



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



In the matter of:)	
)	
XXXXXXXXXXXX, XXXXX)	ISCR Case No. 09-00957
SSN: XXX-XX-XXXX)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Braden Murphy, Esq., Department Counsel
For Applicant: *Pro se*

August 31, 2010

Decision

TUIDER, Robert J., Administrative Judge:

Applicant has mitigated security concerns pertaining to Guideline F (financial considerations). Clearance is granted.

Statement of the Case

On September 15, 2008, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP). On August 27, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing security concerns under Guideline F (financial considerations) for Applicant. 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) effective within the Department of Defense for SORs after September 1, 2006.

Applicant answered the SOR on November 3, 2009, and DOHA received his answer on November 9, 2009. Department Counsel was prepared to proceed on April

15, 2010. The case was assigned to me on May 5, 2010. DOHA issued a notice of hearing on May 6, 2010, scheduling the hearing for May 19, 2010. The hearing was held as scheduled.

The Government offered Government Exhibits (GE) 1 through 7, which were received without objection. The Applicant offered Applicant Exhibits (AE) A and B, which were received without objection, and he testified on his own behalf.

I held the record open until May 28, 2010, to afford the Applicant the opportunity to submit additional documents on his behalf. Applicant timely submitted AE C and D, which were received without objection. DOHA received the hearing transcript (Tr.) on May 26, 2010. The record closed on May 28, 2010.

Procedural Rulings

Amendment of SOR

Department Counsel moved to amend SOR ¶ 1.a. to correct Applicant's Chapter 7 discharge date from "2206" to "2006." Without objection from the Applicant, I granted Department Counsel's request. (Tr. 33-34.)

Findings of Fact

Applicant admitted all of the SOR allegations. His admissions are incorporated as findings of fact. After a thorough review of the evidence, I make the following additional findings of fact.

Background Information

Applicant is a 56-year-old tool room machinist, who has worked for a defense contractor employer since November 1982. His employer has changed hands several times since 1982; however, Applicant has remained in the same location. He is a first-time applicant for a security clearance. (GE 1, Tr. 16-19, 27-28.)

Applicant graduated from high school in May 1971. He attended a community college from September 1996 to May 2000, and estimates that he has earned 15 credit hours. Applicant has also attended various job-related courses throughout his working career. He did not serve in the armed forces. (GE 1, Tr. 22-24.)

Applicant married in June 1984, and has been separated from his wife since July 2008. They have three children, a 26-year-old daughter, a 23-year-old son, and an 18-year-old son. At the time of hearing, Applicant's daughter was living with her mother, and his two sons were living with family members. Applicant does not pay spousal or child support. His wife is employed as a nurse. (GE 1, Tr. 21-22, 28-30.)

Financial Considerations

Applicant's background investigation addressed his financial situation and included the review of his September 2008 e-QIP; his April 2009 responses to DOHA Interrogatories; his October 2005 Chapter 7 Bankruptcy petition; his February 2006 Chapter 7 Bankruptcy discharge; as well as his September 2008, February 2009, and December 2009 credit reports. Applicant's SOR alleges a 2006 Chapter 7 Bankruptcy and three separate collection accounts totaling \$11,534. (GE 1 – 7; SOR ¶¶ 1.a. – 1.d.)

Applicant and his wife filed for Chapter 7 bankruptcy in October 2005 and were awarded a discharge in February 2006. The total amount of debts discharged on their Schedule F (Creditors Holding Unsecured Nonpriority Claims) was \$58,503. Applicant stated the reason he and his wife were forced to file bankruptcy was due to his wife's "casino gambling habit." Her gambling habit had been ongoing for approximately 12 years and led to the deterioration of their marriage. (GE 6, GE 7, Tr. 30-33, 47-48, 51; SOR ¶ 1.a.)

The remaining three debts are collection accounts for credit cards. Applicant testified that two of the accounts are joint accounts and the third account was opened without his knowledge by his estranged wife before they separated. Applicant attributes these collection accounts to his wife's indiscriminate spending, but recognizes his obligation to make good on them. He estimates that he fell behind on these debts at the time he and his wife separated in 2008. (AE A, Tr. 35-36, 46, 50-52.)

In May 2010, Applicant retained the services of a debt consolidation firm (DCF). Applicant enrolled his three SOR debts with the DCF. Applicant has been making monthly payments to the DCF since May 2010 in the amount of \$287 per month by direct debit. His three SOR debts are being monitored and paid by the DCF. (AE B, AE D, Tr. 36-40.)

In conclusion, Applicant has made good-faith efforts to repay or resolve the three debts alleged. Applicant remains current on the rest of his monthly bills. His budget reflects a monthly remainder and demonstrates that he maintains a modest lifestyle and is living within his means. (GE 4, Tr. 40-47.)

Character Evidence

Applicant submitted a reference letter from a senior company manager. The manager stated that Applicant worked on and off for him for over 20 years in various positions. He stated that Applicant has shown an outstanding work ethic and a positive attitude in everything he does. Applicant is conscientious and has always been willing to work late and come in early. He concluded, "For all the years [Applicant] has worked for me I have never heard him say a negative thing about anyone. If all my employees were like [Applicant], my life would be a whole lot easier." (AE C.)

Policies

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

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 in seeking 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 of 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

Upon consideration of all the facts in evidence, and after application of all appropriate legal precepts, factors, and conditions, including those described briefly above, I conclude that a relevant security concern exists under Guideline F (financial considerations). AG ¶ 18 articulates the security concern relating to financial problems:

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.

AG ¶ 19 provides two financial considerations disqualifying conditions that could raise a security concern and may be disqualifying in this case: "(a) inability or unwillingness to satisfy debts," and "(c) a history of not meeting financial obligations." Applicant's history of delinquent debt is established by his admissions and the evidence presented. As indicated in SOR ¶¶ 1.a. to 1.d., he filed for bankruptcy in 2005 and more recently accumulated three debts totaling \$11,534 that were in various states of delinquency for several years. The Government established the disqualifying conditions in AG ¶¶ 19(a) and 19(c).

Five financial considerations mitigating conditions under AG ¶¶ 20(a) through (e) 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;

(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's conduct does not warrant full application of AG ¶ 20(a) because there is more than one delinquent debt and his financial problems are not isolated. Three debts remain unpaid. Therefore, his debt is "a continuing course of conduct." See ISCR Case No. 07-11814 at 3 (App. Bd. Aug. 29, 2008) (citing ISCR Case No. 01-03695 (App. Bd. Oct. 16, 2002)). He receives partial credit under AG ¶ 20(a) because the debt "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."

Under AG ¶ 20(b), Applicant receives credit because his indebtedness stems from his estranged wife's gambling problems, which are largely beyond his control. Applicant took the drastic step of filing Chapter 7 bankruptcy hoping his indebtedness was behind him. Applicant's wife continued to gamble and engage in indiscriminate spending. Her behavior led to the deterioration of their marriage. They are currently separated with a divorce pending.¹

AG ¶ 20(c) is not applicable because Applicant did not produce evidence of financial counseling. However, he has produced evidence that establishes that he is living within his means and has regained his financial responsibility. Furthermore, there is sufficient information to establish full mitigation under AG ¶ 20(d).² Applicant is making a good-faith effort to pay or otherwise resolve his debts. AG ¶ 20(e) is not applicable because Applicant did not dispute the legitimacy of any of his debts. His

¹"Even if Applicant's financial difficulties initially arose, in whole or in part, due to circumstances outside his [or her] control, the Judge could still consider whether Applicant has since acted in a reasonable manner when dealing with those financial difficulties." ISCR Case No. 05-11366 at 4 n.9 (App. Bd. Jan. 12, 2007) (citing ISCR Case No. 99-0462 at 4 (App. Bd. May 25, 2000); ISCR Case No. 99-0012 at 4 (App. Bd. Dec. 1, 1999); ISCR Case No. 03-13096 at 4 (App. Bd. Nov. 29, 2005)). A component is whether he maintained contact with his creditors and attempted to negotiate partial payments to keep his debts current.

²The 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 [the "good-faith" mitigating condition], 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 in order to claim the benefit of [the "good-faith" mitigating condition].

(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. June 4, 2001)).

2005 Chapter 7 Bankruptcy filing lacks security significance both because of the passage of time, and because it followed the financial fallout incurred as a result of his wife's gambling habits.

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 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.

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. AG ¶ 2(c).

There is evidence against mitigating Applicant's conduct. The SOR lists a 2005 Chapter 7 bankruptcy and three debts totalling \$11,534 that were at one time or another in various states of delinquency. He failed to keep his accounts current, showing financial irresponsibility and lack of judgment. This fact alone raises sufficient security concerns to merit further inquiry.

The mitigating evidence under the whole-person concept is more substantial. Applicant's record of good employment weighs in his favor. He has accumulated 28 years of faithful and loyal service in the defense industry. Applicant is a law-abiding citizen. He has made a good-faith effort to pay or resolve his SOR debts. He recognized he had a problem with his debts, retained the services of a DCF in May 2010, and is making monthly payments to his DCF by direct debit. His monthly expenses are current. The Appeal Board has addressed a key element in the whole-person analysis in financial cases, stating:

In evaluating Guideline F cases, the Board has previously noted that the concept of "meaningful track record" necessarily includes evidence of actual debt reduction through payment of debts." However, an applicant is not required, as a matter of law, to establish that he has paid off each and every debt listed in the SOR. All that is required is that an applicant demonstrate that he has ". . . established a plan to resolve his financial

problems and taken significant actions to implement that plan.” The Judge can reasonably consider the entirety of an applicant’s financial situation and his actions in evaluating the extent to which that applicant’s plan for the reduction of his outstanding indebtedness is credible and realistic. See Directive ¶ E2.2(a) (“Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination.”) There is no requirement that a plan provide for payments on all outstanding debts simultaneously. Rather, a reasonable plan (and concomitant conduct) may provide for the payment of such debts one at a time. Likewise, there is no requirement that the first debts actually paid in furtherance of a reasonable debt plan be the ones listed in the SOR.

ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) (internal citations omitted). Applicant is making a significant contribution to the national defense. His company fully supports him and recommends him for a security clearance. He made mistakes, and debts became delinquent. There is, however, simply no reason not to trust him. He is paying down his debts. Furthermore, he has established a “meaningful track record” of debt payments. These factors show responsibility, rehabilitation, and mitigation. After weighing the disqualifying and mitigating conditions, and all the facts and circumstances in the context of the whole person, I conclude he has mitigated the financial considerations security concerns.

I take this position based on the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), my careful consideration of the whole person factors and supporting evidence, my application of the pertinent factors under the adjudicative process, and my interpretation of my responsibilities under the adjudicative guidelines. Applicant has fully mitigated or overcome the Government’s case. For the reasons stated, I conclude he is eligible for access to classified information.

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. to 1.d.: For Applicant

Conclusion

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue Applicant's eligibility for a security clearance. Eligibility for a security clearance is granted.

Robert J. Tuider
Administrative Judge