



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 09-03774

Appearances

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

February 17, 2010

Decision

WHITE, David M., Administrative Judge:

Applicant has resolved all but one of the delinquent debts that accrued five years ago during a former relationship. He makes regular payments toward this last debt, and has established a track record of financial responsibility and solvency. Based upon a thorough review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

Applicant submitted his security clearance application on January 9, 2009. On July 22, 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 acknowledged receipt of the SOR on July 28, 2009. He answered the SOR in

writing on August 11, 2009, and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on September 11, 2009, and DOHA assigned the case to me on September 21, 2009.

DOHA issued a Notice of Hearing on October 1, 2009, and I convened the hearing as scheduled on October 28, 2009. Department Counsel offered Government Exhibits (GE) 1 through 6, which were admitted without objection. Applicant testified on his own behalf, and offered Applicant Exhibits (AE) A through G, which were also admitted without objection. I granted Applicant's request to leave the record open until November 12, 2009, for submission of additional evidence. DOHA received the transcript of the hearing (Tr.) on November 4, 2009. On November 10, 2009, Applicant submitted his budget statement, performance evaluation, record of Navy awards, multiple citations for exceptional performance, and conditional settlement offer for his larger remaining debt, which were marked AE H through L and admitted without objection. I reopened the record on February 2, 2010, to accept proof from Applicant that he had resolved that debt by paying the collection agency the offered settlement amount (AE M). Department Counsel did not object to this additional evidence.

Findings of Fact

Applicant is a 33-year-old security specialist directly employed by a defense contractor for almost two years. He performed similar work for the same company under contract for the preceding two years. In his answer to the SOR, Applicant admitted the truth of both allegations set forth therein. Those admissions are incorporated into the following findings of fact.

Applicant has never been married. He has one child from a previous relationship, and recently began living with his current girlfriend. He has six years active duty and two years active reserve military service, and held a security clearance since he enlisted in 1996. He earned a Good Conduct Medal and Navy Unit Commendation, and was honorably discharged. (GE 1; AE J; Tr. at 40, 56.)

While Applicant lived with his child's mother, from 2002 to 2005, she was financially irresponsible and regularly spent more than they earned. Applicant worked a lot, and had little to do with budgeting or household finances. He did realize in general terms that they were spending irresponsibly, however. As a result, when the relationship ended he had accrued substantial delinquent debt. He negotiated and paid settlements with five or six of his former creditors between 2006 and early 2008 to resolve those accounts. The two delinquent accounts alleged in the SOR remained unresolved at the time of his hearing, however. (AE G; Tr. at 34-36, 39-40, 46-47, 70.)

The \$5,922 debt alleged in SOR ¶ 1.a is a medical bill for a surgical procedure Applicant underwent in 2005. He thought he had medical insurance that would cover most of the cost. Unknown to him, however, his policy had been cancelled a month or two earlier because there were insufficient funds in his bank account to cover the scheduled automatic premium payments. His child's mother had spent the money on

other things without informing him of the resulting cancellation of his medical insurance. When he learned of the bill, he made a few payments, totaling \$150, but then moved after breaking up with his child's mother, and forgot to make subsequent payments. The company did not send him further bills, and he was unaware of this debt until advised of it during his security interview. The record credit reports indicate the original debt was \$5,922, but the present balance was \$5,772. Applicant paid this creditor \$125 on September 25, 2009, and \$75 on October 22, 2009, so the current balance is now \$5,572. Applicant intends to continue paying this creditor until the debt is resolved. (GE 2 at 3, GE 3 at 1; GE 4 at 1; GE 5 at 1; AE D; Tr. at 36, 58-59, 63-65.)

The approximately \$14,000 debt alleged in SOR ¶ 1.b is a collection account for what originated as a \$6,408 credit card debt. Applicant's February 14, 2009, credit report showed a \$13,424 balance, and by his October 25, 2009, credit report the balance due rose to \$14,918. Sometime in 2006 or 2007, Applicant contacted the collection agency to attempt to negotiate a settlement on this debt. The creditor refused to accept a reduced amount that he could afford to pay, so he did not pay them anything. Instead, in October 2007, he entered into an agreement with a company to represent him in negotiating a settlement. He paid this company the agreed fees totaling \$1,680 over 17 months, but did not thereafter save sufficient funds to finance any of the settlements the company was tentatively able to negotiate on his behalf before his hearing. In "trying to make some sort of good-faith payment," that some people told him would probably be in his best interest, Applicant made one \$25 payment to this creditor on October 22, 2009. On November 11, 2009, Applicant received a conditional settlement offer from the collection agency to resolve this debt for a payment of \$6,350 by November 18, 2009. He subsequently paid the agency \$6,400, and received a letter, dated December 30, 2009, stating that the account is considered paid in full, and no further funds are due on this matter. (GE 2 at 9; GE 5 at 3; AE A; AE E; AE L; AE M; Tr. at 32-33, 50-51, 70-71.)

Applicant provides regular financial support to his mother, whose home he co-owns. She receives a medical retirement pension, and her sister now lives with and helps her. From October 2007 through September 2009, he sent his mother \$16,950. (AE B; Tr. at 29-30, 39, 54-56.)

Applicant's child care expenses have recently been reduced because his girlfriend, who does not have a job, watches his child. She is seeking employment, and he recently obtained a second job working part time in a video rental store. He has \$392 in a savings account that he plans to add to and use for delinquent debt repayment. He also has about \$12,500 in a company retirement savings plan, half of which he could borrow if he chose to. Applicant's description of his plan to resolve remaining delinquent debt was, "I plan on actively making payments in the future to satisfy that. If I can start working more hours, and my girlfriend gets a job, I think this -- I would be able to satisfy this debt in a reasonable amount of time." His financial statement shows \$3,621 in monthly income and \$3,199 in monthly expenses, leaving a \$422 surplus for savings and payments on his delinquent medical debt. (AE C; AE F; AE H; Tr. at 34, 40, 54, 69-70.)

Applicant's most recent performance evaluation, and numerous citations for exceptional performance, reflect his outstanding dedication and execution of wide-ranging and responsible security duties. He is also pursuing off-duty education, and has one more year of classes to complete his bachelor's degree in Criminal Justice Administration. (AE I; AE K; Tr. at 9, 53-54.)

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider and apply 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, these guidelines are applied in conjunction with the factors listed in AG ¶ 2, describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶¶ 2(a) and (c), the entire process is a conscientious scrutiny of applicable guidelines in the context 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 the 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 in 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, "[t]he 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, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision." Section 7 of Executive Order 10865 provides, "[a]ny determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned."

A person applying for access to classified information seeks to enter 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 that 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.

Analysis

Guideline F, Financial Considerations

AG ¶ 18 expresses the security concern pertaining to financial considerations:

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. Compulsive gambling is a concern as it may lead to financial crimes including espionage. Affluence that cannot be explained by known sources of income is also a security concern. It may indicate proceeds from financially profitable criminal acts.

AG ¶ 19 describes conditions that could raise a security concern and may be disqualifying. Department Counsel requested analysis of the applicability of three of these potentially disqualifying conditions:

- (a) inability or unwillingness to satisfy debts;
- (b) indebtedness caused by frivolous or irresponsible spending and the absence of any evidence of willingness or intent to pay the debt or establish a realistic plan to pay the debt; and
- (c) a history of not meeting financial obligations.

(Tr. at 18.) From 2002 to 2005, Applicant accumulated the two SOR-listed delinquent debts that total about \$20,000, as well as five or six other delinquencies that he resolved between 2006 and 2008. He entered into an agreement with a credit settlement service to attempt resolution of the larger of these debts, and paid that company \$1,680 to represent him. Shortly after his hearing, he received a settlement offer that he could afford to pay, and did so to fully resolve that debt. Applicant has begun regular payments toward the remaining medical debt that are well within his budgetary ability to continue. Accordingly, he has eliminated the formerly applicable security concerns under AG ¶ 19(a). He is not under continuing financial duress, so he is no longer at risk of having to engage in illegal acts to generate funds. The evidence established a history of not meeting some financial obligations while in a prior relationship from 2002 to 2005, raising potential security concerns under AG ¶ 19(c). AG ¶ 19(b) was not established in this case. Although Applicant admits irresponsible spending over the period from 2002 to 2005 that resulted in multiple delinquent debts,

his resolution of several of these debts between 2006 and early 2008, and his recent efforts regarding the remaining two, provide strong evidence of his willingness and intent to pay his debt.

AG ¶ 20 provides conditions that could mitigate security concerns arising from the foregoing financial considerations. The potentially applicable mitigating conditions are:

- (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.

Mitigation under AG ¶ 20(a) was established in part. Applicant's delinquencies arose from five to seven years ago, during a relationship he broke off. He resolved most of them between 2006 and 2008, but two substantial debts continued at the time of Applicant's hearing. He since resolved the larger one, and only one debt of about \$5,500 remains. Most of the underlying irresponsible spending was done by the mother of his child, with whom he no longer lives. However, he admitted his own irresponsible participation and at least tacit consent to her conduct, so mitigation under AG ¶ 20(b) was not established. Applicant provided no evidence of financial counseling, but hired a company to negotiate a reduced settlement of one debt, which led to its successful resolution in late 2009. During the two months immediately preceding his hearing, he also paid \$200 toward the \$5,772 debt alleged in SOR ¶ 1.a. These are substantial steps in the right direction, creating meaningful mitigation under AG ¶¶ 20(c) and (d). Moreover, Applicant demonstrated his present solvency and ability to avoid additional delinquencies in the future. Applicant did not dispute any of his delinquencies under AG ¶ 20(e), and in fact admitted that they are valid debts.

As the Appeal Board ruled concerning the successful mitigation of security concerns arising from financial considerations, “[a]n applicant is not required to show that [he] has completely paid off [his] indebtedness, only that [he] has established a reasonable plan to resolve [his] debts and has ‘taken significant actions to implement that plan.’” ISCR Case No. 06-12930 at 2 (App. Bd. Mar. 17, 2008) (quoting ISCR Case No. 04-09684 at 2-3 (App. Bd. Jul. 6, 2006)). This applicant has established and substantially implemented an effective plan to resolve the debts that would formerly have given rise to security concerns.

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 relevant 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 applicable guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all the pertinent facts and circumstances surrounding this case. Applicant’s conduct of security concern was incurring two delinquent debts, which totaled about \$20,000. He fully resolved the larger debt, and is making regular payments toward the remaining \$5,500 debt. His delinquencies arose between 2002 and 2005, during a relationship with a financially irresponsible woman that has ended. Since 2006, he has incurred no new delinquencies, and resolved the vast bulk of his prior debt. His actions have greatly mitigated the formerly applicable security concerns, and he has established a good-faith track record of financial responsibility. The record demonstrates his ongoing ability to address the remaining delinquent debt, and his excellent performance of responsible security duties at work while continuing to pursue advanced education. Applicant’s actions have eliminated any continuing potential for pressure, coercion, or duress. He demonstrated that his financial problems are unlikely to continue or worsen. Applicant presented sufficient evidence to fully mitigate security concerns arising from his history of failing to meet financial obligations, and his former inability to pay some delinquent debts. The record generates significant confidence as to his present eligibility and suitability for a security clearance.

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

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the interests of national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

DAVID M. WHITE
Administrative Judge