



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



In the matter of:)	
)	
-----)	ISCR Case No. 10-00969
SSN: -----)	
)	
Applicant for Security Clearance)	

Appearances

For Government: D. Michael Lyles, Esquire, Department Counsel
For Applicant: Alan V. Edmunds, Esquire

November 26, 2010

Decision

GALES, Robert Robinson, Administrative Judge:

Applicant mitigated the security concerns regarding financial considerations. Eligibility for a security clearance or access to classified information is granted.

Statement of the Case

On July 2, 2007, Applicant applied for a security clearance and submitted an Electronic Questionnaire for Investigations Processing (e-QIP) version of a Security Clearance Application (SF 86).¹ On an unspecified date, the Defense Office of Hearings and Appeals (DOHA) issued him a set of interrogatories pertaining to his financial situation. He responded to the interrogatories on April 9, 2010.² On May 13, 2010, DOHA issued a Statement of Reasons (SOR) to him, pursuant to 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 and modified

¹ Government Exhibit 1 (SF 86), dated July 2, 2007.

² Government Exhibit 2 (Applicant's Answers to Interrogatories, dated April 9, 2010).

(Directive); and the *Adjudicative Guidelines for Determining Eligibility For Access to Classified Information* (December 29, 2005) (AG) for all adjudications and other determinations made under the Directive. The SOR alleged security concerns under Guideline F (Financial Considerations), and detailed reasons why DOHA could not make a preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant, and recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

Applicant acknowledged receipt of the SOR on May 24, 2010. In a sworn, written statement, dated June 9, 2010, Applicant responded to the SOR allegations and requested a hearing before an administrative judge. Department Counsel indicated the Government was prepared to proceed on July 8, 2010, and the case was assigned to me on August 4, 2010. A Notice of Hearing was issued on August 23, 2010, and I convened the hearing, as scheduled, on September 23, 2010.

During the hearing, 5 Government exhibits (1-5) and 13 Applicant exhibits (A-M) were admitted into evidence without objection. Applicant and two witnesses testified on his behalf. The record remained open to afford Applicant the opportunity to supplement it, and on September 28, 2010, he submitted four additional exhibits (N-Q) that were admitted into evidence without objection. The transcript was received on October 1, 2010.

Findings of Fact

In his Answer to the SOR, Applicant admitted all of the factual allegations in ¶¶ 1.a. through 1.i. of the SOR. Applicant's admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence in the record, and upon due consideration of same, I make the following additional findings of fact:

Applicant is a 57-year-old employee of a defense contractor, currently serving as a senior mechanical engineer,³ and he is seeking to retain a SECRET security clearance. A high school graduate with substantial university credits,⁴ he has no military experience.⁵ He was granted a SECRET security clearance in 1984.⁶ He assumed his position with his current employer in September 1984.⁷

Applicant was married in 1977 and divorced in 1978.⁸ He married his current wife in 1985.⁹ He has two stepchildren (both born in 1974).¹⁰

³ Government Exhibit 1, *supra* note 1, at 11.

⁴ Applicant Exhibit K (Student Grade Report, dated January 9, 1996); *Id.* at 10.

⁵ *Id.* Government Exhibit 1, at 22-23.

⁶ *Id.* at 29-30.

⁷ *Id.* at 10-11.

⁸ *Id.* at 15.

Financial Considerations

Because of her poor health, Applicant's mother-in-law was relocated to, and resided in, Applicant's home for about 17 years.¹¹ His father's poor health resulted in his relocation as well, and he resided in Applicant's home for six years.¹² Applicant's wife was the primary care provider, and she used as much annual and family leave, as well as leave without pay, as possible before being forced to relinquish her full-time position in 2005, in favor of a part-time position.¹³ His wife remained in a part-time status for nearly two and one-half years.¹⁴ Her annual full-time salary was \$23,000, and her part-time annual salary was between \$10,000 and \$12,000.¹⁵

There was nothing unusual about Applicant's finances until about 2005, when his mother-in-law's health deteriorated.¹⁶ Although Applicant was receiving their cumulative \$1,000 monthly Social Security contributions,¹⁷ the routine family expenses, including medications for the parents and medical care for his mother-in-law, and his wife's loss of income, began to take their toll on the family finances.¹⁸ In May 2007, Applicant's mother-in-law passed away, and nine months later, in February 2008, his father passed away.¹⁹ Following the loss of her mother, Applicant's wife became depressed, unable to perform meaningful activities, including the handling of family finances, for about eight months.²⁰ The loss of the Social Security contributions because of their respective deaths reduced the family monthly income and although Applicant's wife was eventually able to return to her part-time position, the full-time position was no longer available.²¹ With depleted savings, and reduced income, some unanticipated expenses, including

⁹ *Id.* at 13.

¹⁰ *Id.* at 18-19.

¹¹ Tr. at 39.

¹² *Id.*

¹³ *Id.* at 40, 45.

¹⁴ *Id.* at 41.

¹⁵ *Id.* at 55.

¹⁶ *Id.* at 48.

¹⁷ *Id.* at 42.

¹⁸ *Id.* at 48.

¹⁹ Applicant Exhibit P (Newspaper death notices).

²⁰ Tr. at 64-65.

²¹ *Id.* at 51.

\$15,000 in funeral expenses, had to be paid by using credit cards.²² None of Applicant's, nor his wife's, siblings would or could assist them with expenses.²³

Applicant had previously been able to remain current with all of his financial obligations, and initially, unsuccessfully, attempted to withdraw funds from his 401(k) to do so.²⁴ He eventually prevailed, and was permitted to withdraw \$2,000, and applied that money to his credit cards.²⁵ He also tried to get as much overtime as possible and he and his wife took odd jobs to generate funds because they did not want to resort to bankruptcy.²⁶ Although Applicant's wife had the primary responsibility for the bills, Applicant periodically inquired as to their status, but was advised that everything was under control.²⁷ At some unspecified point, Applicant failed to keep up with his monthly payments, causing interest rates to increase, and accounts started to become delinquent. Some of the accounts were placed for collection with a variety of collection agents, and some of the accounts were charged off.²⁸

For a period of about six months, Applicant worked with an unspecified individual or company in an effort to consolidate his debts, but the proposed payments would have been higher than if he had continued making minimum payments.²⁹ His wife even called several creditors seeking to make settlements, but the creditors were not willing to do so.³⁰ Finally, when nothing seemed to work favorably, they sought the assistance of a bankruptcy attorney, and based upon his advice, they stopped all payments on their delinquent accounts.³¹ About one year later, on April 7, 2010, Applicant and his wife filed a joint voluntary petition for bankruptcy under Chapter 7 of the U.S. Bankruptcy Code.³² In the petition, he listed \$188,940 in assets (including \$180,000.00 in real property), and \$279,059.32 in liabilities.³³ Applicant and his wife reported creditors holding unsecured nonpriority claims worth \$71,496.32.³⁴ They were granted a discharge on August 2, 2010.³⁵

²² *Id.* at 75-76.

²³ *Id.* at 79, 81-83.

²⁴ *Id.* at 56-57.

²⁵ *Id.* at 70-71.

²⁶ *Id.* at 57, 63.

²⁷ *Id.* at 85-86.

²⁸ Government Exhibit 5 (Combined Experian, TransUnion, and Equifax Credit Report, dated July 14, 2007); Government Exhibit 4 (Combined Experian, TransUnion, and Equifax Credit Report, dated October 17, 2009).

²⁹ Tr. at 63.

³⁰ *Id.* at 54.

³¹ *Id.* at 85.

³² Applicant Exhibit O (Voluntary Petition, dated April 7, 2010).

³³ *Id.* (Summary of Schedules).

The SOR identified eight purportedly continuing delinquencies as reflected by credit reports from 2007, 2009, and 2010, totaling approximately \$53,684. Some accounts reflected in the credit reports have been transferred, reassigned, or sold to other creditors or collection agents. Other accounts are referenced repeatedly in these as well as other different credit reports, in many instances duplicating other accounts listed, either under the same creditor name or under a different creditor name. Some accounts are identified by complete account numbers, while others are identified by partial account numbers, in some instances eliminating the last four digits and in others eliminating other digits. Some accounts reflect no account number. Among the debts discharged were the ones listed in ¶¶ 1.a through 1.h. of the SOR.³⁶

On April 7, 2010, Applicant prepared a personal financial statement indicating combined monthly net income of \$5,020.27, monthly expenses of \$1,975.00, monthly debt repayments of \$1,796.59, and a net remainder of \$1,248.68 available for discretionary spending.³⁷ His wife was laid off from her part-time job in July 2010.³⁸ Applicant's current annual salary is \$85,498.00.³⁹ He currently has no delinquent accounts.⁴⁰

On May 15, 2010, Applicant and his wife completed a course on personal financial management given on the Internet as required by the U.S. Bankruptcy Court.⁴¹

Character References

Several family friends and co-workers are supportive of Applicant and have characterized him as honest, trustworthy, a faithful family man, reserved, positive,

³⁴ *Id.* (Schedule F – Creditors Holding Unsecured Nonpriority Claims).

³⁵ Applicant Exhibit N (Discharge of Joint Debtors, dated August 2, 2010).

³⁶ Tr. at 61-62.

³⁷ Personal Financial Statement, dated April 7, 2010, attached to Government Exhibit 2, *supra* note 2.

³⁸ Tr. at 57.

³⁹ Applicant Exhibit M (Leave and Earnings Statement, dated September 23, 2010).

⁴⁰ *Id.* at 70; The SOR did not allege that Applicant had more than the eight purportedly delinquent accounts. In ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006) the Appeal Board listed five circumstances in which conduct not alleged in an SOR may be considered stating:

(a) to assess an applicant's credibility; (b) to evaluate an applicant's evidence of extenuation, mitigation, or changed circumstances; (c) to consider whether an applicant has demonstrated successful rehabilitation; (d) to decide whether a particular provision of the Adjudicative Guidelines is applicable; or (e) to provide evidence for whole person analysis under Directive Section 6.3.

(citing ISCR Case No. 02-07218 at 3 (App. Bd. Mar. 15, 2004); ISCR Case No. 00-0633 at 3 (App. Bd. Oct. 24, 2003)). I have considered the non-SOR derogatory information in this decision for the purposes authorized by the Appeal Board.

⁴¹ Applicant Exhibit O (Certificate of Debtor Education, dated May 15, 2010), *supra* note 32.

steady, committed, hardworking, honest, loyal, and possessing integrity.⁴² A review of his employee performance assessments for the past four years reveal overall assessments of “high contributor” or “successful contributor” the second and third highest of the five possible definitions.⁴³

Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security emphasizing, “no one has a ‘right’ to a security clearance.”⁴⁴ As Commander in Chief, the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information. The President has authorized the Secretary of Defense or his designee to grant an applicant eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.”⁴⁵

When evaluating an applicant’s suitability for a security clearance, the administrative judge must consider the AG. In addition to brief introductory explanations for each guideline, the AG list potentially disqualifying conditions and mitigating conditions, which are used in evaluating an applicant’s eligibility for access to classified information.

An administrative judge need not view the guidelines as inflexible, ironclad rules of law. Instead, acknowledging 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. 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 meaningful decision.

In the decision-making process, facts must be established by “substantial evidence.”⁴⁶ The Government initially has the burden of producing evidence to establish a potentially disqualifying condition under the Directive, and has the burden of establishing controverted facts alleged in the SOR. Once the Government has produced substantial evidence of a disqualifying condition, under Directive ¶ E3.1.15, the

⁴² Applicant’s Exhibits A – D (Letters of Recommendation, various dates).

⁴³ Applicant Exhibits E – H (Performance Assessment and Development Review, various dates).

⁴⁴ *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

⁴⁵ Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.

⁴⁶ “Substantial evidence [is] such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all contrary evidence in the record.” ISCR Case No. 04-11463 at 2 (App. Bd. Aug. 4, 2006) (citing Directive ¶ E3.1.32.1). “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994).

applicant has the burden of persuasion to present evidence in refutation, explanation, extenuation or mitigation, sufficient to overcome the doubts raised by the Government's case. The burden of disproving a mitigating condition never shifts to the Government.⁴⁷

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 as well. It is because of this special relationship that the Government must be able to repose a high degree of trust and confidence in those 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. Furthermore, "security clearance determinations should err, if they must, on the side of denials."⁴⁸

Clearance decisions must be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned."⁴⁹ Thus, nothing in this decision should be construed to suggest that I have based this decision, in whole or in part, on any express or implied determination as to Applicant's allegiance, loyalty, or patriotism. It is merely an indication the Applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance. 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.

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. . . .

⁴⁷ See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

⁴⁸ *Egan*, 484 U.S. at 531

⁴⁹ See Exec. Or. 10865 § 7.

The guideline notes several conditions that could raise security concerns. Under AG ¶ 19(a), an “inability or unwillingness to satisfy debts” is potentially disqualifying. Similarly, under AG ¶ 19(c), “a history of not meeting financial obligations” may raise security concerns. Also, under AG ¶ 19(e), “consistent spending beyond one’s means, which may be indicated by excessive indebtedness, significant negative cash flow, high debt-to-income ratio, and/or other financial analysis,” is potentially disqualifying.

As noted above, there was nothing unusual about Applicant’s finances until about 2005. At some unspecified point, he failed to keep up with his monthly payments, and accounts started to become delinquent. Some accounts were placed for collection and some accounts were charged off. Applicant attributed his financial situation to having stretched his income while his wife had reduced her income to care for her mother and his father for a substantial period. AG ¶¶ 19(a), 19(c), and 19(e) apply.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Under AG ¶ 20(a), the disqualifying condition may be mitigated where “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.” Also, under AG ¶ 20(b), financial security concerns may be mitigated where “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.” Evidence that “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” is potentially mitigating under AG ¶ 20(c). Similarly, AG ¶ 20(d) applies where the evidence shows “the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.”⁵⁰

Applicant’s financial problems commenced sometime in 2005, when his mother-in-law’s health began to deteriorate. Because his financial difficulties commenced five years ago, and continued until 2010, it was initially frequent and continuing in nature. However, Applicant eventually took the situation under control, and, although he attempted to avoid bankruptcy, eventually succumbed to it and resolved all of the delinquent accounts by having them discharged in bankruptcy. His initial reliance on his

⁵⁰ The 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 [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)).

wife's handling the family finances raised significant doubt as to his reliability, trustworthiness, and good judgment, but his subsequent involvement in the handling of his finances, as well as his decision to seek resolution under Chapter 7 of the U.S. Bankruptcy Code, under the circumstances, has eliminated such doubts. AG ¶ 20(a) applies because it is unlikely to recur and does not cast doubt on Applicant's current reliability, trustworthiness, and good judgment.⁵¹

AG ¶ 20(b) applies because Applicant went through a lengthy period during which his wife had to surrender her full-time position, along with substantial pay and benefits, to serve as primary caregiver to her mother and his father for a lengthy period. The costs associated with that family endeavor were both tangible and intangible, resulting in monetary loss and an impact on his wife's mental health. When his mother-in-law and his father died, they were faced with reduced income and increased expenses associated with their respective funerals. His wife's lengthy part-time employment and inability to reacquire full-time employment only exacerbated the financial problems. Her depression following the death of her mother also contributed to the problem. These events were clearly beyond Applicant's control, and Applicant acted responsibly to address the debts that resulted.⁵²

AG ¶ 20(c) applies because Applicant received financial counseling associated with his bankruptcy, and there is clear and abundant evidence that his financial problems are resolved and are under control. He no longer has any delinquent accounts, has established a budget, presented a personal financial statement, and now has a monthly net remainder available as savings for emergencies.

AG ¶ 20(d) partially applies because Applicant attempted to address his delinquent debts well before the SOR was issued. Nevertheless, circumstances were such that he was unable to resolve them either by settling them or by paying them off, although he attempted to do so.⁵³ As a result, he reluctantly turned to an attorney who advised that he file for bankruptcy. It took him some time to gather the funds necessary to do so, but he did, and all of his delinquent debts were discharged.

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):

⁵¹ See ISCR Case No. 09-08533 at 3-4 (App. Bd. Oct. 6, 2010).

⁵² *Id.* at 4.

⁵³ "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 or she maintained contact with creditors and attempted to negotiate partial payments to keep debts current.

(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.

There is some evidence against mitigating Applicant's conduct. Applicant has a history of financial delinquencies commencing in 2005. He lived beyond his means and permitted accounts to become delinquent and placed for collection or charged off.

The mitigating evidence under the whole-person concept is substantial. Those delinquencies were the unfortunate consequence of his wife's relinquishing her full-time position in favor of a part-time position to furnish necessary primary care for her mother and Applicant's father. There were health expenses and funeral expenses along with the loss of \$1,000 a month in Social Security benefits. While it is true that he was unable to successfully address his delinquent accounts by settling or paying them off, he finally resolved them. His unsuccessful efforts should not be overlooked simply because he eventually turned to bankruptcy. Applicant's financial situation is now excellent with a substantial monthly net remainder available for savings, discretionary spending, or emergency use. I have evaluated the various aspects of this case in light of the totality of the record evidence and have not merely performed a piecemeal analysis.⁵⁴ His substantial good-faith efforts are sufficient to mitigate continuing security concerns. See AG ¶ 2(a)(1) through AG ¶ 2(a)(9).

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
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	For Applicant
Subparagraph 1.e:	For Applicant

⁵⁴ See *U.S. v. Bottone*, 365 F.2d 389, 392 (2d Cir. 1966); See also ISCR Case No. 03-22861 at 2-3 (App. Bd. Jun. 2, 2006).

Subparagraph 1.f:	For Applicant
Subparagraph 1.g:	For Applicant
Subparagraph 1.h:	For Applicant
Subparagraph 1.i:	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.

ROBERT ROBINSON GALES
Administrative Judge