



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



In the matter of:)	
)	
-----)	ISCR Case No. 09-00819
SSN: -----)	
)	
Applicant for Security Clearance)	

Appearances

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

August 31, 2010

Decision

CURRY, Marc E., Administrative Judge:

Applicant mitigated the government’s financial considerations security concern. Clearance is granted.

Statement of the Case

On April 13, 2010, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, Financial Considerations. DOHA took the action 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 May 3, 2010. He admitted SOR subparagraphs 1.b, and 1.e through 1.g, and denied the remainder. He requested a hearing, and the case was assigned to me on May 28, 2010. On June 8, 2010, a notice of hearing was

issued scheduling the case for June 28, 2010. The hearing was conducted as scheduled. I received nine Government exhibits, ten Applicant exhibits, and Applicant's testimony. At the conclusion of the hearing, I left the record open at Applicant's request, to allow him to submit additional exhibits. Within the time allotted, he submitted 13 additional exhibits that I received as Applicant's Exhibits (AE) K through W. DOHA received the transcript on July 7, 2010.

Findings of Fact

Applicant is a 45-year-old married man with one adult child, age 20. Over the years, he has attended approximately two and a half years of college. (GE 1 at 3) For the past two years, he has worked as a facilities manager for a federal government contractor. (Tr. 19) He has been in this line of work for 19 years.

Applicant is highly respected on the job. The branch head of the agency where he works characterizes him as "an asset to the Command." (AE L) According to the program manager, Applicant "has been an asset to [the] team from day one, by tackling assignments with dedication and professionalism." (AE M)

Applicant married in 1990. (AE A) He and his wife divorced in 1995, then reconciled in approximately 2000.¹ While they were back together, they financed the purchase of two cars and opened a joint credit card account.

Sometime in 2001, Applicant and his wife's relationship again deteriorated, prompting Applicant to move out of the home. Enraged, his estranged spouse then intentionally overspent the credit limit on their credit card and failed to pay for any of the purchases. (AE 8 at 10) In sum, she charged about \$7,000 of merchandise to the credit card. (Tr. 48) Over the years, this account remained in delinquent status. By 2008, it had accrued to \$9,400, as listed in SOR subparagraph 1.e.

After leaving his wife, Applicant moved into an apartment. In 2003, he subleased the apartment to his roommate. (Tr. 22, 45) Applicant moved from the apartment with three months left on the lease with the understanding that his friend would continue to make the rental payments. His friend did not do so, prompting the property manager to initiate eviction proceedings. After obtaining multiple judgments, as listed in SOR subparagraphs 1.b through 1.d, the property manager evicted Applicant's friend from the home. Because Applicant's name was on the lease, the judgments were entered against him. As of April 2010, the balance on the judgments was \$2,821. (AE 10 at 2)

When Applicant and his wife separated the second time, they agreed to split their car payments with Applicant making the payments on the car that he kept and his wife making the payments on the car she kept.

¹They remained legally divorced.

Applicant paid off his car note as agreed. Unbeknownst to him, however, his ex-wife stopped making payments on her car. In January 2006, the creditor obtained a judgment against Applicant and his ex-wife for \$13,324, as listed in SOR subparagraph 1.a.

By early 2008, Applicant had accrued approximately \$33,000 of delinquent debt. In addition to the debts listed above, his delinquencies included a \$238 bill owed to a veterinarian, as listed in SOR subparagraph 1.f; a \$598 credit card account, as listed in SOR subparagraph 1.g; a furniture rental and a two utility bills totalling approximately \$2,100; a miscellaneous judgment for \$623; debt owed to a bank for \$3,370; and \$2,000 in back federal income taxes for tax years 2005 and 2006.² (Tr. 59; GE 3 at 4-5, GE 7 at 8)

In November 2008, Applicant retained a credit counseling agency to help him develop a debt satisfaction plan. (Tr. 52) With the help of the credit counselor, he satisfied approximately \$6,000 of delinquent debt by the end of 2009 including the veterinarian bill, the furniture rental bill, the two utility bills, the miscellaneous judgment, and the debt owed to the bank. (AE F; GE 7 at 8-9)

In April 2010, Applicant negotiated a reduction in the amount due to the creditor listed in SOR subparagraph 1.a . Under the agreement, the creditor reduced the amount due to \$4,000. (AE A) Over an 18-month period, Applicant is to make monthly payments of \$233. (AE Q) As of the hearing date, Applicant had made one \$500 down payment and two monthly payments for \$233. (AE Q)

In June 2010, Applicant arranged to satisfy the judgments listed in SOR subparagraphs 1.b through 1.d with \$100 monthly payments. He made the first payment, as scheduled, on June 29, 2010. (AE R)

Applicant had trouble locating the current collection agent for the account listed in SOR subparagraph 1.e. After more than a year of research, he located the creditor, and negotiated a balance reduction from \$9,400 to \$2,468. (AE S) Under the settlement agreement, he will pay \$100 monthly payments. As of the date of the hearing, he had paid the creditor \$100, as scheduled. (*Id.*)

SOR subparagraph 1.g is a credit card account for approximately \$598. Applicant has been unable to locate the current holder of this debt, and it is not listed on the record's most recent credit report. (GE 2)

Applicant still owes the United States Internal Revenue Service (IRS) approximately \$2,000. He has begun to satisfy this delinquency through monthly \$305 payments. (Tr. 61) It is unclear from the record when Applicant initiated these payments.

²The furniture bill, the utility bill, the miscellaneous judgment, and the federal income tax delinquencies are not listed on the SOR.

Applicant maintains a budget. (AE J) It lists approximately \$650 remaining after expenses, but does not include his monthly IRS payments. (*Id.*) Taking into account Applicant's IRS payments, he has approximately \$340 remaining after expenses. His checking account balance averages approximately \$1,300 and he has approximately \$250 in a savings account. (Tr. 57)

Approximately three months before the hearing, Applicant began working at a part-time job as a security guard to supplement his income. (Tr. 58) He works 25 to 30 extra hours per week. (Tr. 59)

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the 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. 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, "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."

The following mitigating conditions under AG ¶ 20 are potentially 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; and

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant's financial problems were not caused by extravagant spending. Instead, they were caused primarily when his disgruntled ex-wife purposely exceeded the credit limit on a credit card for which they were jointly responsible. Applicant's financial problems were later exacerbated when his ex-wife failed to honor an agreement to make the car payments on a jointly-owned vehicle.

In 2008, Applicant consulted a credit counselor to help him confront his delinquent debts. Since then, Applicant satisfied approximately \$6,000 of delinquent debt, and negotiated more than \$9,000 of balance reductions. He was able to make this progress in part through the extra income generated from a part-time job that he obtained as part of his efforts to confront his debt problem.

Although Applicant has been unable to locate the current holder of the debt listed in SOR subparagraph 1.g, his income and savings are sufficient to satisfy this debt once he locates the creditor. I was concerned that Applicant did not provide documentary evidence corroborating his IRS payments. However, Applicant's testimony regarding the IRS payments was credible in light of the ample corroborating evidence he provided to prove that he was satisfying the other debts. I conclude all of the above mitigating conditions apply.

Whole-Person Concept

Under the whole-person concept, 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 is an industrious individual who is respected on the job. His financial problems were largely caused by circumstances beyond his control. Over the past two years, he has addressed them by obtaining a part-time job to generate more income, retaining a credit counselor, and methodically satisfying the delinquencies. Upon evaluating this case in the context of the whole-person factors, I conclude Applicant has rehabilitated his financial situation.

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.g: 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