



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



In the matter of:)	
)	
-----)	ISCR Case No. 09-06498
SSN: -----)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Nicole Noel, Esquire, Department Counsel
For Applicant: *Pro se*

January 13, 2011

Decision

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

On June 4, 2010, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) enumerating security concerns arising under Guideline F (Financial Considerations). DOHA took action under 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.

In a July 30, 2010, response, Applicant admitted four of the 10 allegations raised under Guideline F and requested a hearing before a DOHA administrative judge. DOHA assigned the case to me on October 8, 2010. The parties proposed a hearing date of December 15, 2010. A notice setting that date for the hearing was issued on November 5, 2010. I convened the hearing as scheduled.

Applicant gave testimony, introduced two witnesses, and offered 10 documents, which were accepted into the record without objection as exhibits (Exs.) A-J. The Government introduced four documents, which were accepted into the record without objection as Exs. 1-4. The transcript (Tr.) of the proceeding was received on December

28, 2010, and the record was closed. Based on a review of the testimony, submissions, and exhibits, I find Applicant met his burden of mitigating security concerns related to financial considerations. Clearance is granted.

Findings of Fact

Applicant is a 35-year-old researcher who has worked for the same government contractor since April 2009. He served in the United States Army from 1994 until 2001, when he received a medical discharge. Applicant is currently completing a bachelor's degree in multi-disciplinary studies with the goal of starting a master's degree by the end of 2011. Applicant and his ex-wife share custody of their three-year-old child.

At issue in the SOR are 10 debts, noted at SOR allegations ¶¶ 1.a-1.j. In denying allegations ¶ 1.a and ¶¶ 1.e-1.i, Applicant provided evidence that the debts at issue were previously paid. Before proceeding with Applicant's direct testimony, the Government expressed its agreement that these alleged debts, amounting to approximately \$2,135, were satisfied.¹ Consequently, remaining at issue are those four debts noted at SOR allegations ¶¶ 1.b-d and ¶ 1.j, all of which are attributable to essential medical care, as noted below.

Applicant met his wife in 2006. They dated for a few months before she discovered she was pregnant. She had no health insurance. Although she was unsure of the father's identity, Applicant tried "to be the better person" and offered to marry her.² They got married and the child was born under Applicant's health insurance policy. The baby was determined to be his child, and the couple settled down to try to make a family despite his hectic travel schedule. During this time period, Applicant often felt sick and tired, a condition that adversely affected his work. For unrelated reasons, his wife requested a separation and prepared to relocate to a distant state in mid-2007.

Applicant's estranged spouse earned a modest salary, and Applicant immediately began providing for her and their baby.³ Shortly thereafter, in late August or early September 2007, Applicant lost his job. At the time, Applicant still maintained excellent credit.⁴ Although he found a new position as a financial advisor by the end of October 2007, the salary was based on commission. Consequently, Applicant went without a paycheck for about four months.⁵ He received his first paycheck "of

¹ Tr. 25-28. Applicant's stated strategy for addressing his delinquent debts from smallest to largest is reflected in his satisfaction of these debts. The remaining debts at issue, discussed below, are for larger balances.

² Tr. 40.

³ Tr. 45. Applicant and his estranged wife amicably devised payment amounts which were later adopted by the court. Child support was assessed at \$500 a month.

⁴ Tr. 37.

⁵ Tr. 32.

substance” in about January 2008.⁶ Despite his financial distress and poor health, he maintained his child support payments, supplementing them when he could with additional, but modest sums.⁷

In the interim, in about late September 2007, Applicant was diagnosed with cancer. To help meet his obligations, he cashed out his former employer’s version of stock options.⁸ This gave him access to about \$23,000, of which he used \$11,000 to satisfy a business loan previously taken on behalf of his estranged wife, and he reserved the balance for his on-going expenses.⁹ About a month after losing his job, his health insurance expired and he did not have a COBRA policy.¹⁰

Meanwhile, Applicant’s cancer treatment continued. By the end of the year, he was receiving the first of two aggressive and costly rounds of radiation treatments, payment for which was expected out of pocket.¹¹ The radiation component of his treatment was conducted over a four-month span, extending into the early months of 2008. Lacking health insurance for this essential treatment, Applicant incurred an estimated \$30,000 to \$50,000 in personal debt.¹² He depleted his 401k account to keep up with the medical costs and put some of his medical bills on credit cards.¹³ The mounting medical costs led him to seek multiple loans.¹⁴

Applicant and his wife were granted a divorce in April 2008. They built an amicable relationship while Applicant recovered from his treatments and received appropriate medical attention. In 2009, he relocated to be closer to his daughter and to live in a region with a lower cost of living. He sees his child almost every day. Applicant is now in remission and fully employed.

Using his background as a financial planner and advisor, Applicant has followed the same advice he gives to clients in addressing the debts he acquired between 2007 and 2008. He no longer uses credit and “will never use a credit card for anything other

⁶ Tr. 44. Applicant’s January 2008 paycheck was for about \$1,200 to \$1,500.

⁷ *Id.*

⁸ Tr. 34.

⁹ Tr. 35; Ex. C (Letter of Oct. 30, 2009) regarding SOR allegation ¶ 1.c.

¹⁰ Tr. 33.

¹¹ *Id.* During the four months of radiation treatments, Applicant was without medical coverage for three months. Tr. 45.

¹² Tr. 46. Applicant’s form of cancer necessitated a particularly costly procedure offered by a private institution with particular expertise in the treatment provided.

¹³ Tr. 60.

¹⁴ Tr. 46.

than to survive,” a lesson he learned from experience.¹⁵ He currently generates a net monthly income of about \$8,400, comprised of salary and GI Bill/VA benefits. Upon receipt of each paycheck, he pays himself first for his essential obligations. To this end, he maintains a particularly detailed and workable budget that includes repayments on the debts at issue, child support, and other anticipated expenses.¹⁶ He has addressed the debts at issue by paying off the smaller ones first, a process he still follows.¹⁷ He also consulted an attorney regarding strategies for approaching creditors in his efforts at debt resolution.¹⁸

Remaining at issue are the debts noted at SOR allegations ¶¶ 1.b-d and ¶ 1.j, amounting to approximately \$48,800. These debts are mostly the result of Applicant’s medical care, although they also represent the “perfect storm of events” occurring in his life in 2007-2008.¹⁹ Through Applicant’s repayment strategy, the sum captured by the June 2010 SOR is a reduction from an original sum balance in excess of about \$62,000.²⁰ The debts remaining at issue are:

1.b: 2008 Judgment for approximately \$20,644 – In repayment. The origin of this debt is related to medical, pre-divorce marital, and general debts acquired between 2007 and 2008.²¹ There is no evidence as to how much of this sum reflects interest and fees. This creditor originally wanted monthly payments of \$617 to establish a payment plan. At the time, that sum was too unwieldy. On advice of counsel, Applicant counter-offered to make smaller payments and his payments have been accepted.²² He reduced the original debt by about \$700 through various payments before relocating.²³ Since then, Applicant has been in regular monthly repayment since early November 2010.²⁴

1.c: Bank debt of approximately \$10,935 – In repayment. This account is an employee account through the employer Applicant was with until September 2007. The original obligation was created by a business loan Applicant had taken on behalf of his former

¹⁵ Tr. 60.

¹⁶ Ex. G (Budget).

¹⁷ *Id.*

¹⁸ Tr. 29.

¹⁹ Tr. 46, 64, quoting Department Counsel’s summation of Applicant’s separation, unemployment, and diagnosis.

²⁰ See Answer to the SOR, dated Jul. 30, 2010.

²¹ Tr. 31-32, 34. When asked specifically as to the origin of the debt, Applicant referenced his period of unemployment and battle with cancer.

²² Tr. 29.

²³ *Id.*

²⁴ Ex. B (Bank statement, dated Dec. 8, 2010).

wife before their estrangement. After Applicant was terminated, he sold his stock options and paid approximately \$11,311 toward a total debt to this creditor of about \$23,000. This payment reduced the balance to approximately \$11,800.²⁵ Applicant provided evidence that he has been in regular payment on this account since at least July 1, 2010.²⁶

1.d: Collection account for \$6,333 – In repayment. Between his marital estrangement, period of unemployment, and medical treatments, Applicant needed funds in late 2007. He applied for and received a loan from the entity represented by this collection agent. Applicant provided evidence he has been making regular \$50 payments every two weeks since at least August 2010.²⁷

1.j: Collection account for \$11,832 – In repayment. This debt is also the result of a debt incurred when Applicant was faced with a period of unemployment and undergoing cancer treatment during his 2007 separation.²⁸ Applicant provided evidence of regular monthly payments on this debt since July 1, 2010.²⁹

Applicant's employer described Applicant as a "stellar employee" whose reliability, discretion, and trustworthiness should not be questioned due to his finances.³⁰ The employer emphasizes Applicant's demonstrated dedication to repaying his debt. Two character witnesses spoke about Applicant's personal qualities in the highest terms.³¹

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.

²⁵ Tr. 34; Ex. C (Letter, dated Oct. 30, 2009) reflecting payment of \$11,311.34.

²⁶ Tr. 36; Ex. D (Statement, dated Dec. 8, 2010).

²⁷ Tr. 38; Ex. F (Statement, dated Dec. 8, 2010).

²⁸ Tr. 37.

²⁹ Ex. E (Statement, dated Dec. 8, 2010).

³⁰ Ex. A (Letter, dated Dec. 15, 2010).

³¹ Tr. 14-21.

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. . . .”³² The burden of proof is something less than a preponderance of evidence. The ultimate burden of persuasion is on the applicant.³³

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 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.”³⁴ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.³⁵

Based upon consideration of the evidence, Guideline F (Financial Considerations) is the most 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.

³² See *also* ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

³³ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

³⁴ *Id.*

³⁵ *Id.*

Analysis

Guideline F - Financial Considerations

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 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.”³⁶ It also states that “an individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.”³⁷ Although he demonstrated satisfaction of six of the 10 debts at issue, Applicant admitted four of the debts cited in the allegations raised under this guideline. The remaining debt is sufficient to raise Financial Considerations Disqualifying Condition (FC DC) AG ¶ 19(a) (inability or unwillingness to satisfy debts) and FC DC AG ¶ 19(c) (a history of not meeting financial obligations). With such conditions raised, it is left to Applicant to overcome the case against him and mitigate security concerns.

In this case, Applicant provided significant evidence of mitigation. The debts at issue were incurred due to Applicant’s marital estrangement, loss of employment, and cancer. While any of those circumstances could potentially recur in a lifetime, the nearly simultaneous confluence of three such traumatic events is unlikely to recur. Moreover, since overcoming this “perfect storm” of adverse events, Applicant has demonstrated sound judgment and responsibility in handling the resultant financial distress they caused. 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) applies.

As noted, Applicant’s debt was largely the result of debts incurred after losing his job in the summer of 2007. Separated, without regular income for several months and lacking health insurance for the majority of the time he received essential radiation treatments, Applicant resorted to credit to meet his obligations. In doing so, he first cashed in stock options, then depleted his 401k account before seeking third-party loans. Once his health, employment, and situation stabilized, he started making payments on his debts, ultimately satisfying six of the ten at issue and commencing repayment on the remaining four. Such facts are sufficient to raise 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).

Applicant is a trained and experienced financial planner/consultant. He has also consulted legal counsel in addressing his delinquent debt. While his personal background presents a unique situation for consideration under this guideline, his

³⁶ AG ¶ 18.

³⁷ *Id.*

training, experience, and legal counsel provided him with the essentials to successfully address his debts in an organized and effective manner. FC MC AG ¶ 20(c) (the person has received or is receiving counseling for the problem and there are clear indications that the problem is being resolved or is under control) applies.

Applicant satisfied six of the 10 debts at issue. He is now addressing the four remaining debts. Applicant demonstrated that he is currently in regular repayment on those obligations. FC MC AG ¶ 20(d), (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts) applies. None of the other FC MCs apply.

The burden for mitigation in these proceedings is placed squarely on Applicant. This case is not one of an individual living beyond his means, investing in risky ventures, or failing to understand basic personal finance. Applicant presented unique facts and adequate evidence sufficiently mitigating the creation of the debts at issue. More importantly, he articulated and demonstrated an organized, methodical approach to repaying his debts. To date, a majority of the debts at issue have been satisfied. The remaining debts are in timely repayment. Applicant has both the resources and demonstrated resolve to continue making such payments until his remaining debts are satisfied. I find that 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 the 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 on 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 35-year-old researcher who has been a trusted employee for his current employer for nearly two years. He is well-regarded and respected by his peers. Applicant is a veteran of the United States military. Divorced, he has honored his financial commitments to his young child. He relocated to both be closer to that child and to live in an area with a lower cost of living. He has considerable experience as a financial counselor and analyst. He demonstrated his prowess in this area in satisfying the debts he incurred when marital separation, unemployment, and cancer unexpectedly coincided to create a "perfect storm" of adverse events in the summer of 2007. Prior to that time, Applicant had no financial issues of note and maintained excellent credit.

Throughout his adverse circumstances, Applicant has acted honorably and responsibly. He first faced financial adversity with his marital separation and the loss of a job. When his wife left, he immediately started providing child support. When he lost his job, he cashed out his stock options to start addressing mounting debts. When his cancer treatments created rising debts not covered by health insurance, he depleted his

401k. He resorted to a reliance on credit only when it became essential to maintaining his necessary medical treatment, for which he incurred an unwieldy amount of debt.

Since his health has stabilized and Applicant resumed employment in his new state in mid-2009, he has utilized his knowledge of finances to employ a systematic method for repaying his debts without resorting to bankruptcy. Six of the 10 debts at issue in the SOR are fully satisfied. He has reduced the total sum balance of the remaining four debts at issue substantially. Applicant is making regular payments on those remaining account balances. Given his demonstrated commitment to addressing his debts, his improved health, his current income, improved circumstances, and his continuing resolve to honor his debts, there is no indication that Applicant will not continue to do so. Given all these considerations, there is sufficient evidence to mitigate Guideline F security concerns. Clearance is 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
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 national interest to grant Applicant a security clearance. Clearance granted.

ARTHUR E. MARSHALL, JR.
Administrative Judge