



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



In the matter of:)	
)	
-----)	ISCR Case No. 09-04394
SSN: -----)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Ray T. Blank, Esq., Department Counsel
For Applicant: *Pro se*

September 14, 2010

Decision

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

On February 25, 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 an undated answer to the SOR, Applicant admitted three of the seven allegations set forth under Guideline F and requested a hearing before an administrative judge. DOHA assigned the case to me on April 16, 2010. The parties proposed a hearing date of May 26, 2010. A notice setting that date for the hearing was issued on May 6, 2010. I convened the hearing as scheduled. Applicant gave testimony and either presented or referenced six documents, which were noted as received as exhibits (Exs.) A-F without objection. Department Counsel offered six documents, which were admitted without objection as exhibits (Exs.) 1-6. Applicant was given until June 11, 2010, to submit any additional materials. DOHA received the transcript (Tr.) of the proceeding on June 4, 2010. On June 21, 2010, Department Counsel forwarded seven

documents received from Applicant between June 4, 2010, and June 10, 2010. They were accepted into the record as Exs. G-M 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 45-year-old equipment sub-custodian working for an established defense contractor. He has worked for the same company since 2009. He earned a high school diploma and an associate's degree in logistics. Applicant retired from the United States military after 22 years of service. He is married and has seven children.

Applicant served in the United States Air Force from 1983 until he was honorably discharged in June 2005. He relocated to accept a civil service position in his current region of residence, which has been adversely impacted by recent economic conditions. He made an offer on a house. The anticipated position was eliminated by a financial cut back, impeding his hope of buying a home.¹ He could not find another logistics-related position, so he looked for any available positions. In order to meet expenses after two months of unemployment and a delay in receiving his military retirement and disability payments, he found work in August 2005 as a convenience store manager. In about February of 2006, he endured a month of unemployment before finding a better paying job.²

In March 2006, Applicant accepted a night shift position at a discount chain store franchise.³ In November 2008, he was let go for failing to meet production goals while the company faced a period of financial cutbacks.⁴ Applicant was unable to find another job until March 2009. While unemployed, he struggled to provide for his wife and children through the winter. During this time, his financial resources were depleted and there was a delay in his receipt of unemployment compensation. The winter weather in his region caused him to incur unusually high utility bills.⁵ Applicant worked with his utility providers to maintain electricity throughout the winter. Some relief arrived with his receipt of unemployment compensation in early 2009. Around the same time, one of his creditors contacted him about his account. He worked out a repayment plan that incorporated a delay in repayment until he was re-employed.⁶ In mid-March 2009, he

¹ Tr. 19.

² Tr. 22.

³ Tr. 60.

⁴ Tr. 23.

⁵ Tr. 23, 78.

⁶ Tr. 24 regarding SOR allegation ¶ 1.e.

accepted his current position as an equipment custodian. Soon thereafter, he started making payments to the creditor.⁷

Once again employed, Applicant moved his family into a house under a rent-to-own plan. The house, however, had many problems. Applicant incurred related expenses in managing those problems, along with the expense of supporting his wife and seven children.⁸ By the autumn of 2009, he was also incurring significantly high utility bills during a notably bitter winter.

Applicant pursued financial planning assistance, but is unable to pursue the program offered.⁹ He has not received financial counseling.¹⁰ At work, he is well-regarded for his performance and trustworthiness.¹¹ Five of his children are home-schooled in order to reserve funds. The oldest child attends a local parochial school at an annual cost of about \$2,500.¹² The youngest child is not school age. Applicant's wife is currently the homeschool provider, but she is pursuing certification in editing to prepare her for the workplace.

At issue in the SOR are the following debts, representing allegations ¶¶ 1.a-1.f. Applicant admitted allegations ¶¶ 1.a, 1.d, and 1.f in his response to the SOR, and denied the remaining debts.

1.a – Judgment for \$2,102 – *In repayment*. Applicant recently proposed a repayment plan that was accepted by the creditor to satisfy a 2007 judgment. He paid \$400 in May 2010, and is scheduled to then pay \$100 per month for nine months, followed by monthly payments of \$225 until the balance is satisfied. Applicant submitted evidence of both the plan and the initial \$400 payment.¹³ He also submitted a receipt indicating payment of \$100 in June 2010.¹⁴

⁷ Tr. 25. Regarding the debt noted as SOR allegation ¶ 1.e.

⁸ Tr. 26-27.

⁹ Ex. M (Letter, dated Jun. 8, 2010).

¹⁰ Tr. 33.

¹¹ Exs. C-E (References).

¹² Tr. 52.

¹³ Ex. A (Credit union documents)

¹⁴ Ex. K (Notation of payment, dated Jun. 3, 2010).

1.b, 1.c, and 1.g – Medical account balances of \$29, \$15, \$380 – *Paid*. Applicant provided evidence that these hospital bills from 2007 were recently paid.¹⁵ The Government indicated its satisfaction these debts are paid.¹⁶

1.d – Charged-off account for \$7,306. – *Settled*. The date of last activity on this account is shown as 2005. Applicant was offered a settlement opportunity to resolve the matter on payment of \$2,923, which was negotiated for settlement by payment of \$2,500. Applicant recently paid the agreed upon sum.¹⁷ The Government indicated its satisfaction that this matter has been settled.¹⁸

1.e – Collection account balance of \$9,326 – *In repayment*. Applicant provided evidence that he resumed repayment on this debt after he started his current position last year, as described above.¹⁹

1.f – Collection account balance for \$100 – *Paid*. On March 29, 2010, this account was satisfied by telephonic payment to a third party collection entity, identified at Tr. 50.²⁰

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

¹⁵ Tr. 38-41; Original Case File, Attachment to response to SOR.

¹⁶ Tr. 41.

¹⁷ Ex. B (Receipt).

¹⁸ Tr. 42.

¹⁹ Tr. 24-25, 46; Ex. I (Banking statement, Jun. 2009 to May 2010).

²⁰ Tr. 49-51; Ex. H (Transaction history).

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. . . .”²¹ The burden of proof is something less than a preponderance of evidence. The ultimate burden of persuasion is on the applicant.²²

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.”²³ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.²⁴

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 information.”²⁵ The guideline sets out several potentially disqualifying conditions. Here,

²¹ See *also* ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

²² ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

²³ *Id.*

²⁴ *Id.*

²⁵ AG ¶ 18.

Applicant had several delinquent debts, some of which still retain unpaid balances. 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.

Applicant's income since he was discharged from the military has varied, mostly due to a position eliminated after he relocated to accept the job, multiple periods of unemployment, difficulty in finding employment opportunities, and a delay in receiving unemployment compensation. During this time, he accepted mostly low paying retail positions that did not utilize his logistics experience. As a result of these circumstances, bills were neglected. He is now employed by a stable employer in an industry that is less vulnerable to local economics. He has tried to minimize expenses, resorting to a relocation to accept a job and homeschooling for most of his children. Some of the debts, since paid, were incurred for hospital services. While most of the debts at issue are older, he was recently able to pay or enter into repayment on all the accounts at issue. Such conditions, as well as his recent ameliorative actions, are sufficient to raise 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.

Applicant pursued financial planning, but he was rebuffed in his efforts for lack of sufficient investment funds. There is no evidence he has pursued financial counseling. Consequently, 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) does not apply.

While his debts are older and his response to meeting his obligations delayed, six of the debts at issue were addressed this year, while one has been in repayment since last year. With all the seven debts at issue suitably addressed, FC MC ¶ 20(d) (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts) applies.

Given the efforts and circumstances described above, the current status of the debts at issue, and Applicant's demonstrated willingness and ability to persevere on his two remaining debts, 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 moved his family to a new region in search of stable employment. When he arrived, he found that the offered job was not as described. He found it difficult to find stable employment in the region, incurring delinquent debt in pursuit of any viable job offers. In doing so, he accepted those positions he could find, rather than continuing his work in logistics or holding out for higher paid positions. The jobs he found were modest positions. His expenses were impacted by unusually high utility bills in the last two winters.

While there was significant delay in finally addressing some of the debts at issue, Applicant’s credible testimony reflects that he was previously willing, but financially unable to address those debts. In the past year, he paid five of the debts at issue. Two of his remaining delinquent debts are now in repayment. Now working for a stable employer, he should be able to continue making payments on those two remaining debts. In light of the facts in this case, 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-g	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