



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



In the matter of:)	
)	
)	ISCR Case No. 09-03795
SSN:)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Candace Le'l Garcia, Esquire, Department Counsel
For Applicant: Pro Se

March 23, 2010

Decision

HOGAN, Erin C., Administrative Judge:

Applicant submitted a security clearance questionnaire (SF 86 - eQIP) on January 28, 2009. On October 15, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) 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 for SORs issued after September 1, 2006.

On October 22, 2009, Applicant answered the SOR and requested a hearing before an administrative judge. Department Counsel was ready to proceed on November 24, 2009. The case was assigned to me on December 7, 2009. On January 11, 2010, a Notice of Hearing was issued, scheduling the hearing for January 28, 2009. The case was heard on that date. During the hearing, the government offered eight exhibits which were admitted as Government Exhibits (Gov) 1 – 8. Applicant and his wife testified and offered 20 exhibits which were admitted as Applicant Exhibits (AE) A -

T. The record was held open until February 18, 2010, to allow Applicant to submit additional documents. Applicant timely submitted a 4-page document that was admitted as AE U with no objection. Department Counsel's response to AE U is marked as HE I. The transcript (Tr) was received on February 4, 2010. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

Findings of Fact

In his answer to the SOR, Applicant admits the allegations in SOR ¶¶ 1.a – 1.e, and denies the allegation in SOR ¶1.f.

Applicant is a 42-year-old curriculum developer employed by a Department of Defense contractor seeking to maintain his security clearance. He has worked for his current employer since October 2005. He held a security clearance for 25 years. He served 20 years in the United States Navy, retiring as an E-6 on December 31, 2005. He was an air crewman, aviation warfare systems operator. He was hired in his current position because of his experience in the Navy. He is a high school graduate and has taken some college courses. He is married and has a 21-year-old daughter and a 20-year-old son. (Tr at 7-9; Gov 1.)

Applicant's security clearance background investigation revealed that he has the following delinquent accounts: a \$363 cable television account placed for collection (SOR ¶ 1.a: Gov 4 at 1; Gov 5 at 1; Gov 6 at 5); a \$1,921 state tax lien entered against Applicant in March 2009 (SOR ¶ 1.b: Gov 4 at 1; Gov 5 at 1); a \$9,063 charged off loan (SOR ¶ 1.c: Gov 4 at 2; Gov 5 at 1; Gov 6 at 3); a \$3,701 bulk department store account that was placed for collection (SOR ¶ 1.d: Gov 4 at 2; Gov 5 at 2); a \$6,042 charged off bank loan (SOR ¶ 1.e: Gov 4 at 2; Gov 5 at 2; Gov 6 at 4,9); and a \$9,008 account that was 120 days past due in the amount of \$1,807 (SOR ¶ 1.f: Gov 6 at 4).

Applicant and his wife have had two periods where they experienced significant financial problems. In November 1993, Applicant's military pay was cut to \$300 per month because of a clerical error. The error was not fixed until January 1994. Applicant did not have enough income to support his family and could not pay any bills. He was not reimbursed for the error until June 1994. At the same time, a \$12,000 balloon payment was due on his car loan because Applicant cancelled his automobile insurance when he deployed overseas. He left his car at his father's home. The loan agreement required full coverage insurance on the car at all times. The bank insured the car at its own rates, which were much higher. Applicant felt he could not pay his expenses and filed for bankruptcy in 1994. His total assets were \$10,255. His total liabilities were \$20,702. His debts were discharged. (Tr at 137-139; Gov 7; Gov 8)

After he retired from the military, Applicant struggled financially. In September 2005, Applicant's wife broke her ankle and had to have a metal plate put in her ankle. She was incapacitated for six weeks. She worked in retail and was only able to work part-time because she could not stand for long periods of time. Her work hours were

reduced from 32 hours to 12 hours. The reduction in income affected their ability to pay the bills. (Tr at 47)

In October 2005, Applicant moved to his current place of employment. His wife and two children remained behind. He used his charge cards to buy furniture and other necessities. He was responsible for paying for two households. He would travel to where his wife and children lived on the weekends. He went through three moves in a short period of time. His family eventually joined him in June 2006. (Tr at 47-51; Gov 2)

In March 2007, Applicant's car was hit from behind by an uninsured motorist. His car was a total loss. He did not have liability insurance. He obtained a \$5,000 judgment against the uninsured motorist but has not received any money from the judgment. He has not purchased a new car because he was unable to afford it. (Tr at 47-49; AE A)

In April 2008, Applicant and his family were renting a house. They received notice that the home was going to foreclosure and they needed to move out. Their landlord filed bankruptcy. They never received their security deposit back. The unexpected move added an additional strain on the family finances. (Tr at 49-53; Gov 2; AE B)

Applicant, his wife, and son currently live in a two bedroom apartment. They have one car. They have a plan in place to pay off their debt and hope to resolve the debt within a year. (Tr at 53-55) He denied the debt in SOR ¶ 1.f because it is a duplicate of SOR ¶ 1.c. (Tr at 56, 65)

Applicant was not able to begin to pay these debts off earlier because he learned that he owed the Internal Revenue Service (IRS) approximately \$9,355 in back taxes for tax years 2006, 2007, and 2008. He encountered tax problems because he was not aware that he moved into a higher tax bracket when he retired. He also could no longer claim his two children as exemptions. Applicant and his wife paid the IRS a \$2,000 down payment and have been paying \$650 a month over the past 13 months. They have one more payment of \$550 before the plan is paid in full. They adjusted their tax withholdings in order to avoid this problem in the future. (Tr at 72-75; AE N)

Applicant's highest annual income in the Navy was \$29,000. (Tr at 139) After separating from active duty, his adjusted gross income in 2006 was \$102,061. His adjusted gross income in 2007 was \$115,683. His adjusted gross income in 2008 was \$123,721. (AE N)

Applicant and his wife obtained a \$2,000 loan in 2008 in order to pay the IRS down payment on their repayment plan. They paid off the loan. They have no credit cards and no savings. Applicant is cashing in some stock that he owns in a 401(k) in order to pay the down payment for the agreement with the creditor in SOR ¶ 1.c. He is aware of the tax consequences of early withdrawal. (Tr at 89-92, 122-127, 133-135; AE E; AE S)

Other debts that were not alleged in the SOR have been paid on a timely basis. (Tr at 76-80; AE D – AE J) Applicant wanted to pay the federal tax debt first before paying the debts alleged in the SOR. In July 2006, they began to work on a plan to resolve their debts. On January 19, 2007, they entered into a personal debt management program with Consumer Credit Counseling. They paid \$624 a month to Consumer Credit Counseling from February 2007 to September 2007. Applicant claims that Consumer Credit Counseling only resolved one account that was included in the plan. He and his wife decided they could do a better job resolving their delinquent accounts and cancelled the agreement in October 2007. Shortly after, they learned about the IRS tax debt. (Tr at 82-85; AE R)

Applicant and his wife entered into agreements to pay other debts beginning in February 2010. The current status of the delinquent accounts are:

SOR ¶ 1.a, \$363 cable television account placed for collection: The debt was resolved on January 20, 2010. (AE M)

SOR ¶ 1.b, \$1,921 state tax lien: Applicant agreed to pay \$123.77 a month for ten months. The first payment was due on February 15, 2010. They sent in post-dated checks of \$150 and anticipate the debt will be paid in July 2010. The first payment was processed on February 15, 2010. (Tr at 61-63; AE O; AE U at 4)

SOR ¶ 1.c, \$9,063 loan: Applicant claims SOR ¶ 1.f is a duplicate of this account. They are negotiating with the law firm that is collecting the debt. The law firm wants them to pay ten percent of the balance (\$1,000) before they are willing to negotiate payment arrangements. Applicant provided a copy of a \$1,071 cashier's check in his post-hearing submission which was sent to the law firm on February 16, 2010. Applicant and the law firm are negotiating payment arrangements. (Tr at 65-66; AE U at 2)

SOR ¶ 1.d, \$3,701 collection account with a bulk department store: Applicant used this to buy furniture when he first moved. He agreed to pay \$100 a month beginning on February 17, 2010 until the debt is paid. (Tr at 67-68; AE L)

SOR ¶ 1.e, \$6,042 charged off account: On January 19, 2010, Applicant agreed to settle the account for \$2,719. He agreed to pay \$459 a month beginning on February 15, 2010 for a period of six months. Applicant made the first payment in February 2010. (Tr at 69-71; AE K; AE U at 3)

SOR ¶ 1.f, \$9,008 debt that was 120 days past due in the amount of \$1,807: This account is a duplicate of SOR ¶ 1.c.

Applicant's net monthly income is a minimum of \$4,600. It is often more when he works overtime. His military retirement check is \$850. His wife works part-time and earns about \$400 monthly. Their total net monthly income is a minimum of \$5,850. Their rent is \$1,595. Their monthly expenses total \$4,433 which includes the payment

agreements to their delinquent creditors. They have approximately \$1,416 left over each month after expenses. (Tr at 122-124; AE S).

Applicant's project manager testified that Applicant is very diligent and professional. He is experienced in handling classified information, and handles classified information on a daily basis. She has supervised Applicant for four years. She is aware of Applicant's financial problems. His luck has not been good over the past several years. She has no reason to suspect that Applicant has a gambling problem or abuses drugs or alcohol. She does not believe he is prone to compromise classified information. He talks about his financial problems freely with her including his tax problems. She trusts him. (Tr at 95-110)

Lieutenant Commander F. worked with Applicant when he was on active duty from January 2002 to July 2004, and considers him a friend. He states Applicant gives 110% to his profession. He describes Applicant as "faithful to his country," "trustworthy, honest, and dependable." He is aware that Applicant is encountering some financial hardship but is working on correcting the situation. He would not hesitate to work with Applicant and is confident that Applicant would never mishandle classified information. (AE T)

Applicant's performance evaluations in his current job and during his military service were favorable. (AE R; AE Q)

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 when determining 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 as to 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

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 disqualifying conditions that could raise security concerns. I find Financial Considerations Disqualifying Condition (FC DC) ¶19(a) (an inability or unwillingness to satisfy debts); and FC DC ¶19(c) (a history of not meeting financial obligations) apply to Applicant’s case. Applicant’s recent financial difficulties began shortly after he retired from the Navy in December 2005. The SOR alleged five delinquent accounts totaling \$21,090. During the hearing, it was discovered Applicant owed a \$9,000 tax debt to the IRS for tax years 2006, 2007, and 2008.

The government’s substantial evidence and Applicant’s own admissions raise security concerns under Guideline F. The burden shifted to Applicant to produce

evidence to rebut, explain, extenuate, or mitigate the security concerns. (Directive ¶E3.1.15) An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the government. (See ISCR Case No. 02-31154 at 5 (App. Bd. September 22, 2005))

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Financial Considerations Mitigating Condition (FC MC) ¶ 20(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) is not applicable. Applicant has had financial problems for several years. While Applicant has established payment plans with his creditors, he only recently started paying towards those payment plans. It is too soon to conclude that Applicant will follow through with the payment plans. Applicant's past financial history, to include a previous bankruptcy in 1994, raise questions about his reliability, trustworthiness, and good judgment.

FC MC ¶ 20(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) partially applies. Applicant encountered financial problems after retiring from the Navy. His wife broke her ankle and was unable to work full-time which reduced her income. In 2007, Applicant was rear-ended by an uninsured motorist. He obtained a judgment against the driver but has never been reimbursed for the loss of the car. In April 2008, he and his family had to move unexpectedly when their landlord filed for bankruptcy. Although Applicant encountered some unforeseen expenses within the past few years, his tax returns reveal that his income increased significantly after he retired from the Navy. He should have been aware this would have an impact on his taxes. Most of the financial problems resulted from poor planning as opposed to circumstances beyond Applicant's control. Once Applicant acknowledged the financial problems, he took steps to resolve the delinquent accounts. He and his wife live a modest lifestyle. He is beginning to act responsibly towards his delinquent accounts.

FC MC ¶ 20(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) applies. In 2007, Applicant and his wife consulted Consumer Credit Counseling and had an agreement with them. After making payments for several months and seeing no progress towards resolving their accounts, they canceled the agreement believing they could do better on their own. Their plan to resolve the delinquent accounts was delayed because of the \$9,000 IRS tax debt. Paying off the tax debt was their first priority. Once they resolved the tax debt, they entered into payment arrangements to resolve the remaining delinquent accounts. They have enough income to make the payments and it is likely that the delinquent accounts will be resolved in ten months. Applicant's financial situation will stabilize in the near future.

FC MC ¶ 20(d) (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts) applies. Applicant resolved the debt alleged in SOR ¶ 1.a. He entered into repayment agreements with the debts alleged in SOR ¶¶ 1.b, 1.d, and 1.e. He is in the process of negotiating payments with the creditor who is collecting the debt alleged in SOR ¶ 1.c. There is sufficient evidence to conclude the debt alleged in SOR ¶ 1.f is a duplicate of SOR ¶ 1.c. Although Applicant recently entered into these payment plans, credit is given because he made it a priority to pay off his tax debt first. He made payments to all of the creditors with whom he has entered into payment plans. He has taken proactive steps as opposed to expressing a promise to pay off his debts in the future. Overall, Applicant has made a good-faith effort to resolve his delinquent accounts.

Applicant has mitigated the concerns raised under Guideline F.

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 considered Applicant's 20 years of honorable service in the Navy. I considered the favorable comments of his supervisor and a former officer. I considered his favorable performance reports. I considered that Applicant had several misfortunes that caused financial problems. However, I also believe better planning would have prevented some of Applicant's financial problems. While he recently entered into repayment agreements for the debts alleged in the SOR, I considered that he began to resolve these debts in 2007. His IRS tax problems prevented him from taking steps to resolve the accounts earlier. He set up payment plans with his creditors to begin once the federal tax debt was paid. Applicant understands the security concerns that are raised by his financial situation. He has told his supervisor about his financial problems. He entered into repayment agreements and

is aware of the possibility of losing his security clearance if his financial problems continue. Applicant has developed a plan to resolve his delinquent debts. He earns enough income to meet the terms of each repayment plan. He mitigated the concerns raised under 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, 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
Subparagraph 1.f:	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.

ERIN C. HOGAN
Administrative Judge