



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



In the matter of:)	
)	
-----)	ISCR Case No. 09-04390
SSN: -----)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Julie R. Mendez, Esq., Department Counsel
For Applicant: Sheldon L. Cohen, Esq.

August 30, 2010

Decision

MARSHALL, Jr., Arthur E., Administrative Judge:

On January 8, 2010, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) enumerating security concerns arising 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 adjudicative guidelines (AG).

In a March 2, 2010, answer to the SOR, Applicant admitted the 14 allegations set forth under Guideline F, provided explanations as to the 13 debts enumerated, and requested a hearing before an administrative judge. DOHA assigned the case to me on March 29, 2010. The parties proposed a hearing date of April 22, 2010. A notice setting that date for the hearing was issued on April 1, 2010. I convened the hearing as scheduled. Applicant gave testimony, introduced one witness, and presented 22 documents, which were accepted into evidence without objection as exhibits (Exs.) A-V. Department Counsel offered four documents, which were admitted as exhibits (Exs.) 1-4 without objection. Applicant was given until May 14, 2010, to submit any additional materials. DOHA received the transcript (Tr.) of the proceeding on April 29, 2010.

Before the record was closed on May 14, 2010, Department Counsel forwarded three additional documents received from Applicant on May 6, 2010. They were accepted into the record as Exs. W-Y without objection and the record was closed. Based on a review of the testimony, submissions, and exhibits, I find Applicant met his burden in mitigating security concerns. Clearance is granted.

Findings of Fact

Applicant is a 39-year-old systems administrator working for a defense contractor. He has worked for the same company since late 2007. He has earned a high school diploma and an associate's degree in electronic engineering. Applicant is about to graduate with a bachelor's degree in computer science. He is married and the couple has three children.

In 1996, Applicant married. In 2002, after his honorable discharge from the United States Navy, where he maintained an excellent record, Applicant accepted a job working for a defense contractor as a local area network (LAN) technician.¹ As a LAN technician, Applicant was deemed an effective and valued employee.² He remained in that position for five years, ultimately earning about \$70,000 a year. In the interim, his wife left work in telecommunications in favor of a teaching career. Applicant left his job in early 2007. Based on his contacts and his experience helping others in the home improvement industry, Applicant felt confident that he could succeed managing his own contracting company in that industry. With his wife temporarily away from work on maternity leave, he opened his own business. He thought his financial situation was "pretty good" and he already had some home improvement projects negotiated.³ Applicant's new business in performing home improvement projects was initially successful. At first, the business he shared with a partner was "fine."⁴

Within a few months, the souring local real estate market and national economy affected the business adversely. After about five or six months of operation, the business was closed. Applicant quickly accepted a position with another company earning about \$70,000 a year, a salary roughly equivalent to his salary as a LAN technician. Applicant started his present employment in October 2007, within a month of his wife's return to her \$30,000 a year teaching position. Between his wife's maternity leave and the failure of his business, money was tight and debts were acquired. Applicant depleted his 401k retirement savings to pay bills and meet expenses. In October 2007, he resorted to filing for Chapter 13 bankruptcy protection. Meanwhile, his home's sub-prime mortgage had an interest rate that kept rising. Recognizing that he could no longer afford the home, he decided to sell it. In order to get permission to

¹ Tr 83; Ex. B (Military evaluations).

² Tr. 39-42.

³ Tr. 66, 68. (Applicant stated that at the time, he "was able to pay [his] bills and [he] had no creditors, outstanding debts.")

⁴ Tr. 18.

short-sell his house, however, Applicant was required to seek dismissal of the bankruptcy action. The bankruptcy action was dismissed in February 2009. Applicant made no profit from the short-sale.⁵

In 2008, with the house sold, a new job, and a steady income, Applicant enrolled in a program that he thought could help him pay off the creditors he had listed in the dismissed bankruptcy petition. The program provided him with constructive credit counseling. It was not, however, capable of addressing all of his debts efficiently. Eventually, Applicant “decided just to go ahead and pay ‘em all out, in full.”⁶ To do so, he relied on his rising wages and significant overtime. As a result of his effort, Applicant satisfied the delinquent debts ultimately set forth in the SOR under allegations ¶¶ 1.a – 1.f, 1.i – 1.k, and 1.m.⁷ The only debts remaining at issue in the SOR are the debts related to allegations ¶¶ 1.g, 1.h, and 1.l, amounting to about \$25,000.

Of the three accounts remaining at issue in the SOR, is the debt noted at SOR allegation ¶ 1.g. It concerns a mortgage account noted as past due for approximately \$14,424. It is related to a property in which Applicant has since found a tenant who is paying \$950 toward Applicant’s mortgage obligation of \$1,395. Applicant has made arrangements to absorb an arrearage owed into his monthly payment plan. He has been able to make full, regular monthly payments since October 2009.⁸ He provided evidence that he has been current on this account and is now eligible for a home loan modification that should reduce the interest rate on the loan from about 10% to about 7%.⁹

The debt noted at SOR allegation ¶ 1.h is for a charged-off account balance of approximately \$9,900 owed after the 2009 sale of a repossessed 2006 automobile. The car was repossessed not because of late or missed payments, but because it was part of Applicant’s bankruptcy petition, which was later dismissed.¹⁰ The creditor subsequently invited Applicant to make an offer to settle the debt. On March 25, 2010, Applicant wrote the creditor and requested that the matter be settled for \$2,500.¹¹ He

⁵ Tr. 46.

⁶ Tr. 49.

⁷ Tr. 54. The Government stipulated that Applicant has satisfied these debts. Allegation ¶ 1.n does not reference a specific debt, but rather the 2007 bankruptcy petition that was ultimately dismissed in 2009.

⁸ Tr. 70-71, 94-95. Prior to October 2009, Applicant was making partial payments on an arrearage of indeterminate age.

⁹ Tr. 55-59, Ex. O and Ex. P (Mortgage-related records). See also Ex. Y (Attorney’s narrative, dated May 6, 2010) and Ex. X (Letter, dated Apr. 28, 2010).

¹⁰ Tr. 96-100. Applicant’s wife testified that once the bankruptcy action was dismissed, the creditor informed Applicant that it could no longer accept payments on the vehicle.

¹¹ Ex. Q (Letter, dated Mar. 25, 2010).

was told that an offer of at least half of the sum at issue would “likely be accepted.”¹² On April 28, 2010, he wrote to the creditor, requesting that the matter be settled for \$4,950.¹³ He is currently awaiting a response to the suggested offer of settlement. Applicant is willing and able to pay the suggested settlement amount once it is formally accepted.¹⁴

The debt noted at SOR allegation ¶ 1.1 is for a telecommunications account that was charged-off for about \$728. Applicant disputed this credit report entry as incorrect. He testified that he contacted the carrier and was told that it had no record of his having a balance owed.¹⁵ Applicant’s February 2009 credit report notes that a balance was owed by this carrier and in collection for \$728.¹⁶ The credit report entry reflects that the date of last activity on the account was in December 2007, that the collection agency opened its account for the debt in July 2008, and that the date the balance was reported by the collection agency was January 2009.¹⁷ With no record of a balance owed, the carrier told him that it would have the negative entry removed from his credit report.¹⁸ Applicant submitted a copy of his most recent credit report, dated April 21, 2010.¹⁹ That credit report does not reflect a debt owed to either the underlying carrier or the collection entity. Inasmuch as seven years has not passed since any of the dates cited in the February 2009 credit report, it may be assumed the issue has been resolved and removed, not removed because it is a dated account.

Applicant had started addressing his debts by at least October 2009, when he resumed making payments on the mortgage account noted above.²⁰ With his debts under control, Applicant plans to continue managing his finances as he is now handling them.²¹ This includes continuing his regular payments on two non-delinquent accounts,

¹² Tr. 60-61; Ex. Y, *supra*, note 9.

¹³ Ex. W (Letter, dated Apr. 28, 2010).

¹⁴ Tr. 61.

¹⁵ Tr. 63, 73. Applicant concedes he once had a cell phone account with this carrier, but believed he had ended his account with no balance owed. He was unaware of the alleged balance until he saw it on his credit report.

¹⁶ Ex. 3 (Credit report, dated Feb. 7, 2009).

¹⁷ *Id.*

¹⁸ Tr. 63.

¹⁹ Ex. T (Credit report, dated Apr. 21, 2010).

²⁰ See, e.g., Tr. 74. Applicant received the SOR on January 13, 2010, after he had started working with at least his largest creditor. See Official Case File, Receipt to January 8, 2010, correspondence to Applicant’s facility security officer.

²¹ Tr. 66.

one of which is for a vehicle.²² He plans “not to take on any more debt that [he does not] think he can handle.”²³ In his current job, he has risen from making a base salary of about \$68,000 a year to, with current overtime wages, about \$99,000.²⁴ There is no documentary evidence of any other delinquent debts.

Applicant’s budget shows that he has a net monthly remainder of about \$4,000.²⁵ To that sum, his wife’s income adds an additional net sum of about \$1,500. He is applying his net monthly remainder to satisfaction of his remaining obligations, his non-delinquent car loan, and one other non-delinquent account.²⁶ Applicant does not currently maintain any credit cards and he has no unpaid tax debts.²⁷ He maintains a savings account. Applicant and his wife currently live within their means. They live in a rental property as they save for a down payment on a house. It is their hope to own their own home.²⁸ He and his wife spend significant time with their children, especially with church and sports-related activities.²⁹ Their vacations are generally limited to local outings.

Policies

When evaluating an applicant’s suitability for a security clearance, an administrative judge must consider the AG. In addition to brief introductory explanations for each guideline, the AG list potentially disqualifying conditions and mitigating conditions. 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. Under AG ¶ 2(c), this process is a conscientious scrutiny of a number of variables known as the “whole-person concept.” The administrative judge must consider all 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

²² Tr. 75; Ex. Ex. 4 (Budget) at 139.

²³ *Id.*

²⁴ Tr. 69-70.

²⁵ Tr. 76-77.

²⁶ Tr. 76.

²⁷ *Id.*

²⁸ Tr. 31.

²⁹ Tr. 21.

decision, I have drawn only those conclusions that are reasonable, logical and based on the evidence contained in the record.

The Government must present evidence to establish controverted facts alleged in the SOR. An applicant is responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . .”³⁰ The burden of proof is something less than a preponderance of evidence. The ultimate burden of persuasion is on the applicant.³¹

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). “The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”³² Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.³³

Based upon consideration of the evidence, Guideline F (Financial Considerations) is pertinent to this case. Conditions pertaining to this AG that could raise a security concern and may be disqualifying, as well as those which would mitigate such concerns, are set forth and discussed below.

Analysis

Under Guideline F, “failure or an inability to live within one’s means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or an unwillingness to abide by rules and regulations, all of which can raise questions about an individual’s reliability, trustworthiness and ability to protect classified

³⁰ See *also* ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

³¹ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

³² *Id.*

³³ *Id.*

information.”³⁴ The guideline sets out several potentially disqualifying conditions. Here, Applicant admitted to having had 13 delinquent debts. He also admitted to a 2007 bankruptcy petition that was dismissed in 2009. Such facts are sufficient to raise Financial Considerations Disqualifying Condition (FC DC) AG ¶ 19(a) (inability or unwillingness to satisfy debts) and FC DC AG ¶ 9(c) (a history of not meeting financial obligations). With such conditions raised, the burden shifts to Applicant to overcome the case against him and mitigate security concerns.

The majority of the debts at issue were acquired when Applicant’s business rapidly declined and failed. At the time Applicant started his new business in early 2007, however, he did not do so blindly. He had a business partner and contacts in the home improvement industry. He had a familiarity with, and some hands-on experience in, that industry. He already had projects waiting to be performed. He had money saved in his 401k for emergencies, and his wife was expected to return to work after maternity leave. At that time, there were no clear signs that his choice to start his own business would be a reckless endeavor. His timing, however, was unfortunate. A souring economy and downward trend in the housing market quickly impacted Applicant’s new industry. It would have been nearly impossible for Applicant to have foreseen the scope and duration of that economic downturn. Realizing that it was not the time to pursue business in that field, he abandoned the business after five or six months. He immediately found stable corporate employment, around the same time his wife returned to the work force.

Since that time, Applicant has risen at his current place of employment to the point that he earns almost \$100,000 a year, a significant rise from his former base salary of about \$70,000. Hindsight now highlights the fact that his business failure was caused by poor economic times, not by poor judgment. He has learned from his experience. Moreover, once he found himself in an economic position to start addressing his debts, about a year and a half after closing his business and a few months before he received the SOR, he started addressing those obligations. Given these unique circumstances, Financial Considerations Mitigating Condition (FC MC) AG ¶ 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) and FC MC AG ¶ 20(b) (the conditions that resulted in the behavior 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) apply.

In 2008, Applicant focused on his new and stable employment, raising his income through hard work and overtime. By the middle of 2009, he was able to start addressing some of the debts at issue. He received some form of credit counseling, then chose to handle his debts by himself. This included abandoning his bankruptcy petition in order to try to short-sell his home. As a result of that maneuver, his car was

³⁴ AG ¶ 18.

repossessed. He has worked with that creditor and is currently negotiating a settlement on that debt. With some progress started on his largest debts, he then satisfied or disputed the remaining debts reflected in the January 2010 SOR. Today, his mortgage payments and arrearage are being timely paid. He has submitted an offer to settle his car loan-related debt that conforms with the terms suggested by the creditor. Although they are not at issue in the SOR, Applicant is also timely repaying two non-delinquent accounts. Applicant does not rely on credit. He and his family are living modestly, with a significant net income balance saved each month. While his strides at economic stability may be somewhat recent, they have been effective. As for his remaining debts, he has the willingness and resources to honor them. 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) and FC MC ¶ 20(d) (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts) apply.

The only debts noted in the SOR that remain unsatisfied are the home mortgage and the car loan balance. As noted, he is in repayment on the former, and he provided documentation reflecting an active effort to settle the latter. Applicant and his wife have a current joint income of about \$130,000. They are living frugally and within budget. Their monthly net remainder is being applied, in part, to pay off two non-delinquent accounts not at issue in the SOR, with money available to satisfy whatever settlement is reached with the car loan holder. While Applicant's progress on his debts may be relatively recent, the facts indicate that it has been effective and well-executed. Given the progress made, financial considerations security concerns are mitigated.

Whole-Person Concept

Under the whole-person concept, an administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of an applicant's conduct and all relevant circumstances. An administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a). Under AG ¶ 2(c), the ultimate determination of whether to grant 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, as well as the "whole-person" factors. Applicant is a credible and mature man who honorably served in the U.S. armed forces. He is a devoted husband and father. He is about to receive a bachelor's degree. He has been a valued employee by his employers. In his mid-30s, he ventured out to establish his own business. He did so after developing some practical knowledge about the home improvement business, and making business contacts in that field.

Unfortunately for Applicant, he proceeded into his new venture as both the national economy and the local real estate market began to decline. Realizing his business could not survive, he found stable work with his current employer. His return to work coincided with his wife's return to the workforce after her maternity leave. Together, they did their best to resolve their debt. With their income initially too low to start paying off their debts, they filed for bankruptcy protection. When their rising

mortgage payments became a more pressing issue, they sought dismissal of their bankruptcy petition in order to gain permission to conduct a short-sale on their house. Applicant tried a debt consolidation program, but the program was not economically or strategically efficient. Therefore, fortified with a rising income, he took it upon himself to address his debts personally. He caught up on his mortgage, has worked with his auto loan creditor, successfully disputed a telecommunications bill, and satisfied the rest of his debts. The mortgage is currently poised for modification, an effort that, along with the presence of a paying renter in the property, should reduce any personal financial burdens with regard to that obligation. He is awaiting a response on his offer to settle his car loan debt, an offer that conforms with terms suggested by the lender. In addition to the debts at issue in the SOR, Applicant also showed that he is making regular payments on two obligations that are not delinquent. He and his family live frugally, maintain no credit cards, have a savings account, and are saving for a home. They currently retain a notable monthly net income for satisfying debts and building for their future.

Because it took time for Applicant's income to rally and rise to a level where he could personally start to pay off his debts, there was a notable delay in his starting to address them. Since that level was reached, however, he has made significant progress. In light of the foregoing circumstances and Applicant's rehabilitative efforts, he has demonstrated his willingness and ability to honor his debts. Financial considerations security concerns are mitigated.

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

Subparagraphs 1.a-n 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 a security clearance. Clearance is granted.

ARTHUR E. MARSHALL, JR.
Administrative Judge