



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



In the matter of:)	
)	
)	ISCR Case No. 09-02963
)	
Applicant for Security Clearance)	

Appearances

For Government: Daniel F. Crowley, Esq., Department Counsel
For Applicant: *Pro Se*

February 26, 2010

Decision

HEINY, Claude R., Administrative Judge:

Applicant owed five past due, charged-off, or placed for collection accounts, which totaled approximately \$28,000. He paid two of the debts and is making payments on the other three. Applicant has rebutted or mitigated the government’s security concerns under financial considerations. 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 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.

Statement of Reasons (SOR) on July 7, 2009, detailing security concerns under financial considerations.

On July 14, 2009, Applicant answered the SOR, and requested a hearing. On August 5, 2009, I was assigned the case. On August 17, 2009, DOHA issued a notice of hearing scheduling the hearing, which was held on September 23, 2009.

The government offered Exhibits (Ex.) 1 through 7, which were admitted into evidence. Applicant testified on his own behalf and submitted Exhibits A through E, which were admitted into evidence. The record was held open to allow additional information from Applicant. On October 1, 2009, additional material was submitted. Department Counsel had no objection to the material, which was admitted into the record as Ex. F through I. On October 1, 2009, the transcript (Tr.) was received.

Findings of Fact

In Applicant's Answer to the SOR, he admits the five debts. Applicant's admissions to the SOR allegations are incorporated herein. After a thorough review of the record, pleadings, exhibits, and testimony, I make the following additional findings of fact:

Applicant is a 54-year-old military analyst who has worked for a defense contractor since July 2007, and is seeking to maintain a security clearance. Applicant was in the military 20 years retiring as a Warrant Officer 3. (Tr. 30)

In July 2007, Applicant was divorced. The divorce decree made him responsible for all the marital debt. (Ex. 6, 8) Applicant relinquished none of his military retirement income since he had helped his ex-wife obtain her bachelor's and master's degree in education. In 2008, he became behind on his debts.

As the divorce proceeded, Applicant sought financial counseling. (Tr. 26) He learned about debt, credit, revolving accounts, and secured accounts. In September 2008, he had 12 past due revolving accounts. (Ex. C) He has now paid four accounts, settled one, five others are current, and only two remain past due. (Ex. C) As of September 2008, Applicant had seven secured accounts none of which were past due and currently none are past due. (Ex. D) His plan is currently to address the small debts first, get them paid, and then address the larger debts. (Tr. 28)

Applicant is current on his mortgage and vehicle loan. (Tr. 28) He owns two real estate properties. One he owned before he joined the military, on which there is a \$50,000 mortgage. His daughter lives in that home. (Tr. 47) The other is his home on which there is a \$260,000 mortgage. (Tr. 45, 46) He has recently paid off his daughter's vehicle and assists his wife with his daughter's university expenses. (Tr. 28)

In January 2009, Applicant was interviewed about his delinquent accounts. At that time, Applicant owed a telephone service provider \$385 (SOR ¶ 1.a). The creditor

offered to settle this debt for \$231; however, Applicant did not accept the offer, but instead chose to pay the full amount of the debt. (Ex. C, Tr. 38)

Applicant made \$150 monthly payments on the \$5,822 credit card debt (SOR ¶ 1.b). The exact number of payments is not part of the record. In April 2009, the creditor offered to settle this debt for \$2,622, which Applicant accepted and paid. (Ex. 8, F, G) He was making \$150 monthly payments on the \$6,948 credit card debt (SOR ¶ 1.c). Between January 2009 and June 2009, Applicant made \$990 in payment on this debt. (Ex. 7) As of September 2009, the amount owed on the debt was \$5,948. (Ex. I)

Applicant was making monthly payments of \$100 to \$150 on the \$8,597 credit card debt (SOR ¶ 1.d). Between June 2008 and June 2009, Applicant paid \$2,062 on this debt. (Ex. 8) He continues to make \$150 monthly payments on this debt. As of September 2009, the balance on this debt was \$7,461. (Ex. H)

Applicant and his ex-wife owe approximately \$6,666 for past due federal income tax (SOR ¶ 1.e) for tax year 2006. In 2006, Applicant and his wife opened IRAs as part of their retirement plan. (Tr. 35) The IRA was not properly credited towards their taxes. Both Applicant and his ex-wife were to make \$125 monthly payments on the debt, which he has done. (Ex. 6) He provided proof of making payments in July, August, and September 2009. As of August 2009, the balance owed on this account was \$5,081. (Ex. E) Applicant did not know if his ex-wife was making her payments.

Applicant's monthly income is \$4,700 and his monthly military retirement is \$2,500. In June 2009, Applicant provided a personal financial statement (PFS). (Ex. 7) His gross monthly income was approximately \$6,500, his monthly expenses were approximately \$2,900, and he was paying \$3,400 monthly on his debts. His net monthly remainder was \$219.

A summary of Applicant five accounts placed for collection and other past due obligations and the current status of those debts follows:

	Creditor	Amount	Current Status
a	Collection company collecting for a telephone bill.	\$385	Paid. The creditor offered to settle this matter for \$231; however, Applicant chose to pay the full amount of the debt. (Ex. C, Tr. 38)
b	Credit card account was charged off.	\$5,822	In April 2009, an offer of settlement accepted and \$2,622 paid. (Ex. F, G)
c	\$630 was past due on credit card account.	\$6,948	Applicant is making monthly payments on this debt. As of September 2009, the amount owed on the debt was \$5,948. (Ex. I)

	Creditor	Amount	Current Status
d	Credit card account placed for collection.	\$8,597	Applicant is paying \$150 per month on this debt. Balance as of September 2009, was \$7,461. (Ex. 8, H)
e	IRS for past due federal income tax.	\$6,666	Applicant is paying \$125 per month on this debt. Balance as of August 2009, was \$5,081. (Ex. E)
	Total debt listed in SOR	\$28,418	

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. 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 for 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

Revised 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 so as to meet his financial obligations.

The record evidence supports a conclusion Applicant had a history of financial problems. Following his divorce, Applicant became delinquent on five debts, which totaled in excess of \$28,000. 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; or

(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 delinquent debts are recent for they became past due following his July 2007 divorce. It is unlikely Applicant will be experiencing another divorce in the near future. The obligations 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. AG ¶ 20(a) has some applicability.

Under AG ¶ 20(b), Applicant experienced a divorce, which is a condition beyond his control, along with the financial burden associated with it. AG ¶ 20(b) applies. AG ¶ 20(c) fully applies. Applicant has received financial counseling. Moreover, he demonstrated a firm grasp of budgeting, payment plans, and expense reduction. He has the self-discipline necessary to reduce and resolve his debts. There are "clear indications that the problem is being resolved or is under control."

Applicant has also established full mitigation under AG ¶ 20(d) because he showed good faith² in the resolution of her SOR debts. For AG ¶ 20 (d) to apply there

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

must be an “ability” to repay the debts, the “desire” to repay, and evidence of a good-faith effort to repay. A systematic, concrete method of handling his debts is needed, which is present here.

Applicant received a settlement offer on one debt, but chose to pay the full amount of the debt. He received a settlement offer on another debt, which he accepted and paid. He currently makes \$125 monthly payments to the IRS and monthly payments on the two remaining credit card accounts.

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. The debts incurred were not the type that indicates poor self-control, lack of judgment, or unwillingness to abide by rules and regulations. Money was not spent frivolously.

Two of the debts have been paid and Applicant is making timely payment on the three remaining debts. Of course, the issue is not simply whether all his debts are paid or being paid—it is whether his financial circumstances raise concerns about his fitness to hold a security clearance. (See AG ¶ 2(a)(1).) There is nothing in Applicant’s conduct or past actions which cause me 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

bankruptcy [or statute of limitations]) 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)).

conclude Applicant mitigated the security concerns arising from his 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, Financial Considerations: FOR APPLICANT

Subparagraph 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.

CLAUDE R. HEINY II
Administrative Judge