



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



In the matter of:)	
)	
)	ISCR Case No. 09-01446
SSN:)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Francisco Mendez, Esquire, Department Counsel
For Applicant: Eric S. Montalvo, Esquire

March 9, 2010

Decision

HOGAN, Erin C., Administrative Judge:

Applicant submitted a Questionnaire for National Security Positions (SF 86) on May 21, 2009. On September 11, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the 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 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.

On October 5, 2009, Applicant answered the SOR and requested a hearing before an administrative judge. Department Counsel was ready to proceed on October 25, 2009. The case was assigned to me on November 3, 2009. On December 15, 2009, a Notice of Hearing was issued, scheduling the hearing for January 13, 2010. On January 11, 2010, the Notice of Hearing was amended to indicate that the hearing was to be conducted via video-conference. The case was heard on January 13, 2010. The Government offered seven exhibits which were admitted as Government Exhibits

(Gov) 1–7 without objection. The Applicant testified and offered one exhibit which was admitted as Applicant Exhibit (AE) A without objection. AE A has six tabs containing various documents. The record was held open until January 27, 2010, to allow Applicant to submit additional documents. He timely submitted a three-page document that was admitted as AE B. Department Counsel's response to AE B is marked as Hearing Exhibit (HE) I. Applicant also timely submitted a one-page document that was admitted as AE C. Department Counsel's response to AE C is marked as HE II. The transcript (Tr) was received on January 19, 2010. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for a security clearance is granted.

Findings of Fact

In his Answer to the SOR, Applicant denied SOR ¶ 1.h and admitted the remaining SOR allegations.

Applicant is a 33-year-old network troubleshooter, employed with a Department of Defense contractor, who is applying for a security clearance. He has worked for his current employer since March 24, 2008. He works at an overseas location. From May 1, 1996 to July 15, 2005, he served on active duty in the United States Air Force. He was in the satellite communications career field. He separated as a Staff Sergeant (E-5) with an honorable discharge. He served two combat tours while on active duty, OPERATION SOUTHERN WATCH in Kuwait from May 2001 to September 2001, and OPERATION RESTORE HOPE in Haiti in April 2004. He was granted a SECRET clearance on May 6, 1996. His clearance became inactive on July 14, 2007. He has earned two associates degrees, one in aerospace propulsions, and one in electronic systems. He is divorced and has no children. (Tr at 18-21; Gov 1; AE A, Tab 5)

Applicant's security clearance background investigation revealed that he encountered financial problems after he separated from active duty in July 2005. The SOR alleged the following delinquent accounts: a \$32 debt for a insufficient funds check written to a pizza restaurant (SOR ¶ 1.a: Gov 2 at 7; Gov 5 at 7; Gov 6 at 1; Gov 7 at 1); a \$176 cable television account placed for collection (SOR ¶ 1.b: Gov 2 at 1; Gov 5 at 7; Gov 6 at 1; Gov 7 at 1); a \$1,713 account placed for collection (SOR ¶ 1.c: Gov 2 at 6; Gov 5 at 7; Gov 6 at 1); a \$4,502 account placed for collection (SOR ¶ 1.d: Gov 2 at 6; Gov 5 at 7; Gov 6 at 1)); a \$31 credit union account that was charged off (SOR ¶ 1.e: Gov 6 at 2); and a \$582 account to purchase a computer that was charged off. (SOR ¶ 1.f: Gov 2 at 12; Gov 5 at 7; Gov 6 at 2)

Additional delinquent accounts include: a \$3,064 credit card account that was charged off (SOR ¶ 1.g: Gov 2 at 4, 11; Gov 5 at 7; Gov 6 at 2); a \$993 credit card account that was charged off (SOR ¶ 1.h: Gov 2 at 11; Gov 5 at 7; Gov 6 at 2); a \$6,838 military exchange credit card account that was charged off (SOR ¶ 1.i: Gov 2 at 11; Gov 5 at 7; Gov 6 at 2); and a \$1,000 credit card account that was placed for collection. (SOR ¶ 1.j: Gov 2 at 9; Gov 5 at 7)

When Applicant separated from the Air Force he was not prepared for the transition to civilian life. He initially believed that he was to be placed on medical hold because of a back injury. His separation date was earlier than he anticipated. He was unemployed for several months. He found full-time employment in October 2005. The job location was 100 miles away from where he lived. He owned a house which he was unable to rent out until late January 2006. He got behind on his bills during this time because he was responsible for a mortgage payment and rent. (Tr at 21-23)

When he separated from the Air Force, Applicant's annual income was \$28,000 a year. His take home pay was about \$2,000 a month. He earned \$43,000 in his first post Air Force employment. His take home pay remained the same. His monthly take home pay in his current job is approximately \$9,200. With the significant pay increase, he was able to start resolving his delinquent debts. He has no outstanding debts at this time. (Tr at 23-30) He sold the home he owned in January 2007. (Tr at 40)

The current status of the delinquent accounts are:

SOR ¶ 1.a, \$32 insufficient funds check, pizza company: Applicant made several attempts to contact this creditor. He was not aware of this debt and claims it is no longer on this credit report. He will pay it if it is a legitimate debt. The debt is unresolved but of a minimal amount. (Tr at 34-35; AE C)

SOR ¶ 1.b, \$176 cable television account: Debt was paid on December 21, 2009. (AE A, Tab 4 at 1)

SOR ¶ 1.c, \$1,713 account placed for collection: The account was settled in full in December 2009. (Tr at 33; Gov 7 at 2; AE A, Tab 3 at 6; AE A, Tab 4 at 2)

SOR ¶ 1.d, \$4,502 account placed for collection: The account was settled. (Gov 7 at 2; AE A, Tab 3 at 5)

SOR ¶ 1.e, \$31 credit union account: Applicant disputed this account and it has been removed from his credit report. The account is resolved. (Tr at 35-36; AE A, Tab 3; AE B at 3)

SOR ¶ 1.f, \$582 charged off computer account: The account was settled. (Gov 7 at 2)

SOR ¶ 1.g, \$3,064: Account was paid in full on September 25, 2009. (AE A, Tab 3 at 6; AE A, Tab 4 at 2) The account is the same as SOR ¶ 1.d.

SOR ¶ 1.h, \$993 charged off bank account: Account was paid. (AE A, Tab 3 at 5; AE B at 3)

SOR ¶ 1.i, \$6,838 charged off military exchange credit card: Applicant made payments on this account until it was paid in full in July 2009. (Gov 5 at 4; Gov 7 at 2; AE A, Tab 3 at 6; AE B at 3)

SOR ¶ 1.j, \$1,000 credit card account placed for collection. The debt is paid. (AE A, Tab 3 at 11; AE A, Tab 4 at 3)

After the hearing, Applicant submitted an updated personal financial worksheet. His net monthly income is \$9,719. This figure includes a \$225 monthly disability payment from the Veteran's Administration. His total monthly expenses are \$5,490. He has approximately \$4,284 left over each month after expenses. (Tr at 39-40; AE B, Note: The net remainder figure on Applicant's personal financial worksheet is incorrect.) He currently has no delinquent accounts. He is current on federal and state income taxes. (Tr at 24, 39) Department Counsel conceded Applicant's debts are resolved. (Tr at 37)

Applicant's supervisor states that Applicant has worked for him for a year and a half. He describes Applicant's character as stable and reliable. He comes to work on time and completes assigned duties and responsibilities above expectations and in a timely manner. Applicant is trusted by his teammates because of his work ethic and his ability to pull his weight. The supervisor believes Applicant can be trusted to protect United States classified material. (AE A, Tab 2 at 1)

Applicant's co-worker has worked with him since May 2008. He also socializes with Applicant outside of work. He states that Applicant has always conducted himself with a high degree of character in all situations. The co-worker states Applicant is a dependable co-worker and does his fair share of the work load. The co-worker states Applicant is trustworthy and is capable of being entrusted with sensitive information. (AE A, Tab 2 at 2)

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 must be considered 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 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

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 over-extended is at risk of having to engage in illegal acts to generate funds.

The guideline notes several disqualifying conditions that could raise security concerns. I find Financial Considerations Disqualifying Condition (FC DC) ¶19(a) (an inability or unwillingness to satisfy debts); and FC DC ¶19(c), (a history of not meeting financial obligations) apply to Applicant’s case. Applicant encountered financial

problems during the first few years after he separated from the military. The SOR alleged 10 delinquent accounts, an approximate total balance of \$18,931.

The government's substantial evidence and Applicant's own admissions raise security concerns under Guideline F. The burden shifted to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the security concerns. (Directive ¶E3.1.15) An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the government. (See ISCR Case No. 02-31154 at 5 (App. Bd. September 22, 2005))

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Financial Considerations Mitigating Condition (FC MC) ¶ 20(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) applies. Applicant's financial problems occurred when he separated from the Air Force. He did not anticipate his early separation because he believed that he would be placed on medical hold. He was unemployed for a few months. When he found a job, it was 100 miles away and he was paying a mortgage at his former location and rent at his new job location. When he found his current position, he received a substantial pay increase and was able to resolve his delinquent accounts. He has paid off all of his delinquent accounts with the exception of the \$32 debt alleged in SOR ¶ 1.a. His financial situation is stable. His past financial struggles do not raise questions about his reliability, trustworthiness, and good judgment.

FC MC ¶ 20(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) applies because Applicant was unemployed for several months after separating from active duty. As a result he began to incur delinquent debts. Once he found a job, it was located 100 miles away. Applicant found himself paying a mortgage and rent for several months which added an additional financial burden. He acted responsibly under the circumstances. Once he was able to resolve the debts, Applicant systematically resolved his delinquent accounts.

FC MC ¶20(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) applies. Applicant resolved all of his delinquent debts with the exception of a \$32 debt resulting from an insufficient funds check. Applicant demonstrated that he took steps to resolve this account but could not locate the owner of the account. All of his debts are current. His income has increased significantly in his current job. His financial situation is under control.

FC MC ¶20(d) (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts) applies. Applicant has resolved all of his accounts with the exception of one minor account which he attempted to resolve but was

unsuccessful in locating the owner of the debt. He is capable of paying the \$32 debt if the owner of the debt is located in the future. As soon as he was able, Applicant began to pay the delinquent accounts that he incurred in his first few years after separating from the military. He initiated a good-faith effort to resolve his delinquent accounts.

FC MC ¶20(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) applies with respect to SOR ¶ 1.e. Applicant disputed this debt and it was removed from his credit report.

Applicant mitigated the concerns raised under Guideline F.

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.

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.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I considered Applicant's military service and his honorable discharge from the military. I considered the favorable comments of Applicant's supervisor and co-worker. Applicant faced difficulties when he transitioned from active duty to civilian life. His discharge date came sooner than he expected. He did not have a job when he separated from the Air Force. After several months of unemployment, he found a job that was located 100 miles away and found himself responsible for a mortgage and a rent payment. He was able to resolve his delinquent accounts when he accepted his current position in an overseas location. He has resolved all delinquent accounts with the exception of a \$32 account which he will pay if he is able to locate the current owner of the debt. Applicant has demonstrated that he is reliable. His current financial situation is stable. He mitigated the concerns raised under financial considerations.

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.j:	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.

ERIN C. HOGAN
Administrative Judge