



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



In the matter of:)	
)	
-----)	ISCR Case No. 09-05184
SSN: -----)	
)	
Applicant for Security Clearance)	

Appearances

For Government: John B. Glendon, Esq., Department Counsel
For Applicant: Alan V. Edmunds, Esq.

August 6, 2010

Decision

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

The Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) on December 16, 2009. The SOR enumerated 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 January 25, 2010, response, Applicant admitted the nine allegations set forth under Guideline F, provided explanations regarding each account at issue, and requested a hearing before an administrative judge. DOHA assigned the case to me on March 12, 2010. The parties proposed a hearing date of June 15, 2010. A notice setting that date for the hearing was issued on April 30, 2010. I convened the hearing as scheduled. Department Counsel offered five documents, which were admitted as exhibits (Exs.) 1-5 without objection. Applicant testified and presented 19 documents, which were accepted into evidence without objection as Exs. A-S. One additional document was submitted by Applicant on June 22, 2010. It was forwarded to me by Department Counsel on June 23, 2010, with no objection. The document was accepted

as Ex. T. The transcript (Tr.) of the proceeding was received on June 24, 2010. The record was then closed. Based on a review of the testimony, submissions, and exhibits, I find Applicant met his burden in mitigating security concerns. Clearance granted.

Findings of Fact

Applicant is a 32-year-old training lead working the area of logistics support for a defense contractor. He has worked for the same employer for two years. He is married and has four children. Applicant joined the United States Army after high school. Between 1997 and 2008, he had an impressive military career, served in hostile actions, and maintained a security clearance without incident.¹ He was injured during his 11 years of military service. Applicant attended college, but has not completed a degree program.

In late 2007, Applicant was in the military as an E-7 earning about \$50,000 a year. His wife was earning approximately \$65,000 a year. In September 2007, Applicant's wife abruptly lost her job during a company restructuring plan. The interruption in their combined flow of income forced his family to live solely on Applicant's income. As a result, some bills went unpaid or were paid late.² Applicant quickly acquired about \$34,000 in delinquent debt.

Meanwhile, Applicant's wife looked for a new job. She received unemployment benefits for about six months, until she temporarily left her family to seek employment in another part of the country. She found work in the real estate industry, but did not earn sufficient income to help their financial situation. Applicant made the decision to leave the military in order to accept a higher paying position that would also let him rejoin his family. They were reunited in the summer of 2008, when Applicant accepted his current position.

The following year, Applicant's wife began to look for work outside of the sluggish real estate market. By October 2009, it looked likely she would be hired as an insurance company representative. With Applicant's new salary of about \$99,000 a year and his wife's prospective salary of approximately \$65,000, the couple began addressing their delinquent debts in October 2009. Applicant's wife assumed her current position in November 2009. Applicant received the SOR on December 16, 2009, at which point he was already addressing his household's debts.

All but one of the debts at issue in the SOR have been substantially addressed:³

¹ Tr. 9-10.

² Tr. 29-30.

³ Tr. 61-62. As discussed below, no payments have yet been made on the settlement for allegation 1.c. Applicant did, however, present evidence that made the Government "comfortable" that payments will commence in September 2010..

1.a. Collection account (\$515) – Paid. Applicant provided evidence that the account for this credit service was paid in full on or before November 3, 2009.⁴

1.b. Collection account (\$122) – Paid. Applicant provided evidence that the account for this credit service was paid on or about November 2, 2009.⁵

1.c. Collection account (\$8,604) – Payment plan negotiated. Applicant has worked out a settlement amount and payment plan on this disputed furniture company account balance, although repayment has yet to commence.⁶ So as not to overextend himself financially, progress toward the pending balance was temporarily halted due to the finances required for Applicant's hiring of legal representation for this action.⁷ Otherwise, he is prepared to start repayment on the negotiated balance of \$5,500 in September 2010, after he completes the repayment plan noted in 1.g, below.⁸

1.d. Medical collection account (\$22) – Paid. Applicant provided evidence that the balance owed on this hospital emergency room account for a co-payment was paid between November 2, 2009, and November 6, 2009.⁹

1.e. Collection account (\$541) – Paid. Applicant provided evidence that the balance for this utility account was paid on or about January 15, 2010.¹⁰

1.f. Charge-off account (\$2,786) – Paid. Applicant provided evidence that the balance for this account was paid on or before March 26, 2010.¹¹

1.g. Charge-off account (\$20,543) – In repayment. Applicant negotiated a settlement on this auto loan debt in December 2009, the actual balance of which was \$15,742. Payments on the loan were missed when Applicant's wife lost her job in 2007.¹² The

⁴ Ex. H (Letter, dated Nov. 3, 2009).

⁵ Ex. I (Letter, dated Oct. 30, 2009, and account detail, dated Nov. 2, 2009).

⁶ Tr. 40-41. Applicant purchased furniture with a five year warranty. Within months, it needed repair. The company would not honor its warranty because it was going bankrupt. Applicant actively pursued repair of the furniture from 2004 until 2006, when payments became due. After that time, he disputed the balance and the balance remained unpaid.

⁷ Tr. 18-19.

⁸ Tr. 38-39, 61-62. As referenced in note 3, *supra*, the Government is "comfortable that the Applicant will as of September have started making payments" on this account.

⁹ Ex. J (Evidence of payment, dated Dec. 22, 2009); Tr. 19.

¹⁰ Ex. K (Payment receipt, dated Jan. 15, 2010).

¹¹ Ex. T (Letter, dated Mar. 26, 2010).

¹² Tr. 31.

settlement Applicant negotiated featured a pay-off balance of \$7,800.¹³ Repayment commenced in January 2010, when payments of \$975 every 60 days were commenced. Payments have been made through automatic deduction from Applicant's salary. Upon deposit of the final payment of \$975 on August 15, 2010, the entire balance will be satisfied.¹⁴

1.h. Telecommunication collection (\$365) – Paid. Applicant provided evidence this balance was satisfied on or before January 18, 2010.¹⁵

1.i. Collection account (\$274) – Paid. Applicant provided evidence that this debt was paid in full between October 30, 2009, and November 2, 2009.¹⁶

In his free time, Applicant is very involved with youth sports as a coach. At work, in the military, and among associates, Applicant has a solid reputation for honesty, integrity, patriotism, diligence, and superior judgment.¹⁷ At home, Applicant and his wife use a budget that Applicant recently devised. It has thus far proved to be a workable budget, under which they have a net monthly remainder of about \$3,200 a month.¹⁸ They are current on all their utility bills. Applicant has received financial counseling.¹⁹ He has a savings account. He maintains no credit card accounts. Other than the balances owed on the two accounts noted in SOR allegations 1.c and 1.g, Applicant has no outstanding debts and is current on his taxes.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

¹³ Ex. M (Letter, dated Dec. 22, 2009).

¹⁴ Tr. 20-21, 27, 51-53; Exs. M and P (Payments). At the time of the hearing, Applicant owed a balance of approximately \$1,950 on the voluntarily repossessed vehicle.

¹⁵ Ex. N (Letter, dated Jan. 18, 2010).

¹⁶ Ex. O (Letter, dated Dec. 28, 2009, and evidence of payments between Oct. 30, 2009, and Nov. 2, 2009).

¹⁷ Ex. A-E (References).

¹⁸ Tr. 57.

¹⁹ Ex. F (Certificate of Counseling, dated Jun. 1, 2010); Ex. G (Family budget).

²⁰ Tr. 59-60.

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.

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.

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.*

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, Applicant acquired nine delinquent debts, amounting to about \$34,000, after his wife lost her job in 2007. Although the majority of that debt has been repaid, approximately \$1,900 remains owed on an automobile loan and although a second debt has been settled for \$5,500, actual payment on that balance has yet to commence. Consequently, 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) apply. With such conditions raised, the burden shifts to Applicant to overcome the case against him and mitigate security concerns.

Applicant and his wife support their family on their joint income. In 2007, when Applicant’s wife earned considerably more than he earned in the Army, she abruptly lost her job due to a company restructuring. As a consequence, their income was drastically reduced. She actively sought a new job, eventually relocating to generate income. Her new field, however, was in real estate. Given the sluggish real estate market, her income was low. Applicant left his military career in order to better provide for his family financially and his wife found work in the insurance industry. Through these efforts, Applicant has doubled his income, his wife has found a new position paying her at her former salary, and Applicant has paid, addressed, or otherwise negotiated with all of his creditors. Indeed, several of the debts at issue were paid or about to be paid before he received the SOR. Given these facts, 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), 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), and FC MC ¶ 20(d) (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts) apply. In addition to the progress Applicant has made on the debts at issue, he has received beneficial financial counseling. Therefore 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.

To date, Applicant has paid seven of the nine debts noted in the SOR. The eighth and largest debt has been renegotiated, is in repayment, and has been substantially repaid. The only other debt at issue, for \$8,604, will be settled on payment of a negotiated sum of \$5,500. With the hiring of an attorney for this process, however,

²⁵ AG ¶ 18.

Applicant wisely chose to defer payment on this debt to avoid becoming financially overextended. He is prepared to proceed on payments toward that debt in September 2010, after he completes repayment on his largest debt. The Government stated it is “comfortable” with this commonsense plan, and so am I. Given Applicant’s progress on the debts at issue and evidence that he was already addressing those debts before he received the SOR, I find that Applicant provided sufficient evidence to mitigate financial considerations security concerns.

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. Many facts speak in favor of Applicant. He is a mature and credible man who has honorably served this country with distinction. Applicant has built a reputation for honesty, integrity, diligence, and sound judgment. When their household income was drastically reduced in 2007, both Applicant and his wife made significant personal sacrifices to support their family and try to recapture their financial stability. She temporarily left her home and her family in search of work; he sought an honorable discharge from the Army to maximize his earning potential through private sector employment. Their efforts were rewarded. Today, they have a joint income of approximately \$164,000 and the vast majority of their debt has been repaid.

Applicant began paying off his delinquent debts before he received the SOR. Seven of the nine debts at issue have been paid. Applicant is in repayment on a debt initially reflected as having a balance of approximately \$20,543. At the time of the hearing, less than \$2,000 had yet to be paid, and it seemed clear that the balance would be satisfied by September 2010. Moreover, despite his genuine dispute with a furniture company over a debt listed in the SOR for \$8,604, Applicant negotiated a pay-off balance on that debt for \$5,500. Payment on that plan is set to commence in September 2010, when Applicant finalizes his payments on the \$20,543 debt. There is every indication that Applicant will continue to honor these debts until they are completely satisfied, and he has shown that he has both the character and the resources to do so. In light of Applicant’s demonstrated efforts regarding the delinquent debts at issue, from both before and after the issuance of the December 16, 2010, SOR, I find that he has mitigated financial considerations security concerns. Clearance granted.

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-1.i: For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with national interest to grant Applicant a security clearance. Clearance granted.

ARTHUR E. MARSHALL, JR.
Administrative Judge