



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



In the matter of:)
)
) ISCR Case No. 09-07073
)
)
Applicant for Security Clearance)

Appearances

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

August 16, 2010

Decision

GOLDSTEIN, Jennifer I., Administrative Judge:

Applicant has mitigated the Financial Considerations and Personal Conduct security concerns. Of his nine debts, he has satisfied three creditors, is making payments to one creditor, has three others incorporated into his debt management program, and has rehabilitated his two mortgages. The Personal Conduct allegation was unsubstantiated. Eligibility for access to classified information is granted.

Statement of the Case

On March 18, 2010, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines F, Financial Considerations and Guideline E, Personal Conduct. The action was taken under Executive Order (EO) 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 for cases after September 1, 2006.

Applicant answered the SOR on April 20, 2010, and requested a hearing before an administrative judge. The case was assigned to me on May 13, 2010. DOHA issued a notice of hearing on May 21, 2010, and the hearing was convened as scheduled on June 8, 2010. The Government offered Exhibits (GE) 1 through 7, which were admitted without objection. Applicant testified on his own behalf and presented Exhibits (AE) A through G, which were admitted without objection. The record was held open for Applicant to submit additional information. On June 17, 2010, Applicant submitted a packet of 85 pages, which were marked AE H through W and admitted without objection. DOHA received the transcript of the hearing (Tr.) on June 30, 2010.

Findings of Fact

Applicant is a 45-year-old employee of a defense contractor. He was married in 1990 and divorced in 1999. He has no dependents. He has successfully held a security clearance from 1986 to 1988, in connection with his prior employment. (GE 1; Tr. 25-30, 50-52.)

Financial Considerations

The SOR alleges nine¹ delinquent debts as listed on credit reports obtained in 2009 and 2010 totaling \$68,759. (GE 3; GE 4; GE 5; GE 6; GE 7.) Applicant denies each debt in his answer to the SOR.

Applicant began experiencing financial problems in approximately 1998, when his then wife quit her job due to her dissatisfaction with her manager. Applicant testified that the loss of a second income impacted their financial status. The couple divorced shortly thereafter. Applicant was further financially drained when he assisted his ex-wife in finding and paying for an apartment after their divorce. As a result of the divorce, Applicant assumed responsibility for all of their joint debts. (Tr. 50-53.)

In June 2009, Applicant enrolled in a debt management program. He pays the debt management program \$285 per month to negotiate with his creditors. The debt management program then pays off the creditors in a lump sum when it has accumulated enough money to pay the negotiated debt. He has successfully paid off one creditor listed on the SOR, as well as a creditor not listed on the SOR, through the debt management program. (Tr. 64-67.)

Applicant is indebted to a phone company as listed in allegation 1.a. in the approximate amount of \$1,309. Applicant became past due on this account because of the loss of a double income. In approximately January 2010, Applicant reached an agreement with this creditor to make monthly payments of \$155.34 on his debt. He provided documentation that he made five payments under this plan. His balance on this account as of May 21, 2010, was \$872.34. (AE O at 3, 10, 24, 31, 38; Tr. 54-61.)

¹ There are twelve debts alleged, however, 1.i. is a duplicate of 1.e., and 1.j. is a duplicate of 1.a.

Applicant is indebted to the creditor listed in allegation 1.b. in the approximate amount of \$2,694. This debt is currently being managed by the debt settlement program. The current status is "Active Negotiation." (AE D; AE L; AE M; Tr. 61-67.)

Applicant was indebted to the creditor listed in allegation 1.c. in the approximate amount of \$635. This account was settled in full on June 4, 2010, as evidenced by a letter from the collection agent. (AE Q; Tr. 67-69.)

Applicant is indebted to the creditor listed in allegation 1.d. in the approximate amount of \$1,277. This debt is currently being managed by the debt settlement program. In June 2010, Applicant was offered a settlement with this creditor for \$353.35. He contended he paid off this debt, by accepting the settlement. He submitted a copy of a check made out to the creditor for \$353.35 dated June 17, 2010, as proof of payment. (AE D; AE L; AE M; AE R; Tr. 69-70.)

Applicant is indebted to the creditor listed in allegation 1.e. in the approximate amount of \$1,461. This debt is currently being managed by the debt settlement program. The current status is "Active Negotiation." (AE D; AE L; AE M; Tr. 70-75.)

Applicant is indebted to the creditor listed in allegation 1.f. in the approximate amount of \$1,703 on a debt that was 120 days past due. In approximately 2002, Applicant purchased a home for \$215,000. He refinanced the house twice, and now has a first and second mortgage. The first mortgage is for approximately \$340,000. The instant debt was for Applicant's first mortgage. He reached a loan modification agreement with his creditor in September 2009 and is "paying under a partial or modified payment agreement," according to his credit report. The creditor reduced the mortgage rate from 5.85% to 3%, and Applicant is now current on his monthly payments, as evidenced by his bank statement showing his payments under the modified agreement. (GE 6; AE E; AE K; AE O; AE T; Tr. 79-92.)

Applicant is indebted to the creditor listed in allegation 1.g. in the approximate amount of \$55,681. This debt was for the second mortgage on Applicant's residence. He reached a loan modification agreement with his creditor in 2009 and is "paying under a partial or modified payment agreement." In September 2009, the creditor reduced Applicant's payments from \$400 per month to \$350. Applicant is current on his modified payment agreement, as evidenced by his bank statement showing his payments under the modified agreement. (AE F; AE O; Tr. 79-92.)

Applicant was indebted to the creditor listed in allegation 1.h. in the approximate amount of \$67. He satisfied this debt on June 10, 2010, as evidenced by a letter from the creditor. (AE S; Tr. 93-94.)

Applicant is indebted to the creditor listed in allegation 1.i. in the approximate amount of \$1,461. This debt is a duplicate of 1.e., addressed above. (Tr. 95-96.)

Applicant is indebted to a phone service provider listed in allegation 1.j. in the approximate amount of \$1,745. Applicant credibly avers that this is the same debt as listed in allegation 1.a. His credibility is attested to by his colleagues. (Tr. 97-99; AE I.)

Applicant is indebted to the creditor listed in allegation 1.k. in the approximate amount of \$2,187. This debt is currently being managed by the debt settlement program. The debt settlement program has not yet distributed any payments to this creditor. (AE V; Tr. 99-103.)

In April 2010, Applicant received a promotion and now has additional income to devote to the satisfaction of his delinquent accounts. He currently lives within his means and has not incurred any additional debt. (GE 7; AE B.)

Personal Conduct

Applicant was employed by a community college in a non-faculty position for seven-and-a-half years. During his employment, Applicant engaged in a romantic relationship with a 34-year-old student and part-time employee of the college. He brought the relationship to the attention of the college and was told that such relationships were permitted. He was not aware of any college policy that prohibited non-faculty members from dating students. However, another student, who had a romantic interest in Applicant herself, became aware of Applicant's relationship and filed numerous complaints against the Applicant. The jealous student began harassing Applicant. She even broke into his office. Applicant approached the student after the break-in. The student then reported to the college that Applicant was offensive and rude to her. Applicant felt he was not supported by the college and he filed a complaint with his union. In February 2008, Applicant tendered his resignation pursuant to a settlement agreement with the college. (GE 2; Tr. 31- 48.)

Applicant is highly recommended by his colleagues. He has impressed his superiors with his "drive, dependability, and professionalism." His Operations Supervisor calls him a "reliable, capable employee able to manage several tasks at the same time." He has demonstrated that he is "very security conscious." In addition, his performance appraisals reflect that he consistently meets and frequently exceeds expectations. (AE B; AE C.)

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 are to be 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, administrative judges apply the guidelines 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 the applicant or proven by Department Counsel.” The applicant has the ultimate burden of persuasion to obtain 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 EO 10865 provides that adverse 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 for Financial Considerations is set out in AG ¶ 18, as follows:

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 conditions that could raise a security concern under AG ¶ 19. Two are potentially applicable in this case:

- (a) inability or unwillingness to satisfy debts;
- (c) a history of not meeting financial obligations.

Applicant accumulated delinquent debts since 1999 and has been unable or unwilling to pay his obligations. The evidence is sufficient to raise the above disqualifying conditions.

Three of five Financial Considerations Mitigating Conditions under AG ¶ 20 are potentially applicable:

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

Applicant's financial problems were largely caused by the loss of his ex-wife's income due to her decision to terminate her employment, and their subsequent divorce. Since 2009 (and prior to receiving the SOR), he has been acting responsibly with respect to his debts. He has clearly addressed his debts, either through the debt management program or through independent payments. He has been continuously making monthly payments to the debt management program since September 2009. Of his nine debts, he has satisfied three creditors, is making payments to one creditor, has three others incorporated into his debt management program, and has rehabilitated his two mortgages. His recent actions in addressing his debt show reasonableness and adherence to his duty to his creditors. He has not attempted to get out of any of his debts through foreclosure or by relying on statutes of limitations, but has systematically addressed all but one debt. His financial problems are largely being resolved. He now lives within his means and has additional income which he will be able to use to satisfy his debts in a more timely fashion. AG ¶¶ 20(b), 20(c), and 20(d) apply.

Guideline E, Personal Conduct

The security concern relating to the guideline for Personal Conduct is set out in AG ¶ 15:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. The following disqualifying conditions are potentially applicable:

(c) credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information; and

(e) personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress, such as (1) engaging in activities which, if known, may affect the person's personal, professional, or community standing, or (2) while in another country, engaging in any activity that is illegal in that country or that is legal in that country but illegal in the United States and may serve as a basis for exploitation or pressure by the foreign security or intelligence service or other group.

The Government failed to present sufficient evidence to substantiate allegation 2.a. Applicant did resign from his position with the college, however, the evidence suggests that Applicant was the victim in the situation. Evidence reflects no wrongdoing on the part of the Applicant.

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 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.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I have incorporated my comments under Guidelines F and E in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but some warrant additional comment.

Applicant is well respected by his colleagues. He is gainfully employed and recently received a promotion. He has no dependants. He can now afford to satisfy his past due indebtedness and has been working diligently for over a year to satisfy his delinquent accounts. While it took Applicant a while to begin to satisfy his delinquencies, he showed that overall; he is now conscientiously focusing on repaying his indebtedness.

Further, his actions with respect to terminating his employment with the college appear to be reasonable, in light of the circumstances presented in the evidence. The Government failed to indicate that he acted improperly. The letters of support attests that Applicant acts professionally at all times in his current position.

Overall, the record evidence leaves me without questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has mitigated the Financial Considerations and Personal Conduct security concerns.

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.k.:	For Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraph 2.a.:	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.

Jennifer I. Goldstein
Administrative Judge