



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



In the matter of:)	
)	
)	ISCR Case No. 09-00225
SSN:)	
)	
Applicant for Security Clearance)	

Appearances

For Government: James F. Duffy, Esquire, Department Counsel
For Applicant: *Pro Se*

January 12, 2010

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 September 11, 2008. The Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F on June 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 July 2, 2009. He answered the SOR in writing on July 20, 2009, and requested a hearing before an administrative

judge. DOHA received the request on July 23, 2009. Department Counsel was prepared to proceed on August 31, 2009, and I received the case assignment on September 3, 2009. DOHA issued a notice of hearing on September 25, 2009, and I convened the hearing as scheduled on October 19, 2009. The government offered seven exhibits (GE) 1 through 7, which were received and admitted into evidence without objection. Applicant testified on his own behalf. He submitted 21 exhibits (AE) A through U, which were received and admitted into evidence without objection. DOHA received the transcript of the hearing (Tr.) on October 27, 2009. I held the record open for Applicant to submit additional matters. He timely submitted AE V through W, which were admitted without objection. The record closed on November 2, 2009.

Findings of Fact

In his Answer to the SOR, Applicant denied the factual allegations in ¶¶ 1.a through 1.f of the SOR, with explanations.¹ He also provided additional information to support his request for eligibility for a security clearance.

Applicant, who is 72 years old, works as a security patrolmen for a Department of Defense contractor. Applicant has worked for this contractor since he began his employment 12 years ago, and has held a security clearance without incident. He served in the United States Army from 1954 to 1957. After his discharge from the Army, he enrolled in college. Although he attended college for four years, he did not graduate.²

Applicant married in 1967. He and his wife had one son, who died in 2004. His wife died in 2007. Applicant lives alone. During his marriage, he and his wife experienced financial problems, which became severe in the 1980s and 1990s because of loss of income at his job. He did not file bankruptcy, choosing to pay his debts in full.³

Applicant currently owns six properties in two states. Two properties are tenant occupied, and he resides in one property. He does not have a mortgage on any of the six properties. He pays his taxes on the properties each year. At the time of the hearing, he had paid his current tax assessment on these properties. His current tax bills show he does not have any past tax arrearage.⁴

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; AE P; Tr. 16, 60.

³GE 2; GE 5; GE 6; Tr. 17, 59.

⁴AE L; AE M; Tr. 36-38, 41, 65.

Applicant earns \$4,400 a month in gross income from his current position. In addition to his salary, Applicant receives monthly income from social security and three pensions, totaling approximately \$7,000 a month. He also receives \$993 in income on one rental property. The rental income covers the monthly operating expenses for the property. Applicant's monthly expenses average \$1,325. His yearly property taxes total \$7,625. Applicant has sufficient monthly income to pay his monthly living expenses and yearly property taxes.⁵

Applicant also has several investment accounts, including a 401k account. His investment accounts total approximately \$146,000. He has a life insurance policy with a cash value of \$17,000. In 2008, he contributed more than \$11,000 to his church. He contributes to other charities. Applicant estimates his net worth at more than \$1,000,000.⁶

Applicant first learned about negative information on his credit report when he met with the security investigator in 2008. After this meeting, he spent a significant amount of time attempting to talk with the creditors listed in his credit reports. Eventually, Applicant determined that the four unpaid debts listed on his credit reports did not belong to him. He filed a complaint with the police in June 2009, alleging identity theft. The police have not provided him with any information on the status of his complaint. He also filed a fraud alert with the credit reporting companies.⁷

Applicant acknowledged the tax liens identified in SOR allegations 1.e (\$4,343) and 1.f (\$903), but denied he owed these debts. Applicant paid the July 1995 tax lien in 2005. He later learned that he still owed \$37 on the debt, which he paid in March 2009. He has resolved the debt in SOR ¶ 1.e in full. Applicant paid the March 1993 tax lien in SOR ¶ 1.f in full in September 2000.⁸

Applicant denied that he owed the four debts listed in SOR allegations 1.a through 1.d. He challenged these debts with two credit reporting companies on June 2, 2009. He also wrote to the creditor listed in SOR allegation 1.b on June 22, 2009, challenging the validity of this debt. The credit reporting companies removed three debts from his credit report by August 2009 and the last debt by October 2009. Applicant established that he does not owe the debts in SOR ¶ 1.a to 1.d.⁹

⁵GE 2; AE G; AE H; AE J; AE L; AE M; AE R.

⁶GE 2; AE C; AE D; AE E; AE F; Tr. 57.

⁷GE 2; Tr. 53-54; Response to SOR.

⁸GE 2; AE A; AE V; Tr. 18-19, 41, 52.

⁹GE 2; AE S; AE T; AE U; Tr. 46-47, 49-50. The debt identified in SOR allegation 1.c is listed on the April 28, 2009 and May 7, 2009 credit reports with a notation that the consumer is deceased. See GE 2; GE 3.

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.

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 guideline notes 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. The credit reports submitted by the government establish that Applicant accumulated some delinquent debt, which had not been paid. The evidence is sufficient to raise these potentially disqualifying conditions.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Under AG ¶ 20(a), mitigation may occur when "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 two tax liens occurred for tax issues which arose in the 1980s and 1990s. He paid one lien in 2000 and the second lien in 2005, except for \$37. The second lien totaled over \$6,000, 99% of which he paid in 2005. Because of an oversight by the state, the remaining \$37 was not paid until recently. The remaining debts in the SOR are not his, but the result of identity theft or fraud, which he has reported to the police and the credit reporting agencies. I find the behavior occurred under such unusual circumstances that it is unlikely to recur, and it does not raise concerns about his current reliability, trustworthiness, or good judgment. This mitigating condition applies.

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). Similarly, AG ¶ 20(d) applies where the evidence shows "the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts." While Applicant has not received financial counseling, he has resolved all the delinquent debts in the SOR, either by payment or dispute. He is financially sound and prepared for future contingencies. He showed good faith towards his creditors. I conclude that mitigating condition AG ¶¶ 20(c) and 20(d) apply.

Finally, evidence that "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” is potentially mitigating under AG ¶ 20(e). Applicant disputed, in writing, the four debts listed in SOR allegations 1.a through 1.d with the credit reporting agencies and with the creditor listed in SOR allegation 1.c. He also filed an identity theft complaint with the police and a fraud alert with one credit reporting company. His actions resulted in the removal of all four debts from his credit reports. This mitigating condition applies to SOR ¶¶ 1.a to 1.d.¹⁰

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 a conclusion, I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant is 72 years old and has been employed as a security officer for the last 12 years. Applicant developed financial problems in the 1980s and 1990s because he steadily lost income from his job. He chose to pay his debts over filing for bankruptcy. He resolved his old debts over time, including two tax liens related to his financial problems from this time period. Since paying these debts, Applicant has lived within his income on a

¹⁰AG ¶ 20(f) is not raised in this case.

monthly basis. He has sufficient income each month to pay his monthly living expenses and to donate money to his church.

Applicant challenged the four unpaid debts listed on his credit reports as fraudulent. As a result of his challenge, these debts have been removed from his credit report. Applicant owns several properties and has sufficient income each month to pay all his expenses. He is financially secure. Given his assets of approximately one million dollars and his monthly income of approximately \$11,000, there is little likelihood that he can be pressured, coerced, exploited, or forced to reveal classified information based on his financial situation.

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 under Guideline F.

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

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