



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



In the matter of:)	
)	
SSN:)	ISCR Case No. 09-02069
)	
Applicant for Security Clearance)	

Appearances

For Government: Jeff A. Nagel, Esq., Department Counsel
For Applicant: *Pro Se*

February 26, 2010

Decision

LOUGHRAN, Edward W., Administrative Judge:

Applicant mitigated Financial Considerations security concerns. Eligibility for access to classified information is granted.

Statement of the Case

On June 18, 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 revised adjudicative guidelines (AG) promulgated by the President on December 29, 2005, and effective within the Department of Defense (DoD) for SORs issued after September 1, 2006.

Applicant answered the SOR on July 2, 2009, and requested a hearing before an administrative judge. The case was assigned to another administrative judge on August

14, 2009, and reassigned to me on September 18, 2009. DOHA issued a notice of hearing on September 30, 2009, and the hearing was convened as scheduled on November 3, 2009. The government offered Exhibits (GE) 1 through 5, which were received without objection. Applicant testified on his own behalf and submitted Exhibits (AE) A through C, which were received without objection. The record was held open for Applicant to submit additional information. Applicant submitted two documents, which were marked AE D and E, and admitted without objection. DOHA received the transcript of the hearing (Tr.) on November 12, 2009.

Findings of Fact

Applicant is a 50-year-old employee of a defense contractor. He has worked for his current employer since 2007. He has a bachelor's degree. He has never been married and has no children.¹

Applicant's finances were in order prior to a period of unemployment and a business arrangement that went bad. Applicant lost his job in December 2005, and was unemployed until June 2006. He was in a partnership which held real estate. The partner was living in one of their properties and refused to pay his share of the partnership's business expenses. The partner did not pay the mortgage, utilities, taxes, or any of the other costs of living in the house for two years. He also took money out of Applicant's accounts without authorization. Applicant filed a lawsuit against the partner in about January 2006. Among other remedies, he sought to evict the partner so the house could be sold. The partner passed away in October 2007, before the legal case had concluded. Applicant and his partner owned their properties as joint tenants, so the properties automatically passed to Applicant.² The partner's heirs contested the joint tenancy and the right of survivorship. The case was ultimately resolved in Applicant's favor. Applicant spent almost \$40,000 in legal fees protecting his property interests in the two legal actions. He was unable to fight the legal battles and pay his mortgages and his unsecured debts. He chose to pay his mortgages so he would not lose the properties, and resolve the unsecured debts after the situation stabilized.³

Applicant began to address his financial issues after his legal problems ended. He contracted with a debt resolution company in March 2009, to assist him in addressing his problem and establishing payment plans. Applicant enrolled in their debt settlement program (DSP). Applicant agreed to pay \$725 per month into the DSP by automatic debit from his bank account. The company would hold the funds until they negotiated a settlement with a creditor, and would then disburse funds to the creditors. The DSP includes the creditors alleged in SOR ¶¶ 1.a, 1.b. and 1.c. The total balance of those three accounts is listed on the DSP worksheet as \$30,880.⁴

¹ Tr. at 35, 49; GE 1.

² "The primary incident of joint tenancy is survivorship, by which the entire tenancy on the decease of any joint tenant remains to the survivor." *Black's Law Dictionary*.

³ Tr. at 28-36; GE 1, 2.

⁴ Tr. at 36-41, 46-47; Applicant's response to SOR; GE 2, 5.

The SOR alleges five delinquent debts, with balances totaling \$47,122. Applicant admitted owing all the debts alleged in the SOR, with explanations. Individual debts are addressed below.

The debts alleged in SOR ¶¶ 1.a (\$12,407) and 1.b (\$10,728) are included in Applicant's DSP. They are the next debts to be addressed by the debt resolution company.⁵

Applicant admitted owing the credit union alleged in SOR ¶ 1.c for a delinquent credit card account, but he disputed owing the \$12,000 alleged in the SOR. The credit union filed a lawsuit against the Applicant in 2008. Applicant retained an attorney to defend him in the action. There were several settlement offers but they were rejected. The lawsuit was dismissed without a settlement in August 2009. Applicant and his attorney plan on renewing discussion with the credit union's attorney to pay a fair settlement of the debt. Applicant recently paid \$3,000 to settle a disputed debt to the same credit union over a separate checking account. That debt was not alleged in the SOR.⁶

SOR ¶ 1.d alleges a delinquent debt of \$4,426 to a credit card company. Applicant entered into a payment agreement with the company in April 2009. He paid \$150 in April, May, and June, 2009, and then paid the remainder in July 2009.⁷

Applicant's debt resolution company settled the \$7,561 delinquent debt alleged in SOR ¶ 1.e for \$2,100. The company paid the creditor \$700 in August, September, and October 2009.⁸

Applicant had other delinquent debts that were paid before the SOR was issued. He paid a delinquent cellular telephone services debt of \$992 in April 2009.⁹ Applicant has not received formal financial counseling. He earns a substantial salary, and he receives rent from his property. He plans to continue with his debt resolution company's DSP until his remaining delinquent debts are paid. He borrowed against his 401(k) when he was struggling. He has been repaying the 401(k) loan with \$600 monthly payments. The loan will be paid within the next few months. Once that loan is paid, he plans on obtaining another loan from the 401(k) and placing a large lump-sum into the DSP to resolve his debts. Until then, he has the resources to maintain his DSP payments.¹⁰

⁵ Tr. at 46-47; Applicant's response to SOR; GE 2.

⁶ Tr. at 42-46; Applicant's response to SOR; GE 2; AE B.

⁷ Tr. at 39-42; Applicant's response to SOR; GE 2, 5; AE .

⁸ Tr. at 36-39; Applicant's response to SOR; GE 2; AE C.

⁹ Tr. at 36-39, 50; GE 2; AE A.

¹⁰ Tr. at 47-54; GE 2.

Applicant submitted several letters attesting to his character. He is described as a “very hard worker,” a “model citizen,” and a man whose “word is his bond and he will always follow through on commitments.” A retired Army colonel stated that of all the industry professionals he has known over the last seven years, he rated Applicant in the top three “for character values and integrity.” The character references recommend him for a security clearance.¹¹

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 are to be 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, administrative judges apply the guidelines 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 the applicant or proven by Department Counsel.” The Applicant has the ultimate burden of persuasion to obtain 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 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.

¹¹ AE D, E.

Section 7 of Executive Order 10865 provides that adverse 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 *a/so* Executive Order 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 overextended is at risk of having to engage in illegal acts to generate funds.

The guideline notes several conditions that could raise security concerns under AG ¶ 19. Two are potentially applicable in this case:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant accumulated a number of delinquent debts and was unable to pay his obligations for a period. The evidence is sufficient to raise the above disqualifying conditions.

Four Financial Considerations mitigating conditions under AG ¶ 20 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; and

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

Applicant still has several debts to resolve. His financial issues are recent and ongoing. AG ¶ 20(a) is not applicable.

Applicant's finances were in good shape before several events. He lost his job in December 2005, and was unemployed until June 2006. His business partner stopped contributing to their business expenses. The partner lived in one of their properties, did not pay his share of the mortgage, utilities, and taxes, and refused to vacate. Applicant was forced to sue him. The partner died before the trial. Applicant and the partner owned their properties as joint tenants, with the right of survivorship. The deceased partner's heirs contested the joint tenancy. Applicant ultimately was declared the legal owner of the properties, but he spent almost \$40,000 in legal fees for the two actions. These all qualify as conditions that were outside his control. To be fully applicable, AG ¶ 20(b) also requires that the individual act responsibly under the circumstances. After the legal proceedings were over, Applicant went about addressing his finances. He paid several debts that were not alleged in the SOR. He contracted with a debt resolution company in March 2009, and began paying \$725 per month to their debt settlement program. The SOR alleges five delinquent debts. Applicant settled a debt without using the DSP. One debt was settled through the DSP. He has hired an attorney and was disputing in court the amount owed on another debt. The creditor dismissed the lawsuit. Applicant plans on having his attorney negotiate a fair settlement for that debt, and then pay it. The remaining two debts are the next to be addressed by the DSP. Applicant credibly testified that he plans on placing a lump-sum in the DSP to resolve those debts. In ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008), the Appeal Board discussed an applicant's burden of proof under these mitigating factors:

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." See, e.g., ISCR Case No. 05-01920 at 5 (App. Bd. Mar. 1, 2007). 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. See, e.g., ISCR Case No. 02-25499 at 2 (App. Bd. Jun. 5, 2006). 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." See, e.g., ISCR Case No. 04-09684 at 2 (App. Bd. Jul. 6, 2006). 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. See, e.g., ISCR Case No. 06-25584 at 4 (App. Bd.

Apr. 4, 2008). 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.

I find that Applicant acted responsibly under the circumstances; there are clear indications his financial problems are being resolved and are under control; and he has made a good-faith effort to repay his creditors. AG ¶¶ 20(b), 20(c), and 20(d) are applicable.

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 have incorporated my comments under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment. I considered Applicant's favorable character evidence. I also considered the circumstances that led to his financial problems and the steps he has taken to address his issues. As indicated above, an applicant is not required to establish that he has paid 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. I find that Applicant has established a plan to resolve his financial problems and has taken significant action to implement that plan. His finances do not constitute a security concern.

Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has mitigated Financial Considerations security concerns.

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.e: 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.

Edward W. Loughran
Administrative Judge