



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



In the matter of:)	
)	
)	ISCR Case No. 09-07595
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Daniel Crowley, Esquire, Department Counsel
For Applicant: *Pro se*

March 17, 2011

Decision

HEINY, Claude R., Administrative Judge:

Applicant had three student loans placed for collection, which totaled approximately \$20,000 and he owed the IRS approximately \$8,000 in past-due taxes. He has established repayments schedules and is making timely monthly payments on his debts. Applicant has rebutted or mitigated the security concerns under financial considerations. Clearance is granted.

Statement of the Case

Acting under the relevant Executive Order and DoD Directive,¹ the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) on April 29, 2010, detailing security concerns under financial considerations. Applicant contests

¹ 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.

the Defense Department's (DoD) intent to deny or revoke his eligibility for an industrial security clearance.

On June 4, 2010, Applicant answered the SOR and requested a hearing. On August 12, 2010, I was assigned the case. On August 25, 2010, DOHA issued a Notice of Hearing for the hearing held on September 14, 2010.

The Government offered Exhibits (Ex.) 1 through 6, which were admitted into evidence without objection. Applicant testified on his own behalf and submitted Exhibits A through L, which were admitted into evidence without objection. The record was held open to allow additional information from Applicant. On November 16, 2010, additional material was submitted. Department Counsel had no objection to the material, which was admitted into the record as Ex. M. On September 21, 2010, DOHA received the hearing transcript (Tr.).

Findings of Fact

In Applicant's Answer to the SOR, he admitted the four debts. Applicant's admissions to the SOR allegations are incorporated herein. After a thorough review of the record, pleadings, exhibits, and testimony, I make the following additional findings of fact.

Applicant is a 31-year-old multimedia engineer who has worked for a defense contractor since April 2009, and is seeking to obtain a security clearance.

Applicant attended college from August 1998 through February 2000, from January 2002 through August 2002, and January 2004 through January 2005, which he paid for with student loans. Applicant's financial problems began in 2000. (Tr. 27) He made poor choices with credit cards while in college. He agreed to work for his father's company, receive an allowance, and his father was to pay his creditors the balance of his wages. His father's cancer medication caused his father to act irrationally and his father failed to make more than minimum payments to Applicant's creditors. (Tr. 28)

Applicant retook control of his finances and sought debt consolidation. When he was laid off from work, he stopped his monthly payments to the debt consolidation service. (Tr. 29) As of that date, he had paid the company \$1,590, but none of his payments had been sent to his creditors. He ended his arrangement with the debt service.

In 2005, Applicant was notified he had a daughter. (Tr. 31) In December 2005, Applicant's mother died. (Ex. 4) At that time, he was also dealing with this daughter's adoption and an investigation stemming from dating a married woman whom he thought was single. These events resulted in his procrastination in filing his 2005 federal income tax return. As of his personal subject interview in August 2009 (Ex. 4), he had requested an extension for filing his 2006 and 2008 taxes. At that time, he had yet to file his taxes for 2005 through 2008. (Ex. 4) In October 2009, he filed all his past-due returns. His

2009 return was timely filed. The \$61 tax refund for 2009 was intercepted and applied to the balance owed.

As of January 2010, Applicant owed \$3,137 for tax year 2006, \$5,025 for tax year 2008, and \$3,098 for tax year 2009. (Ex. 5, Ex. G-1, and Ex. G-2) For tax year 2007 he owed \$2. (Ex. K) In response to interrogatories, he provided copies of all three years tax returns. (Ex. 5, Ex. I, Ex. J, and Ex. K) His tax obligation for 2008 increased because he cashed in his \$27,473 from a 401(k) account, which he used to pay old debts. (Tr. 35, Ex. I)

Applicant entered into an installment agreement with the IRS for \$135 monthly payments, which he continues to make. (Ex. 5) As of October 8, 2010, he owed \$2,617 for tax year 2006 and \$4,282 for tax year 2008. (Ex. L) When possible, he pays additional amounts on his IRS debt above the agreed upon monthly amount. (Tr. 51) In October 2010, he paid the IRS \$400 in addition to his agreed \$135 monthly payment. (Ex. L) In September 2010, he was unsuccessful in his attempt to obtain a credit union loan to pay off the IRS debt. (Tr. F)

Applicant had two student loans (SOR 1.a, \$3,146 and SOR 1.b, \$2,926) which were placed for collection. He set up an automatic payment to make monthly payments of \$61 and \$57 on these loans. (Ex. C) The loans are out of default status. (Tr. 43) He is making \$118 monthly payments by automatic deduction on these loans. (Ex. B)

Applicant had a \$14,000 student loan placed for collection (SOR 1.c), which he was paying with a \$115 monthly automatic payment. (Ex. D and E). In October 2009, he paid \$1,100 on the debt (Ex. 5) and in December 2009 the amount changed to a \$115 monthly automatic deduction. (Ex. 5) His student loans have been successfully rehabilitated. (Ex. A) A \$123 automatic debited is made monthly from his bank account. (Ex. A and D)

In addition to his full time contractor job, Applicant has his own company and does contract work for others. (Tr. 40) He has obtained material from a radio financial talk show to help him with his finances. (Tr. 42) He is working to have an emergency fund of \$1,000 in savings. (Tr. 53) In addition to the debts previously listed, he is current on his debts including his car payment, credit card debt, and one additional debt. (Tr. 55)

In June 2009, when Applicant completed his Electronic Questionnaires for Investigations Processing (e-QIP), he acknowledged his delinquent student loans and his failure to file his tax returns on a timely basis. (Ex. 1)

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 must be considered 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.

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 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 safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of 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 of 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

Adjudicative Guideline (AG) ¶ 18 articulates the security concerns relating to financial problems:

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.

Additionally, an individual who is financially irresponsible may also be irresponsible, unconcerned, negligent, or careless in properly handling and safeguarding classified information. Behaving responsibly or irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life.

A person's relationship with his creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to repay debts as agreed. Absent substantial evidence of extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a position of risk that is inconsistent with holding a security clearance. An applicant is not required to be debt free, but is required to manage his finances to meet his financial obligations.

Applicant has a history of financial problems. Applicant had three student loans totaling approximately \$20,000 placed for collection and owed approximately \$8,000 in past-due taxes. Disqualifying Conditions AG ¶ 19(a), "inability or unwillingness to satisfy debts" and AG ¶ 19(c), "a history of not meeting financial obligations," apply.

The guideline includes conditions that could mitigate security concerns arising from financial difficulties. The five potentially applicable Mitigating Conditions (MC) under AG ¶ 20 are:

(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;

(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;

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

(e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

Applicant has established repayment plans with the IRS and for his student loans. Each month his bank account is automatically debited to pay these agreed upon amounts. When he is able, he makes additional payments on the accounts.

An applicant is not required, as a matter of law, to establish that he has paid off each and every debt listed in the SOR. Nor is there a requirement that a plan provide for payments on all outstanding debts simultaneously. In evaluating financial consideration cases, the concept of “meaningful track record” includes evidence of actual debt reduction through payment of debts. An applicant must demonstrate that he has established a plan to resolve his financial problems and taken significant actions to implement that plan, which Applicant has done.

Applicant’s payments in accord with his repayment plans commenced in 2009, which is a sufficient repayment history to infer that he will continue making his monthly payments as agreed. Applicant has initiated a good-faith effort to repay overdue creditors or otherwise resolve his debts. The mitigating factors listed in AG ¶ 20(d) apply.

The mitigating conditions listed in AG ¶ 20(c) apply. Applicant has obtained financial counseling from a talk radio program on how to address his debts. He is working on establishing a \$1,000 emergency fund. He is making timely payments on his student loans, on his past-due tax obligations, on his car note, his credit card account, and the one additional debt he has. There are clear indications that the problem is being resolved or is under control.

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. The debts incurred were not the type that indicates poor self-control, lack of judgment, or unwillingness to abide by rules and regulations. Money was not spent frivolously. The debts set forth in the SOR were not incurred on luxuries, but were for student loans and taxes.

He is current on all of his outstanding financial obligations. The issue is not simply whether all his debts are being paid—it is whether his financial circumstances raise concerns about his fitness to hold a security clearance. (See AG ¶ 2(a)(1).) Applicant became delinquent on filing his taxes when a number of issues, including the death of his mother, occurred simultaneously. These events will not repeat themselves. He has filed all of his past-due tax returns and is making timely payment on his past-due taxes. He is also making timely payment on his three student loans. His student loans have been rehabilitated and he is current on their payment.

Overall, the record evidence leaves me without questions or doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising from his 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, Financial Considerations:	FOR APPLICANT
Subparagraphs 1.a – 1.d:	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.

CLAUDE R. HEINY II
Administrative Judge