



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



In the matter of:)	
)	
)	ISCR Case No. 09-04622
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Daniel Crowley, Esquire, Department Counsel
For Applicant: *Pro se*

October 20, 2010

Decision

HEINY, Claude R., Administrative Judge:

Applicant has rebutted or mitigated the security concerns under financial considerations. Clearance is granted.

Statement of the Case

Applicant contests the Defense Department’s (DoD) intent to deny or revoke his eligibility for an industrial security clearance. Acting under the relevant Executive Order and DoD Directive,¹ the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) on March 18, 2010, detailing security concerns under financial considerations.

¹ Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (DoD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the DoD on September 1, 2006.

On April 19, 2010, Applicant answered the SOR and requested a hearing. On June 4, 2010, I was assigned the case. On June 10, 2010, DOHA issued a Notice of Hearing for the hearing held on June 29, 2010. The Government offered Exhibits (Ex.) 1 through 6, which were admitted into evidence without objection. Applicant testified and submitted Exhibits A through C, which were admitted into evidence without objection. On July 29, 2010, DOHA received the hearing transcript (Tr.).

Findings of Fact

In Applicant's Answer to the SOR, he disputed the reasons why his security clearance was not being granted. In Applicant's Answer to the SOR, he admits the factual allegations, with explanations and proof of payment on some of the debts. I incorporate Applicant's admissions to the SOR allegations. After a thorough review of the record, pleadings, exhibits, and testimony, I make the following additional findings of fact:

Applicant is a 35-year-old personal computer technician who has worked for a defense contractor since April 2009, and is seeking to obtain a security clearance.

From September 1993 to January 2001, Applicant was on active duty in the United States Navy. When he left the Navy, he was an E-4. Until February 2007, he lived in Virginia when he moved to Texas to take care of his mother-in-law who suffered from cancer before her death. (Tr. 52) The SOR alleges five unpaid medical accounts and two additional accounts placed for collection or charged-off. Five of the accounts have been paid, one is being paid, and he has recently been contacted by the final creditor and will establish a repayment plan as to this final debt (SOR ¶ 1.e, \$1,482).

On January 1, 2006, Applicant was injured in a motorcycle accident and incurred medical debts. Another individual was driving a motorcycle which rear ended a car flipping that motorcycle into Applicant's lane. A number of motorcycles were wrecked. The accident occurred in a tunnel limiting Applicant's ability to avoid being struck by the other motorcycles. Applicant broke his wrist resulting in a three-day hospital stay. (Tr. 28, 38) At the time of the accident, Applicant had employer provided health insurance. (Ex. 3) The other driver was uninsured. Applicant's insurance company contested payment, stating Applicant had contributed to the accident. (Tr. 29) Applicant hired an attorney to assist him with the accident and his insurance company. Applicant lost touch with his attorney and the statute of limitations now prevents him from recovering from his insurance company. (Tr. 30)

Applicant's friend was also involved in the same motorcycle accident. However, that individual had full insurance coverage which paid for repairing their motorcycle and paid all his medical expenses. From this experience, Applicant has learned to carry full insurance coverage in the future.

A number of these accounts are being collected by one collection agency. The \$325 medical debt (SOR ¶1.a), the \$1,207 medical debt (SOR ¶1.b), the \$26,043

medical debt (SOR ¶1.c), and the \$149 medical debt (SOR ¶1.d) have all been consolidated into a single debt. Applicant pays \$200 per month on this debt by automatic debit. (Tr. 35, Ex. A) As of June 4, 2010, Applicant owed \$25,643 on these four consolidated debts. (Ex. C) These four debts (SOR ¶¶1.a—1.d) are being paid² as agreed. (Applicant's Answer to the SOR)

Applicant wanted to pay the \$1,482 medical debt (SOR ¶1.e), but the credit bureau report (CBR) failed to list the creditor's contact information. Unable to contact the creditor, Applicant disputed the debt. Applicant recently received a letter from the creditor as a result of the dispute. (Tr. 35) Applicant intends to establish a repayment plan for this debt. (Tr. 40, Ex. C)

Applicant had a \$825 credit card account (SOR ¶1.f) charged off, which has now been paid in full. (Applicant's Answer to SOR, Tr. 36) When Applicant was unemployed during 2006, the credit card account had gone unpaid. (Ex. 3) Applicant had a \$582 gym membership account (SOR ¶1.g) placed for collection, which he paid. (Applicant's Answer to SOR)

Applicant's April 2010 CBR lists nine accounts in good standing. (Ex. C) He is current on his student loan payments. (Tr. 37) Applicant's wife is an accountant making \$42,000 a year. (Tr. 37, 43) They have two children ages 3 and 13. (Tr. 44) Applicant's home is paid for. He just recently purchased a 2011 car. (Tr. 43) Applicant has \$8,000 in his 401(k) retirement plan. (Tr. 46)

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which must be considered 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 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

² Applicant's June 25, 2010 CBR lists the debts in SOR ¶¶ 1.a, 1.b, and 1.d as having been paid. (Tr. 34, Ex.6)

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 to obtain 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 safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about 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 about 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

Adjudicative Guideline (AG) ¶ 18 articulates the security concerns relating to financial problems:

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.

Additionally, an individual who is financially irresponsible may also be irresponsible, unconcerned, negligent, or careless in properly handling and safeguarding classified information. Behaving responsibly or irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life.

A person's relationship with his creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to repay debts as agreed. Absent

substantial evidence of extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a position of risk that is inconsistent with holding a security clearance. An applicant is not required to be debt free, but is required to manage his finances to meet his financial obligations.

Applicant's motorcycle accident resulted in a number of medical bills. He had five unpaid medical bills and two other delinquent accounts, which totaled more than \$30,000. Disqualifying Conditions AG ¶ 19(a), "inability or unwillingness to satisfy debts" and AG ¶ 19(c), "a history of not meeting financial obligations," apply.

Five Financial Considerations Mitigating Conditions under AG ¶¶ 20 are potentially applicable:

(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.

All but five per cent of the delinquent accounts were the result of the 2006 motorcycle accident. Applicant is repaying his medical debts related to that accident. He has learned the importance of maintaining full insurance. The medical debts are not considered remote in time because one remains unpaid and he is making payments on the others. However, the majority of the delinquent accounts relates to a single event and, as such, could be considered infrequent. Applicant has medical insurance through his current employer and he now maintains full insurance coverage. With such insurance coverage he is unlikely to incur financial problems due to medical bills. The mitigating conditions in AG ¶ 20(a) apply.

Under AG ¶20(b), Applicant relocated to a new state due to his mother-in-laws medical problems. This is an event beyond his control as were his medical problems. Applicant is acting reasonably by paying his debts. The mitigating conditions listed in AG ¶20(b) apply.

There are clear indications Applicant's financial problems are under control. He is making payments on the largest debt. His home is paid for. He recently purchased a new car. There is no indication that he is unable to meet his financial obligations. The mitigating conditions in AG ¶20(c) apply. Applicant is making payment by automatic deduction on the medical debt listed in SOR ¶1.c. The mitigating conditions listed in AG ¶20(d) apply.

Applicant has only recently heard from the creditor listed in the remaining \$1,482 medical bill (SOR ¶1.d). He wanted to pay this debt earlier, but his CBR failed to give any information about the name of the creditor. After disputing the debt and waiting six weeks, the creditor finally responded. Applicant intends to establish a repayment plan for this debt. Based on how he addressed the other debts and his demeanor, I believe he will repay this debt as he asserts he will do.

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. The debts incurred were not the types that indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations. Money was not spent frivolously. The debts set forth in the SOR were not incurred on luxuries. All but two of the delinquent debts were for medical treatment following a motorcycle accident.

I had ample opportunity to evaluate the demeanor of Applicant, observe his manner and deportment, appraise the way in which he responded to questions, assess his candor or evasiveness, read his statements, and listen to his testimony. It is my impression that his explanations that he wanted to address the final debt sooner, but could not because he did not have the creditor's contact information and now that the creditor has responded he will establish a repayment plan, are consistent, and considering the quality of the other information before me, have the solid resonance of truth.

Five of the debts have been paid, one is being paid monthly, and one will be paid. Of course, the issue is not simply whether all his debts are paid—it is whether his financial circumstances raise concerns about his fitness to hold a security clearance. (See AG ¶ 2(a)(1).) Overall, the record evidence leaves me without questions or doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising from his 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, Financial Considerations: FOR APPLICANT

Subparagraphs 1.a—1.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 eligibility for a security clearance. Eligibility for access to classified information is granted.

CLAUDE R. HEINY II
Administrative Judge