



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



In the matter of:)	
)	
)	ISCR Case No. 09-02632
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Alison O’Connell and Daniel Crowley, Esq., Department Counsel
For Applicant: *Pro se*

May 12, 2010

Decision

HEINY, Claude R., Administrative Judge:

Applicant had two accounts placed for collection, six student loans charged off, and was alleged to be \$14,000 past due on his mortgage. Applicant has paid the two accounts placed for collection and is current on his student loans and mortgage. Applicant has rebutted or mitigated the Government’s security concerns under financial considerations and personal conduct. Clearance is granted.

Statement of the Case

Applicant contests the Defense Department’s intent to deny or revoke his eligibility for an industrial security clearance. Acting under the relevant Executive Order and DoD Directive,¹ the Defense Office of Hearings and Appeals (DOHA) issued a

¹ 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 DoD on September 1, 2006.

Statement of Reasons (SOR) on July 21, 2009, detailing security concerns under financial and personal conduct.

On September 2, 2009, Applicant answered the SOR and requested a hearing. On October 13, 2009, I was assigned the case. On November 6, 2009, DOHA issued a notice of hearing scheduling the hearing, which was held on November 19, 2009. At that hearing, Applicant stated he had insufficient time to prepare for his hearing due to having just returned from an overseas deployment. A request for continuance was accepted. The case was then assigned to another judge. On December 22, 2009, the case was reassigned to me. On January 4, 2010, DOHA issued a notice of hearing scheduling the hearing, which was held on January 27, 2010.

At the hearing, the Government offered Exhibits (Ex.) 1 through 6, which were admitted into evidence without objection. Applicant testified on his own behalf and submitted Exhibits A through G, which were admitted into evidence without objection. The record was held open to allow additional information to be presented. On February 9, 2010, additional material was received. Department Counsel had no objection to the material, which was admitted into the record as Ex. H. On November 30, 2009 and February 4, 2010, transcripts (Tr.) were received.

Findings of Fact

In Applicant's Answer to the SOR, he denied the factual allegations of the SOR. After a thorough review of the record, pleadings, exhibits, and testimony, I make the following additional findings of fact:

Applicant is a 31-year-old electronic engineer who has worked for a defense contractor since May 2001, and is seeking to maintain a security clearance.

In January 2009, Applicant completed an Electronic Questionnaires for Investigations Processing (e-QIP). He answered "no" to section 28. a and 28.b., which asked if he had, in the prior seven years, ever been more than 180 days delinquent on any debt or was he currently more than 90 days delinquent on any debt. When he completed his e-QIP, creditors were not contacting him to demand payment of delinquent accounts. (Tr. 57) When Applicant obtained a current credit report, he learned of the unpaid \$135 cable bill (SOR ¶ 1.a) and the \$2,743 furniture bill (SOR ¶ 1.b). (Tr. 58)

In December 2008, Applicant's credit was good enough for him to purchase a new truck to replace a 12-year-old vehicle. (Ex. 2; Tr. 52) The loan had been preapproved at seven percent. He declined the preapproved loan to accept a four percent loan. (Tr. 51, 61)

Applicant's television cable changed from one provider to another. One monthly payment was missed during the transition and a \$135 debt was placed for collection. (Tr. 30) The debt was paid in August 2009. (Ex. A)

In 2001, Applicant purchased furniture (SOR ¶ 1.b) and thought the account had been paid. (Tr. 31, 39) Before February 2009, Applicant contacted the creditor listed in SOR ¶ 1.b and asserted he was told there was no current account. (Ex. 2) In August 2009, Applicant paid \$829, which was accepted as full settlement on the account. (Ex. A)

Applicant obtained six student loans (SOR ¶ 1.c, 1.d., 1.e., 1.f, 1.g, and 1.h), which totaled \$23,331. Applicant asserted he had made payments on his student loans, but the bank applied his payments to the wrong accounts and did not properly credit his payments. (Ex. 2) Applicant has now authorized the creditor to debit his checking account to make the student loan payments. (Ex. D, Tr. 43) Applicant does not write checks to the creditor, but allowed the account to be debited. (Ex. C, D, E, H, Tr. 32) Applicant has been unsuccessful in consolidating his student loans. During 2009, Applicant paid \$2,500 in student loan interest. (Ex. H)

In June 2001, Applicant purchased his home for \$103,000. Currently, Applicant owes \$82,000 on his home which has a fair market value of \$119,000. (Tr. 47) The SOR asserts Applicant was more than 120 days past due on \$14,416 (SOR ¶ 1.a). Applicant asserts he has always made his mortgage payments on time. His monthly mortgage payments were recently lowered from \$1,200 per month to \$1,049. (Ex. B) To be \$14,416 past due, Applicant asserted for a past due amount of this size to have been accumulated he would have had to miss 12 months of payments, which he denies. He states he has never received any past due notices, foreclosure letters, or been assessed a late fee by his mortgage company. (Tr. 60)

In March 2009, Applicant's wife called their mortgage company to dispute the amount owed. In May 2009, she was told the account was current. (Ex. 2) In September 2009, the mortgage company indicated the account was being reviewed and Applicant should continue making his \$1,049 monthly payments, which he has made. (Ex. B, Ex. F) For 2009, Applicant paid \$7,741 in home mortgage interest. (Ex. H)

In 2008, Applicant's wife had her identity stolen, which resulted in them changing banks. (Tr. 38) Applicant's wife handles the household's finances. Applicant travels and there have been times when he was home for only a week every four or five months. (Tr. 46) Applicant's wife's yearly income is \$45,000. (Tr. 46) As of May 2009, Applicant and his wife's gross monthly income was approximately \$7,000. Their monthly expenses and debt payments were approximately \$5,900, which left a net monthly remainder of \$1,300. (Ex. 2)

Applicant has \$4,500 in a 401(k) retirement account. (Tr. 50) Applicant maintains one personal credit card he uses when traveling with his job. (Tr. 49) Applicant and his wife use a spreadsheet to budget their income and expenses. (Tr. 55) Last year, they had \$3,000 to \$4,000 in unreimbursed medical expenses. (Tr. 55)

A summary of Applicant's accounts charged off, accounts placed for collection, and past due obligations and their current status follows:

- SOR 1.a, a \$135 cable bill paid in August 2009, after receiving the SOR. (Ex. A)
- SOR 1.b, a \$1,935 was settled and \$829 was paid in August 2009, after receiving the SOR. (Ex. A)
- SOR 1.c through 1.g, \$23,331 in student loans being paid as agreed. Applicant is paying his student loans as agreed. (Ex. C, D, E, H)
- SOR 1.h, past due mortgage payment. Applicant is paying his mortgage as agreed. (Ex. B, F, H)

Policies

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

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

Adjudicative Guideline (AG) ¶ 18 articulates the security concerns 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.

Additionally, an individual who is financially irresponsible may also be irresponsible, unconcerned, negligent, or careless in properly handling and safeguarding classified information. Behaving responsibly or irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life.

A person's relationship with his creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to repay debts as agreed. Absent substantial evidence of extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a position of risk that is inconsistent with holding a security clearance. An applicant is not required to be debt free, but is required to manage his finances to meet his financial obligations.

The record evidence supports a conclusion Applicant had two accounts placed for collection and six student loans that were charged off. It was also asserted he had been 120 days past due on his mortgage. Disqualifying Conditions AG ¶ 19(a), “inability or unwillingness to satisfy debts” and AG ¶ 19(c), “a history of not meeting financial obligations,” apply.

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.

Under AG ¶ 20(a), Applicant's financial problems are recent. The two charged-off-accounts were paid in August 2009 AG ¶ 20(a) does not apply. Under AG ¶ 20(b), Applicant incurred \$3,000 to \$4,000 in unreimbursed medical expense last year, which were related to or caused by events beyond his control. However, AG ¶ 20(b) has only limited application when this amount is considered against Applicant's and his wife's annual salary. Additionally, Applicant failed to indicate how these debts affected his ability to pay the SOR obligations.

Although Applicant has not received counseling, AG ¶ 20(c) applies because there are clear indications the problem is being resolved or is under control. Applicant paid the two accounts placed for collection. He has allowed his student loan creditor to debit his checking account as necessary to pay his loans. His mortgage payments are current. Because he is current on his student loan payments and his mortgage, AG ¶ 20(d) applies.

AG ¶ 20(e) has limited application. It appears that Applicant's financial problem arose out of two creditors not properly crediting payments he was making for his mortgage and student loans. There is no documented proof substantiating the claim related to his student loans and the only documentation related to his mortgage is the letter (Ex. B) indicating his mortgage account was being reviewed. There is no indication of the findings made in the review, if any.

Personal Conduct

AG ¶ 15 articulates the security concerns relating to personal conduct:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

When Applicant completed his January 2009 e-QIP, his answers related to debts ever being more than 180 days delinquent or currently more than 90 days delinquent were incorrect, but this does not prove Applicant deliberately failed to disclose information about his finances. Applicant denied any intentional falsification. Deliberate omission, concealment, or falsification of a material fact in any written document or oral statement to the Government, when applying for a security clearance, is a security concern. But every inaccurate statement is not a falsification. A falsification must be deliberate and material. It is deliberate if it is done knowingly and willfully.

When Applicant completed his e-QIP, he was unaware he had any delinquent debts. He knew that he had previously had problems having his student loan payment properly credited, but was unaware of any delinquencies. He was not receiving, and had not received, any letter or calls from creditors indicating he was past due on obligations or had unpaid accounts, accounts charged off, or accounts placed for collection.

When he completed his e-QIP, he believed all his debts were in good standing. Having observed Applicant's demeanor and listened to his testimony, I find his answers were not deliberate omissions, concealments, or falsifications. I find for Applicant as to SOR ¶ 2.a.

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. Applicant has paid two of the accounts and is current on his student loans and mortgage. Of course, the issue is not simply whether all his debts are paid—it is whether his financial circumstances raise concerns about his fitness to hold a security clearance. (See AG ¶ 2(a)(1).)

Applicant had problems with the creditor properly crediting his student loan payments. This has been corrected by Applicant allowing the creditor to debit his checking account as necessary. During 2009, he paid \$2,500 in student loan interest and \$7,741 in mortgage interest. Applicant is current on his mortgage and student loan obligations. In 2009, when he completed his e-QIP, he was unaware of any financial problems.

Overall, the record evidence leaves me without questions or doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the financial and personal conduct 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, Financial Considerations: FOR APPLICANT

Subparagraph 1.a—1.i: For Applicant

Paragraph 2, Personal Conduct: FOR APPLICANT

Subparagraph 2.a: 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.

CLAUDE R. HEINY II
Administrative Judge