest man. He did not pay the debts because he honestly did not think he had to.

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 has mitigated Financial Considerations security concerns.

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.i:	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 continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is granted.

Edward W. Loughran
Administrative Judge