



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



In the matter of:)	
)	
)	ISCR Case No. 09-06833
SSN:)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Gregg A. Cervi, Esquire, Department Counsel
For Applicant: *Pro se*

October 8, 2010

Decision

HENRY, Mary E., Administrative Judge:

Based upon a review of the case file, pleadings, exhibits, and testimony, I grant Applicant's eligibility for access to classified information.

Applicant signed his Electronic Questionnaire for Investigations Processing (e-QIP) on May 7, 2009. The Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) on April 29, 2010 detailing security concerns under Guideline F, Financial Considerations, that provided the basis for its preliminary decision to deny him a security clearance. 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) implemented on September 1, 2006.

Applicant acknowledged receipt of the SOR on May 6, 2010. He submitted a notarized, written response to the SOR allegations dated May 18, 2010, and requested a decision on the written record in lieu of a hearing.

Department Counsel prepared a File of Relevant Material (FORM) and mailed Applicant a complete copy on August 5, 2010. Applicant received the FORM on August 13, 2010. He had 30 days from receipt of the FORM to file objections and submit material in refutation, extenuation, or mitigation. He submitted a response with attachments dated August 23, 2010. DOHA assigned this case to me on October 4, 2010. The Government submitted nine exhibits, which have been marked as Item 1-9 and admitted into the record.¹ His written response to the FORM and attachments are admitted into the record as Applicant Exhibit (AE) A to C.

Findings of Fact

In his Answer to the SOR, Applicant admitted all the factual allegations in the SOR. His admissions are incorporated herein as findings of fact. He also provided additional information to support his request for eligibility for a security clearance. After a complete and thorough review of the evidence of record, I make the following additional findings of fact.²

Applicant, who is 49 years old, works as an aircraft mechanic for a Department of Defense contractor. He began his employment in 2009. Applicant enlisted in the United States Air Force in October 1979 and retired in 2005 at the rank of Master Sergeant (E-7). He received many medals and awards during his 26 years of service, including the Meritorious Service Medal with two oak leaf clusters, Air Force Commendation Medal with two oak leaf clusters, Air Force Achievement Medal with one oak leaf cluster, Air Force good conduct medal with a silver oak leaf cluster and two oak leaf clusters, National Defense Service Medal with one bronze star, and others.³

Applicant married his first wife in 1984 and they divorced in 1997. They had a son born in 1988 and daughter born in 1990. During his marriage, he paid his bills and did not have financial problems. Applicant's divorce from his first wife was lengthy and expensive for him. As a result of the divorce proceedings, the court awarded the house to his first wife and all the marital debts, including the mortgage payment and court costs, to him. He incurred attorney fees and child support obligations. His expenses were overwhelming on his \$26,000 a year income. He filed bankruptcy in 1998 upon the recommendation of his attorney. The bankruptcy court discharged his debts of \$167,110 on June 15, 1998. He listed to the mortgage on the house his wife received in their divorce and a car titled to her as his largest debts. These debts totaled \$131,000 or nearly 80% of his discharged debts.⁴

Between 1998 and 2003, Applicant paid his bills and worked to re-establish his credit. He purchased a home in 2003. He also had a savings account and an

¹Applicant's response to the SOR has been marked and admitted as Item 4, and the SOR has been marked as Item 1.

²Item 4.

³Item 5; Item 6.

⁴Item 6; AE A.

investment portfolio. Two years later, he retired from the Air Force. In 2006, Applicant met his current wife, whom he married in September 2006. At this time, they together had five children between the ages of 9 and 17.⁵

Because of the family size, Applicant purchased a larger home for \$840,000. His realtor and mortgage team advised that the house purchased in 2003 would sell very soon and not to worry. He relied on their assertions and now realizes that his new financial problems began at this time. For the next two years, he attempted to pay both mortgages. He rented one house, but the rental income did not cover the mortgage. He slowly started falling behind in his bills. His wife worked, but her work hours at a local university were cut, reducing household income.

In November 2008, Applicant cashed out his mutual funds and used the money to pay bills. He was also advised to place both his houses up for sale before foreclosure. After months without a buyer, the mortgage companies began the process to short-sale the houses. Eventually, both houses were sold. Applicant does not owe any money on these mortgages, including the SOR debt in ¶ 1.c.⁶

Concerning the \$31,000 credit card debt listed in SOR ¶ 1.b, Applicant made arrangements with the creditor on May 5, 2010 to repay the debt at \$500 a month. He has made his payments each month since May 2010, for a total of \$2,000 by the end of August 2010. Under this payment plan, he will pay this debt in full in five years.⁷

Applicant's August 4 and 6, 2010 credit reports reflect that he has resolved all his debts but the credit card debt. His credit reports also show that his bills are paid and that he does not owe a balance on his mortgage debt. He pays his other bills. He also paid three other past-due debts incurred during this period of financial crisis. These debts are not listed in the SOR.⁸

Applicant did not provide a financial statement. He works and his wife works. He also receives a military retirement. His actual monthly income is unknown. He provided some indication of his monthly payments for housing, cars, utilities, cell phones, college housing expenses, and savings. He pays his expenses as shown by his credit reports. The record evidence does not show that he was ever behind in his child support payments. His children are now grown. His daughter and a step-daughter are in college, and he is helping to pay these costs.⁹

⁵AE A.

⁶Item 4; Item 7; AE A; AE C.

⁷Item 4; AE B.

⁸Item 6; Item 7; AE C.

⁹Item 7 to Item 9; AE A; AE B.

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 are used 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 decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, 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. . . ." An applicant has the ultimate burden of persuasion for 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 an 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.

AG ¶ 19 describes the disqualifying conditions that could raise security concerns. I have considered all the conditions, and especially the following:

19(a) inability or unwillingness to satisfy debts.

19(c) a history of not meeting financial obligations.

Appellant developed significant financial problems when he remarried and incurred significant housing costs for his larger family. He was unable to sell his first house as anticipated. His bills became unmanageable and he missed payments. These two disqualifying conditions apply.

The Financial Considerations guideline also includes examples of conditions that can mitigate security concerns. I have considered mitigating factors AG ¶ 20(a) through 20(f), and especially the following:

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.

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.

20(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant's new financial problems began in 2007 after he remarried and purchased a larger house for his new blended family. He was unable to sell his smaller house, as the economic downturn in the housing market had started. He tried to pay both mortgages, but could not. He rented the smaller house for a year. However, he did not receive rent equal to his mortgage payment. At the same time, his wife's employer reduced her work hours, placing more strain on family finances. In November 2008, he

withdrew his investment money to pay some of his debts and listed both houses for sale. Because of the poor housing market, the houses did not sell at the listed price; however, the mortgage companies agreed to sell the property through a short sale. The properties are sold and Applicant has no resulting debt from the sale. Applicant acted reasonably and within his financial abilities. AG ¶ 20(b) applies.

Applicant did not enroll in a debt counseling course. However, he pays his bills and his debts listed in the SOR are under control or resolved. AG ¶ 20(c) applies.

Applicant contacted the credit card company and offered to make monthly payments on his debt. The credit card company agreed to a monthly payment of \$500, which Applicant has made since May 2010. AG ¶ 20(d) applies to the debt in SOR ¶ 1.b.

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 an applicant's conduct and all relevant 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. The decision to grant or deny a security clearance requires a careful weighing of all relevant factors, both favorable and unfavorable. In so doing, an administrative judge must review all the evidence of record, not a single item in isolation, to determine if a security concern is established and then whether it is mitigated. A determination of an applicant's eligibility for a security clearance should not be made as punishment for specific past conduct, but on a reasonable and careful evaluation of all the evidence of record to decide if a nexus exists between established facts and a legitimate security concern.

The evidence in support of granting a security clearance to Applicant under the whole-person concept is more substantial than the evidence in support of denial. In reaching a conclusion, I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. At two different times in his life, Applicant developed serious debts problems. The first occurred as a result of his 1997 divorce. When his divorce proceedings concluded, he became responsible for all the marital debts, including the mortgage and his wife's car payment.

In addition to assuming all the joint debts, he now paid child support. On the other hand, his household income had declined. Because of these significant financial burdens and related stress, he followed his attorney's advice and filed bankruptcy. Over the next nine years, he paid his bills, including his child support. He saved his money. He purchased a house and developed an investment account. Following his divorce and bankruptcy discharge, he acted responsibly with his finances by paying his bills. He saved money, developed an investment portfolio, and purchased a house in 2003.

Applicant's second financial problem started in 2007 when he purchased a larger house for his new and larger family. About the same time, the real estate market began to slow. He could not sell his smaller house. He tried to pay both mortgages, but he did not have enough financial resources to do so. He tried unsuccessfully to sell both homes at the new lower market value. Eventually, he sold the house through a short sale. His finances are now stable, allowing him to pay his bills every month. He negotiated a payment plan for his one remaining credit card debt and he is making the payments as agreed. Applicant had an excellent record while in the military. He has taken affirmative action to pay or resolve most of the delinquent debts raising security concerns. His debts cannot be a source of improper pressure or duress because he showed good judgment in his efforts to resolve his financial problems. 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. While one debt remains unpaid, it is insufficient to raise security concerns, as he is repaying it monthly. (See AG ¶ 2(a)(1).)

Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising from his finances under Guideline F.

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:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	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.

MARY E. HENRY
Administrative Judge