



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



In the matter of:)	
)	
)	ISCR Case No. 09-07054
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Jeff A. Nagel, Esquire, Department Counsel
For Applicant: *Pro se*

April 8, 2011

Decision

MASON, Paul J., Administrative Judge:

Applicant’s documented track record of payments to several unlisted creditors over 18 months is part of his debt plan to resolve all listed accounts in the Statement of Reasons. When the unlisted creditors are satisfied, he will be able to devote his efforts to the listed creditors who will be more inclined to negotiate repayments with him. Eligibility for access to classified information is granted.

Statement of the Case

Applicant completed and certified his Electronic Questionnaire for Investigations Processing (e-Qip)(GE 1) on December 1, 2008. He was interviewed by an investigator from the Office of Personnel Management (OPM) on June 11, 2009. A summary of this interview appears in Applicant’s interrogatory answers dated November 16, 2009. His

correction to the interview summary was that he had received financial counseling in the form of credit card debt counseling. With the above modification, Applicant agreed with the investigator's summary could be used at a hearing to determine his security suitability.

On March 19, 2010, DOHA issued a Statement of Reasons (SOR) detailing security concerns under financial considerations (Guideline F). 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 by the Department of Defense on September 1, 2006.

Applicant submitted his answer to the SOR on April 2, 2010. DOHA issued a Notice of Hearing on June 21, 2010, for a hearing on July 14, 2010. The hearing was held as scheduled. At the hearing, five exhibits (GE 1 through 5) were admitted in evidence in support of the Government's case. Applicant and one witness testified. Applicant's nine exhibits (AE A through AE I) were admitted without objection. In the time allowed to submit post-hearing exhibits Applicant supplied seven exhibits (AE J through AE P). Department counsel interposed no objection to the exhibits. Applicant's exhibits AE A through AE P are now in the record. DOHA received the transcript (Tr.) on July 21, 2010. The record closed on July 23, 2010.

Findings of Fact

The SOR contains five allegations under Guideline F (financial considerations). The five delinquent accounts total about \$40,000. Four of five of the accounts represent credit cards. There is no information in the record that describes the fifth account (§ 1.d). Applicant admitted §§ 1.a, 1.b, 1.c, and 1.e. He denied § 1.d because he did not recognize the name of the creditor. The account appears in GE 4. The last activity taken on the account before it became delinquent was February 2010. (*Id.*)

GE 3 is a credit report dated May 2008. The report identifies one account in collection from 2006. However, that account is not listed in the SOR or the more recent credit report in GE 4 that is dated March 2010. The delinquent accounts listed in the SOR also appear in GE 4. The listed accounts were transferred for collection in February 2009 and February 2010.

Applicant is 54 years old and single. In June 1980, he graduated from an area university with bachelors degrees in management science and systems science. Since 1986, he has also been the chairman and chief executive officer (CEO) of a research corporation, whose business purpose is the design of security technologies that help the contract entity control their personal information anytime and anywhere. Over 25 research

capabilities of the corporation are listed in the corporate statement. (GE 2 at 266)¹ Applicant is an inventor through his research corporation. He has patents pending in 18 foreign countries, and he has ventures with foreign patent law firms that assist in forwarding his intellectual property in foreign markets. (GE 1 at 22)² From March 2008 to May 2008, Applicant was the application architect leader for another defense contractor before being terminated through a reduction-in-force. In November 2008, he was hired as a principal engineer by a defense contractor in November 2008, but he is currently unemployed because he does not have a security clearance. In 1983 and 1992, Applicant had his background investigated for access suitability. (GE 1 at 330-331) He has held a security clearance in the past. (Tr. 44)

As an inventor and CEO of his research corporation, a small business, Applicant has had to use a large amount of credit to apply for patents and secure patent-related products. Because of his good credit history, the bank creditor in ¶¶ 1.a and 1.e provided him with a credit line. (Exact date credit line offered not in record) Applicant explained:

Many small businesses, when we don't have the cash, because we have good credit - - I had very good credit so you see I got a lot of credit cards thrown at me because of my good credit - - I used those to pay patent bills. I used those to pay lawyers. And so I accumulated debt on my credit cards as my way of financing myself. And so when [the bank] pulled that hundred thousand dollar - - or \$70,000 credit line, I was using that to pay these other debts and once I had the safety net removed, I'm screwed and I'm - - but, I want to make clear for the record that I do not use - - I use these credit cards to fund [Applicant's research corporation]. (Tr. 53-54, 57)

In early 2008, Applicant was working for another defense contractor when he was laid off. He had a medical procedure conducted at a hospital and was told the cost would be less than \$200. Instead, he was billed close to \$7,000. He contested the overcharges and another unrelated overcharge for x-rays. (Tr. 38-39) Both creditors apologized for the mistaken entries on Applicant's credit report, and directed the appropriate credit agencies to remove the inaccurate information from Applicant's credit report. (GE 2 at 156, 164)

Even after Applicant officially advised the bank creditor (¶ 1.a and ¶ 1.e) that the medical bills in his credit report were inaccurate (GE 2 at 173; AE O), the bank refused to reinstate his credit line. Applicant noted the "business line of credit was a safety net that

¹ The handwritten page number is located in the lower right corner of the page.

² The page number is located in the upper right hand corner of the page.

was established in case of loss of revenue/employment, other financial hardship or needed funds to help cover business expenses such as my firm's legal expenses." (GE 2 at 5) Applicant explained:

[the bank], after 20 plus years of my good standing relationship egregiously cut off my business line of credit refusing to acknowledge documented facts in my favor, plus letters from health care authorities removing these derogatory medical collection items. Additionally, [the bank] refuses to acknowledge independent, expert financial and legal evaluations of my firm's intellectual property which has been patiently built over 10 years. (*Id.*)

Though Applicant has received unemployment compensation since 2009, he has continued to pay those creditors who were willing to negotiate repayment agreements with him. After trying unsuccessfully to negotiate or settle with the listed creditors. (Tr. 50, 52, 54, 57)³ Applicant's plan is to continue to focus on the resolution of the past due debts he is paying, then devote his attention to the listed creditors. He has made regular payments to a credit card company from January 2009 to June 2010. (GE 2 at 273; AE A) He has made regular payments to a second credit card company from March 2009 through June 2010. (AE B) Since October 2009, he has made as many payments to other creditors as his unemployment compensation budget allowed. (GE 2 at 281-282) He has furnished payments to a credit union (*Id.* at 276) and a city bank (*Id.* at 283) In 2009, he was able to make eight payments to the utility company (*Id.* at 285), 11 payments to the government military exchange (*Id.* at 286), and 12 payments to two telecommunications services. (*Id.* at 287-288) He has continued to pay most of the above creditors through July 2010. (AE C)

Applicant is current on his day-to-day and month-to-month expenses. He has rented an apartment in the local area since 2000. (GE 1; Case file, hearing notice) He is current on his rent and utility bills. His car is paid and he is current on car insurance. (Tr. 46-47) Applicant's financial statement also lists his rent, utilities, and car insurance. (GE 2 at 279-283)

Character Evidence

Applicant has written articles on programs his research corporation offers. One article is information asset management. (AE H) A second article explains the objectives health record management capabilities. (AE I)

³ See unsigned forbearance agreement requiring Applicant to turn over patent rights to the bank.

On July 23, 2010, a director and a senior solutions expert of a competitor company believe that Applicant's information applications has critical importance to the protection of the national security. (AE J)

On July 23, 2010, a senior staff engineer, who wrote a recommendation for Applicant, indicated that he has known Applicant for 10 years in a professional and a social capacity. He believes Applicant's technology would provide an advancement to existing encryption technologies. (AE P)

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the AG. Each guideline lists potentially disqualifying conditions and mitigating conditions, which are required to be used to the extent they apply in evaluating an applicant's eligibility for access to classified information.

The administrative judge's ultimate goal is to reach a fair and impartial decision that is based on common sense. The decision should also include a careful, thorough evaluation of a number of variables known as the "whole-person concept" that brings together all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision. 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 the potential, rather than actual, risk of compromise of classified information.

Under Directive ¶ E3.I.14., the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.I.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 for obtaining a favorable security decision.

Analysis

Financial Considerations

The security concern for financial considerations is set forth 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.

There are two disqualifying conditions under AG ¶ 19 that may apply.

AG ¶ 19(a) (*inability or unwillingness to satisfy debts*); and

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

Applicant owes more than \$40,000 to five creditors. The credit reports show this debt was transferred to a collection status between February 2009 and February 2010. Applicant is unable, no unwilling, to repay the debts. AG ¶ 20(a) applies. The conversion of five debts in the one-year period shows a history of not meeting financial obligations within AG ¶ 20(c).

Four conditions under AG ¶ 20 could potentially mitigate Applicant's delinquent indebtedness:

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*);

AG ¶ 20(b) (*the conditions that resulted in the financial problem were largely beyond the person's control, and the person 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*); and

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

The fact that Applicant had developed a large credit line with the bank over the years suggests that the bank considered Applicant a very worthy credit risk. Applicant's May 2008 credit report (listing only one debt in collection) tends to support that rating. While the bank's removal of Applicant's credit line in 2008 was not illegal, inappropriate, or unethical, the bank would not rescind their removal decision even after receiving correct information showing the entries in Applicant's credit report were wrong. Suddenly, Applicant was left without a "safety net" resource to pay the creditors. Though AG ¶ 20(a) is not applicable

because of the recency of the financial problems, Applicant receives substantial mitigation under AG ¶ 20(b) for “conditions that resulted in the financial problem were largely beyond the person’s control.”

Applicant’s regular payments to keep his month-to-month expenses current while regularly paying several unlisted creditors since early 2009 based on his unemployment compensation budget demonstrates that he has sound financial practices in place. Both AG ¶¶ 20(c) and 20(d) apply even though Applicant has yet to reduce the listed debt.

Whole-Person Concept

In evaluating Applicant’s security clearance worthiness, I have examined the evidence under the disqualifying and mitigating conditions. I have also weighed the circumstances within the context of nine variables known as the whole-person concept. In evaluating the relevance of an individual's conduct, the administrative judge should consider the following factors:

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 the participation was 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.

Applicant is 54 years old and has been involved in information technology for a significant period of time. The depth of his involvement in the field is substantiated by the services his corporation can supply and the technical articles he has written about his field of expertise. He has several patents, patents pending, or licenses, all over the world.

Based on his good credit history, he developed a credit line with the creditor identified in ¶¶ 1.a and 1.c. Sometime in 2008, the bank learned about some negative information on Applicant’s credit report. Even after the bank discovered the information on the report was incorrect, they would not reinstate the credit line.

As his documents verify, Applicant has received unemployment compensation since 2009. With a reduced income, Applicant has been able to maintain payments with several creditors while keeping current on his rent, utilities, and car insurance. Since he could not successfully negotiate reasonable payments with the listed creditors, his plan is to resolve the debts he is currently working on, and then work out a plan with the listed creditors. Based on Applicant’s documented action in regularly paying the unlisted creditors, I am

confident his plan will work. The DOHA Appeal Board has held that there is no mechanical method for an applicant to develop a meaningful track record. The Board noted that:

The judge can reasonably consider the entirety of an applicant's financial situation and actions in evaluating applicant's plan for the reduction of his outstanding indebtedness. There is no requirement that a plan provide for payments on all outstanding debts simultaneously. A reasonable plan (and concomitant conduct) may provide for the payment of such debts one at a time. Likewise, there is no requirement that the first debts actually paid in furtherance of a reasonable debt plan be the ones listed in the SOR. ISCR Case No. 07-06482 at 3 (App. Bd. May 21, 2008)

Having weighed and balanced the entire record, in the context of the whole person, Applicant has mitigated the adverse evidence under the financial considerations guideline.

Formal Findings

Paragraph 1 (Guideline F): FOR APPLICANT

Subparagraph 1.a through 1.e: For Applicant

Conclusion

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant access to classified information. Eligibility for access to classified information is granted.

Paul J. Mason
Administrative Judge