



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



In the matter of:)
)
) ISCR Case No. 09-06272
)
)
Applicant for Security Clearance)

Appearances

For Government: Candace Le'i Garcia, Esquire, Department Counsel
For Applicant: *Pro se*

January 19, 2011

Decision

HOGAN, Erin C., Administrative Judge:

On May 18, 2010, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant 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 adjudicative guidelines (AG) effective within the Department of Defense after September 1, 2006.

On June 5, 2010, Applicant answered the SOR and requested a hearing before an administrative judge. Department Counsel was ready to proceed on June 24, 2010. The case was assigned to another administrative judge on June 28, 2010 and transferred to me on July 30, 2010. On August 13, 2010, a Notice of Hearing was issued, scheduling the hearing for September 15, 2010. The hearing was cancelled on September 14, 2010, because of unforeseen circumstances and rescheduled for October 28, 2010. The case was heard on that date. During the hearing, the Government offered seven exhibits which were admitted as Government Exhibits (Gov) 1 – 7. Applicant testified and offered 12 exhibits which were admitted as Applicant

Exhibits (AE) A - L. The record was held open until November 12, 2010, to allow Applicant to submit additional documents. Applicant timely submitted a five-page document that was admitted as AE M with no objection. Department Counsel's response to AE M is marked as HE I. The transcript (Tr) was received on November 5, 2010. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

Findings of Fact

In his answer to the SOR, Applicant admits all of the SOR allegations.

Applicant is a 53-year-old man employed by a Department of Defense contractor seeking a security clearance. He has worked for his current employer since April 6, 2009. He is a high school graduate. This is his first time applying for a security clearance. He is married. He divorced his first wife in September 1997. He married his second wife in April 2006. He has four children ages 32, 21, 19 and 9. (Tr. 7-10, 64-65; Gov 1)

Applicant's security clearance background investigation revealed that he has the following delinquent accounts: a \$73 medical account (SOR ¶ 1.a: Gov 5 at 1; Gov 6 at 1; Gov 7 at 1); a \$429 medical account placed for collection (SOR ¶ 1.b: Gov 5 at 2; Gov 7 at 1); a \$4,586 credit card account placed for collection (SOR ¶ 1.c: Gov 4 at 7; Gov 5 at 1; Gov 7 at 2); a \$3,614 student loan account placed for collection (SOR ¶ 1.d: Gov 4 at 5; Gov 5 at 2; Gov 6 at 2; Gov 7 at 2); a \$4,674 student loan account placed for collection (SOR ¶ 1.e: Gov 4 at 5; Gov 6 at 2; Gov 5 at 2; Gov 7 at 2); and a \$9,991 student loan account placed for collection. (SOR ¶ 1.f: Gov 4 at 4)

Additional delinquent debts include: a \$125 cell phone account placed for collection (SOR ¶ 1.g); a \$175 telephone account placed for collection (SOR ¶ 1.h: Gov 4 at 7); a \$270 telephone account placed for collection (SOR ¶ 1.i: Gov 4 at 7); and a \$10,878 student loan account placed for collection. (SOR ¶ 1.j: Gov 4 at 8)

In August 2004, Applicant purchased a house taking out a variable rate mortgage. Applicant's mortgage payment increased to \$1,300. He got behind on his non-mortgage debts. He rents out the first floor of his home for \$750 a month, but was unable to keep up with the mortgage payment and pay his other expenses. His wife does not work outside the home. (Gov 2 at 3)

From October 2008 to April 2009, Applicant was unemployed. He received \$430 a week in unemployment compensation when he was unemployed. (Tr. 63) He had no health insurance when he was unemployed. He incurred some medical expenses while he was unemployed, two of the medical accounts are alleged in the SOR. (SOR ¶¶ 1.a and 1.b) His current job provides health insurance. (Tr. 65-66)

The current status of the delinquent debts alleged in the SOR is:

1.a. \$73 medical account: Paid on June 5, 2010. (Tr. 30-31; AE A at 5, fourth money order on the page)

1.b. \$429 medical account: Paid. Settled on September 2, 2010. (Tr. 31, 35; AE L)

1.c. \$4,586 credit card account placed for collection: A law firm obtained a judgment on this account. Applicant satisfied the judgment on March 18, 2010. During the hearing, it was not clear that the law firm collecting on the debt was connected to the original creditor. After the hearing, Applicant provided a document that is located at AE M at 5 which clearly connects the law firm and the debt alleged in the SOR. (Tr. at 37 - 40; AE J; AE M at 5)

1.d. \$3,614 student loan account over 120 days past due: Applicant testified the loan was sent back to the Department of Education for collection. Credit reports dated April 21, 2009, March 26, 2010, May 14, 2010, and June 17, 2010, list this debt as having a zero balance with a notation that a claim was filed with the Government. Applicant claims the creditor alleged in SOR ¶ 1.f is collecting the delinquent student loan accounts alleged in SOR ¶¶ 1.d and 1.e. He pays \$150 each month towards this account pursuant to a student loan rehabilitation program. The payments began in May 2010. The credit reports dated March 26, 2010, May 14, 2010, and June 17, 2010 list only one student loan account with the Department of Education with the current balance of \$12,000. The Department of Education now has this loan. (Tr. 43-44; Gov 4 at 5; Gov 5 at 2; Gov 6 at 2; and Gov 7 at 2; AE A at 3; AE F at 2; AE K)

1.e. \$4,674 student loan account placed for collection: Applicant testified the loan was sent back to the Department of Education for collection. Credit reports dated April 21, 2009, March 26, 2010, May 14, 2010, and June 17, 2010, list this debt as having a zero balance with a notation that a claim was filed with the Government. Applicant claims the creditor alleged in SOR ¶ 1.f is collecting the delinquent student loan accounts alleged in SOR ¶¶ 1.d and 1.e. He pays \$150 each month towards this account pursuant to a student loan rehabilitation program. The payments began in May 2010. The credit reports dated March 26, 2010, May 14, 2010, and June 17, 2010 list only one student loan account with the Department of Education with the current balance of \$12,000. The Department of Education now has this loan. (Tr. 43-44; Gov 4 at 5; Gov 5 at 2; Gov 6 at 2; and Gov 7 at 2; AE at 3; AE F at 2; AE K)

1.f \$9,991 student loan collection account: Applicant claims this debt is the same as the debts alleged in SOR ¶¶ 1.d, and 1.e. As of May 2010, he has been paying \$150 each month towards this debt. (Tr. 43-44, AE M at 2-4)

1.g \$125 cell phone account placed for collection: Paid. (Tr. 52; AE A at 5)

1.h \$175 telephone account placed for collection: Applicant testified that his account was purchased by AT&T. Account paid on December 5, 2009. (Tr. 52-53; AE A at 5)

1.i \$270 telephone account placed for collection: Applicant testified that his account was purchased by AT&T. Account paid on December 19, 2009. (Tr. 52-53; AE A at 5)

1.j \$10,878 student loan account placed for collection: Applicant claims this account is the same as SOR ¶ 1.f. However, he currently is making payments towards two different student loan accounts. He pays \$70 twice a month towards this account. (Tr. 45-47; AE A at 4; AE B; AE M at 3-4)

Applicant's net monthly income is \$3,385. This figure includes the \$750 monthly rental income. His monthly expenses include mortgage \$1,400, groceries \$270, clothing \$140, utilities \$300, car payment \$531, car insurance \$260, life insurance \$70, medical insurance \$120, miscellaneous and gas \$130. Applicant no longer pays child support. His total monthly expenses are \$3,221. This leaves him \$164 each month in discretionary income. Applicant testified that if he is allowed to work overtime, he has \$500 left over each month. If he does not work overtime, he has \$300 left over each month. His wife finished school and is looking for a job. (Tr. 54-58)

Applicant has no savings accounts. He has no open credit card accounts. He has not attended credit counseling. He does not have a budget. He is current on state and federal income taxes. (Tr. 60-62, 65)

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the 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 AG ¶19(a) (an inability or unwillingness to satisfy debts) and AG ¶19(c) (a history of not meeting financial obligations) apply to Applicant’s case. Applicant encountered financial difficulties since August 2004, after purchasing a house with a variable interest rate mortgage. His mortgage payment subsequently increased and he has insufficient income to pay all of his bills. The SOR alleged ten delinquent accounts

totaling \$34,815. Of that amount, \$29,157 consisted of delinquent student loan accounts. Several of the student loans were duplicates of each other.

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. The following mitigating conditions potentially apply:

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) is not applicable. Applicant has had financial problems for the past six years. While Applicant recently resolved all of his consumer accounts, he is in the process of rehabilitating his student loans. Considering Applicant began to resolve his delinquent accounts over the past year, it is too soon to conclude that the behavior happened long ago. Applicant's past financial history raise questions about his reliability, trustworthiness, and good judgment.

AG ¶ 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's recent period of unemployment contributed to his financial problems. However, his decision to purchase a house with an adjustable rate mortgage was within his control. Once Applicant was hired in his current position, he began to focus on paying off his delinquent accounts. He has acted responsibly under the circumstances.

AG ¶ 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. Applicant has not received financial counseling. He is encouraged to take a course or read books on how to manage a budget and finances in order to prevent future financial problems. However, there are clear indications that his financial problems are being resolved. He resolved six of the debts. The remaining accounts are student loan accounts. SOR ¶¶1.d and 1.e are duplicates of SOR ¶ 1.f. There is substantial evidence to conclude that Applicant has two student loan accounts, both of which he has been making payments towards over the past several months. There are clear indications the problem is being resolved. He has a good job that provides health insurance. He is capable of meeting his monthly financial obligations. His finances are likely to improve once his wife finds employment.

AG ¶ 20(d) (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts) applies. Applicant initiated a good-faith effort to resolve his delinquent debts. He resolved the debts alleged in SOR ¶¶ 1.a, 1.b, 1.c, 1.g, 1.h, and 1.i. He presented sufficient evidence to conclude the student loans alleged in SOR ¶¶ 1.d and 1.e were transferred to the student loan account alleged in SOR ¶ 1.f. It has been transferred to another collection agency collecting on behalf of the Department of Education. Applicant has two student loan accounts that he is making payments towards each month under a rehabilitation program. Applicant made a good-faith effort to resolve his delinquent accounts.

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. While Applicant has not always made the best financial decisions in the past, I considered that his recent financial problems were caused by periods of unemployment and underemployment. I also considered that he resolved most of the delinquent accounts and is making regular payments towards his remaining and two largest debts, his student loan accounts. His financial situation is likely to improve when his wife finds employment. 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
Subparagraphs 1.a -1.j:	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