



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



In the matter of:)	
)	
XXXXXXXXXXXX, XXXXX)	ISCR Case No. 09-01116
SSN: XXX-XX-XXXX)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Jennifer I. Goldstein, Esq., Department Counsel
For Applicant: *Pro se*

July 20, 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 October 13, 2008, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP). On September 17, 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 October 2, 2009, and DOHA received his answer on October 5, 2009. Department Counsel was prepared to proceed on

December 14, 2009. The case was assigned to me on January 6, 2010. DOHA issued a notice of hearing on January 7, 2010, scheduling the hearing for January 26, 2010. The hearing was held as scheduled.

The Government offered Government Exhibits (GE) 1 through 8, which were received without objection. The Applicant offered Applicant Exhibits (AE) A through F, which were received without objection, and he testified on his own behalf.

I held the record open until February 9, 2010, to afford the Applicant the opportunity to submit additional documents on his behalf. Applicant timely submitted AE G through I, which were received without objection. DOHA received the hearing transcript (Tr.) on February 3, 2010. The record closed on February 9, 2010.

Findings of Fact

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

Background Information

Applicant is a 61-year-old electronics technician, who has worked for his defense contractor employer since August 2008. He seeks a security clearance, which is a requirement for his continued employment. (GE 1, Tr. 17.)

Applicant graduated from high school in June 1966. He attended community college from January 1985 to December 1986, and was awarded an Associate in Science degree. He subsequently was awarded a Bachelor of Science degree, date uncertain. (GE 1, Tr. 21-23.)

Applicant served a 20-year career in the U.S. Navy, from December 1972 to December 1992, and was honorably discharged as an Electrician's Technician Chief Petty Officer (pay grade E-7). However, for the majority of his Navy career, he was in the Aviation Fire Control Technician rating and underwent a forced conversion shortly before he retired when the Navy eliminated that rating. Applicant spent 13 of his 20 years in the Navy at sea and went on numerous deployments. He successfully held a security clearance during his Navy career. (GE 1, Tr. 18-21, 27-28.)

Applicant was previously married three times, and has been married to his current and fourth spouse since October 1996. He has an adopted son from his first marriage whose whereabouts are unknown. Applicant has three sons from his current marriage, ages 20, 13, and 11. His two youngest sons live at home, and his oldest son is serving in the U.S. Marine Corps. (GE 1, 25-27.)

Financial Considerations

Applicant's background investigation addressed his financial situation and included the review of his October 2008 e-QIP, his April and May 2009 responses to DOHA Interrogatories; as well as his November 2008, February 2009, June 2009, November 2009, and January 2010 credit reports. Applicant's SOR identified eight separate debts totaling \$39,218. (GE 1 – 8, Tr. 12.) (SOR ¶¶ 1.a. – 1.h.)

Applicant has settled, paid, or otherwise resolved the eight debts alleged. A brief summary of each debt follows. The debts alleged in SOR ¶¶ 1.a. and 1.b. are past-due credit card accounts (same credit card company) in the amounts of \$17,577 and \$3,657, respectively. The creditor has combined these accounts and Applicant has been making \$100 monthly payments by direct debit to the creditor since September 2009. The accounts are current and Applicant plans to settle these accounts as soon as he is able to sell off equipment from his failed business, discussed *infra*. (AE A, Tr. 40-44.)

The debt alleged in SOR ¶ 1.c. is a past-due credit card account in the amount of \$893. Applicant settled this account for \$475, which he paid in July 2009. (AE B, Tr. 44-46.)

The debt alleged in SOR ¶ 1.d. is a past-due credit card account in the amount of \$1,661. Applicant had been making monthly payments on this account for approximately one year before the hearing. Post-hearing, he settled the remaining balance owed on this account for \$601, which he paid in February 2010. (AE I, Tr. 46-48.)

The debt alleged in SOR ¶ 1.e. is a past-due credit card account in the amount of \$7,773. Applicant settled this account with the creditor for approximately \$3,000. In December, the creditor issued the Applicant a Form 1099C, Cancellation of Debt, for \$4,602.36. Applicant reported this amount when he filed his income tax return. (AE C, Tr. 49-51.)

The debt alleged in SOR ¶ 1.f. is for a past-due credit card in the amount of \$1,219. Applicant settled this account for \$605.93, which he paid in May 2009. (AE D, Tr. 53-54.)

The debt alleged in SOR ¶ 1.g. is for a past-due medical bill in the amount of \$170, which Applicant paid in full in September 2009. (AE E, Tr. 54-55.)

The debt alleged in SOR ¶ 1.h. is for a past-due credit card in the amount of \$6,268. Applicant has been making monthly payments by allotment in the amount of \$203.81 since mid-2009. The account is current. (AE F, Tr. 55-59.)

Post-hearing, Applicant submitted documentation that he paid off two past-due medical bills that were not alleged in the SOR. (AE G, AE H, Tr. 59-60.)

Applicant attributes his financial problems to the fact that his small business failed in 2008 as a result of the recent economic downturn. From 1996 to 2008, Applicant owned an ice cream distributorship and a mobile vending business in the off-road areas in his county of residence. (GE 2, Tr. 30-32.) When the economy failed, the off-road vehicle community significantly reduced its off-road vehicle use. With little or no income, Applicant resorted to using his credit cards to make ends meet. He reached a point where his business was doing so poorly and he was so deep in debt that he was forced to close his business in the latter part of 2008. He is actively looking for buyers to purchase his business assets. (GE 3, Tr. 33-37.) Applicant estimates that his business assets are worth \$50,000 to \$60,000; however, “[he would] be willing to take [\$20,000] for [them] if [he] could get that.” (Tr. 64.)

In conclusion, Applicant has paid, settled, made good-faith efforts to repay overdue creditors, or resolved all debts alleged. Applicant remains current on the rest of his monthly bills. His budget further demonstrates that he maintains a modest lifestyle and is living within his means.

Character Evidence

After Applicant retired from the Navy, he became very active and involved in his community. He served as a city councilman for seven years, and during those seven years served as mayor for two terms. He served on his city planning commission, served as a board member of his state league of cities for a one-year term, and is currently the president of the board of directors of his county school district, serving a second four-year term. (GE 2, Tr. 62-64.)

Applicant called four character witnesses to testify on his behalf, a grocery store and ice plant owner, his contract site manager, his immediate supervisor, and a co-worker. The first witness spoke of Applicant’s integrity and honesty and emphasized that Applicant was a “man of his word.” He verified the business downturn that Applicant experienced. The remaining three work-related witnesses described Applicant as “a real professional,” “honest,” “dependable,” “very good character,” “very smart,” and an asset to their company. All the witnesses recommended that Applicant be granted a security clearance. (Tr. 66-94.)

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 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, 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 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 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

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.h., he had eight delinquent debts totaling \$39,218 that were in various states of delinquency since at least 2008. The Government established the disqualifying conditions in AG ¶¶ 19(a) and 19(c).

Five financial considerations mitigating conditions under AG ¶¶ 20(a)-(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. It was not until recently that these debts were paid or resolved. Therefore, his debt is "a continuing course of conduct" under the Appeal Board's jurisprudence. 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), he receives full credit because the downfall in the economy was largely beyond his control and he acted responsibly under the circumstances.¹

AG ¶ 20(c) is not applicable because Applicant did not seek financial counseling. He has, however, produced evidence that reflects he is living within his means and regained financial responsibility. Furthermore, there is sufficient information to establish full mitigation under AG ¶ 20(d).² Applicant has paid, is paying, or has otherwise resolved his debts. AG ¶ 20(e) is not applicable because Applicant did not dispute the legitimacy of any of his debts.

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,

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 (such as bankruptcy) 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)).

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 eight debts totalling \$39,218 that were at one time or another in various states of delinquency. For two years, he failed to keep his accounts current or negotiate lesser payments, showing financial irresponsibility and lack of judgment. His lack of success in resolving delinquent debt until recently raises sufficient security concerns to merit further inquiry.

The mitigating evidence under the whole-person concept is more substantial. Applicant's record of military service, community involvement, and good employment weighs in his favor. There is no evidence of any security violation during the time Applicant may have held a security clearance. He is a law-abiding citizen. All of his SOR debts are paid or resolved. 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 has paid 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.h.: 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