



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



In the matter of:)	
)	
-----)	ISCR Case No. 09-00406
SSN: -----)	
)	
Applicant for Security Clearance)	

Appearances

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

May 27, 2010

Decision

CURRY, Marc E., Administrative Judge:

Applicant mitigated the Government’s Financial Considerations security concern. Clearance is granted.

Statement of the Case

On July 31, 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 adjudicative guidelines (AG).

Applicant answered the SOR on August 17, 2009, denying all of the allegations except SOR subparagraphs 1.a, 1.e, and 1.j. On December 15, 2009, the case was assigned to me. On January 13, 2010, DOHA issued a notice of hearing scheduling the

case for February 3, 2010. The hearing was conducted as scheduled. I received six Government exhibits, twenty-nine Applicant exhibits, and the testimony of two Applicant witnesses. At Applicant's request, I left the record open at the end of the hearing for him to submit additional exhibits. He timely submitted three additional exhibits that I incorporated into the record. The transcript (Tr.) was received on February 12, 2010.

Findings of Fact

Applicant is a 42-year-old married man with three children ages 14, 12, and six. He earned a bachelor's degree in business management in 2002. He works for a defense contractor as a consultant training developer specialist. Specifically, he works with unmanned aircraft systems. (GE 1 at 13) His friends and coworkers describe him as a trustworthy person who is dedicated to his family and his job. (AE M-O)

In the late 1990s, Applicant worked for an industrial cleaning company whose main contract was with the local airport. (GE 1 at 18) After 9-11, the airline industry struggled as airline travel dwindled. (*Id.*) Consequently, in November 2001, Applicant lost his job. (*Id.* at 17)

While Applicant was unemployed, he fell behind on his car payments and the payments on his mobile home. Subsequently, his car was repossessed and a judgment was entered against him in the amount of \$786 for his mobile home debt. (Answer to SOR subparagraph 1.a; AE S, respectively) The creditor resold the car, and Applicant owes a deficiency of \$4,312. (Answer to SOR subparagraph 1.a; Tr. 83) As for the mobile home, Applicant sought the help of a church-based organization that assists indigent people in financial distress. (Tr. 86) With their assistance, he paid the delinquency in 2002, and the court vacated the judgment. (AE S)

In 2002, Applicant also managed to pay the credit card delinquency listed in SOR subparagraph 1.n in the amount of \$481. He did so through monthly payments. (AE W)

Applicant remained unemployed for the next four months. Although Applicant gained a job in April 2003, it paid only \$16,000 per year, less than half of what he had previously earned. (Tr. 80)

In 2004, Applicant and his wife conceived their third child. It was born three to four months premature after a difficult pregnancy that involved frequent hospitalizations. (Tr. 80) Applicant, the family's principal wage earner, struggled to pay the copayments for the medical bills.

In 2005, Applicant's automobile broke down and required an engine replacement. (Tr. 47) Shortly after the mechanic replaced the engine, the car's transmission malfunctioned, requiring its complete replacement. Asserting that the mechanic damaged the transmission when he replaced the engine, Applicant demanded that he replace the transmission for free. (Tr. 47) The mechanic refused. Burdened with the cost of the engine's replacement and the unexpected replacement cost of the

transmission, Applicant fell behind on the car payments. (Tr. 47) Subsequently, it was repossessed and resold, leaving Applicant with an outstanding deficiency of approximately \$14,000. (Answer to SOR subparagraph 1.j)

By January 2008, Applicant had accrued approximately \$28,000 of delinquent debt, as listed in the SOR. Approximately \$18,000 consisted of the deficiencies from the repossessed automobiles, as described above, and the remainder was delinquent credit card debts and utility bills.

In August 2008, Applicant began working for his current employer. His annual salary increased from \$25,500 to \$67,000. (Tr. 88) Applicant then began methodically satisfying his debts beginning with the smaller ones first. Their current status is as follows:

Debt	Amount	Status
1.b	\$648	Settled and paid by November 12, 2009. (AE A, P)
1.d	\$548	Successfully disputed. (AE R)
1.i	\$227	Paid. (AE U)
1.k	\$435	Paid by September 9, 2009 through three monthly installments. (AE CC)
1.l	\$1,025	Duplicate of 1.d.
1.m	\$1,103	Paid. (AE V)

Additionally, Applicant has satisfied approximately \$1,300 of debt that was not listed in the SOR. (AE C, AE AA) The delinquency listed in SOR subparagraph 1.f, in the amount of \$2,046 has been sold to another creditor. (Tr. 43) Applicant has been unable to identify the new collection agent.

Applicant has not yet begun making payments toward the deficiencies from the automobile deficiencies as listed in SOR subparagraphs 1.a and 1.j. He is actively attempting to settle them¹. (Tr. 99) The delinquencies listed in SOR subparagraphs 1.g and 1.h, collectively totalling approximately \$3,000, are also outstanding. He initiated settlement arrangements after the hearing. (AE FF)

In 2008, Applicant and his wife met with a credit counselor. (Tr. 96) He recommended they file for bankruptcy protection. (Tr. 96) After Applicant obtained his current job, they decided to satisfy their debts. (Tr. 97)

¹Currently, Applicant and the creditor are at an impasse over the length of time Applicant should be afforded to satisfy the debt. (Tr. 99)

Applicant maintains a budget. (AE EE) He has approximately \$1,522 in monthly after-expense income and \$2,000 in a 401k retirement plan. (*Id.*; Tr. 65)

Policies

The adjudicative guidelines are applied in conjunction with the factors listed in the adjudicative process to evaluate an applicant's eligibility for access to classified information. 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."

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 for obtaining a favorable security decision.

Analysis

Guideline F, Financial Considerations

Under this guideline, the "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." (AG ¶ 18) Applicant's history of financial problems triggers the application of AG ¶¶ 19(a), "inability or unwillingness to satisfy debts," and 19(c), "a history of not meeting financial obligations."

Applicant's economic hardship was triggered by an employment layoff in 2001. Although he was only out of work for four months, he earned only a fraction of his pre-layoff salary until he began working at his current job in 2008. Applicant's financial problems were exacerbated in 2004 when his wife experienced a difficult pregnancy that generated extensive medical bills. Under these circumstances, Applicant could not make ends meet. He did, however, avail himself of assistance from a church-based social service organization, which helped him keep his mobile home. Also, a few years later, he met with a credit counselor.

When Applicant left his previous employer for his current employer, he received a \$42,000 annual pay raise. Since then, he has either paid or successfully disputed approximately \$4,000 of SOR debt and \$1,300 of unlisted debt.

Although Applicant has made progress, more than 80 percent of his delinquent debt remains outstanding. This amount composed of debt owed to four creditors, and half constitutes the deficiency from one automobile repossession. Applicant is actively attempting to resolve these delinquencies, and has ample disposable income available to follow through with any developed settlement plan. The following mitigating conditions, as set forth in AG ¶ 20, are applicable:

(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.

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.

Applicant's financial problems were triggered by an unemployment and a medical emergency. As soon as his financial situation improved, he began satisfying his delinquencies. Although approximately \$24,000 of debt remains outstanding, I am

confident that Applicant will satisfy this debt given the responsible manner he has addressed his delinquencies thus far, and the ample income in reserve that he possesses. I conclude Applicant has mitigated the Financial Considerations security concern.

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.n: 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.

MARC E. CURRY
Administrative Judge