



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



In the matter of:)	
)	
)	ISCR Case No. 09-08020
SSN:)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Candace Le'l Garcia, Esquire, Department Counsel
For Applicant: *Pro se*

November 30, 2010

Decision

HOGAN, Erin C., Administrative Judge:

On June 25, 2010, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline F, Financial Considerations. 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) effective within the Department of Defense after September 1, 2006.

On July 20, 2010, Applicant answered the SOR and requested a hearing before an administrative judge. Department Counsel was ready to proceed on August 11, 2010. The case was assigned to me on August 16, 2010. On August 23, 2010, a Notice of Hearing was issued, scheduling the hearing for September 14, 2010. The hearing was cancelled on September 14, 2010, because of unforeseen circumstances and rescheduled for October 26, 2010. The case was heard on that date. During the hearing, the Government offered 11 exhibits which were admitted as Government Exhibits (Gov) 1 – 11. Applicant testified and called two witnesses. He offered one exhibit which was admitted as Applicant Exhibit (AE) A. The record was held open until

November 9, 2010, to allow Applicant to submit additional documents. Applicant timely submitted a 28-page document that was admitted as AE B with no objection. Department Counsel's response to AE B is marked as HE I. The transcript (Tr) was received on November 3, 2010. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

Findings of Fact

In his answer to the SOR, Applicant admits to all of the SOR allegations.

Applicant is a 51-year-old mechanical technician employed by a Department of Defense contractor seeking a security clearance. He has worked for his current employer since June 2009. He is a high school graduate. He served in the United States Navy from 1977 to 1981. He separated with an honorable discharge. He has been married and divorced twice. His first divorce occurred in 1993. Two children were born of his first marriage, a 21-year-old son and a 22-year-old daughter. He remarried in 1995. He divorced his second wife in January 2002. (Tr. 6-8, 105-106; Gov 1)

Applicant's security clearance background investigation revealed that he has the following delinquent accounts: a \$1,104 credit card account placed for collection (SOR ¶ 1.a: Gov 4 at 2; Gov 5 at 2; Gov 10 at 6); a \$1,910 medical bill placed for collection (SOR ¶ 1.b: Gov 4 at 1; Gov 5 at 1; Gov 10 at 8); a \$1,013 judgment entered against Applicant in 2003 on behalf of a credit card company (SOR ¶ 1.c: Gov 5 at 1; Gov 7; Gov 10 at 3); a \$308 utility account placed for collection (SOR ¶ 1.d: Gov 5 at 2; Gov 10 at 8); a \$5,355.95 judgment entered against Applicant in 2002 on behalf of a hospital (SOR ¶ 1.e: Gov 9; Gov 10 at 3); a \$2,816.32 judgment filed against Applicant in 2002 (SOR ¶ 1.f: Gov 8); and a \$3,210.35 judgment entered against Applicant in 2002 on behalf of a hospital. (SOR ¶ 1.g: Gov 6)

Applicant previously filed for bankruptcy under Chapter 7 in December 1998. He listed total assets of \$7,196 and total liabilities of \$33,858. His debts were discharged on March 18, 1999. (Gov 11) Applicant testified that he filed for bankruptcy because he had a lot of credit card debt. He admits to making a lot of "stupid decisions" back then. At the time, his second wife learned she was pregnant and they charged a lot of items for the new baby on their credit card accounts. She had a miscarriage. He could not afford to pay the credit card bills. (Tr. 94-95)

Applicant was not aware of the delinquent debts until he was interviewed on June 10, 2009, as part of his background investigation. Three of the debts are medical debts. Applicant did not have health insurance. He believes the \$5,355 debt alleged in SOR ¶ 1.e was a medical bill for surgery and medical treatment Applicant had after he dropped an automobile transmission on his hand. The \$3,210 debt alleged in SOR ¶ 1.g related to medical treatment his second wife received for breast cancer. The \$1,910 medical treatment alleged in SOR ¶ 1.b related to a surgical procedure Applicant had. Applicant was under the false assumption that all of these medical bills were covered by special programs for low-income wage earners. (Tr. 60, 97-100, 103, 108-110, Gov 3)

After learning that he had delinquent debts, Applicant did not immediately take steps to resolve the accounts. He did not have the money or the income to begin to resolve his delinquent accounts. He has received several pay raises with his current employer. He tried to resolve these accounts individually, but was unsuccessful. In May 2010, Applicant entered into a debt recovery program with a debt settlement firm. Applicant's first three or four payments were deposits to the firm. After these payments were made, the firm started to make settlement offers to Applicant's creditors. All of the debts alleged in the SOR are included in the debt recovery program. Applicant pays \$448 a month towards the program. The program is expected to last for 36 months. He pays by direct deposit. He has consistently made monthly payments from June to October 2010. He made two payments in June, so six payments have been made so far. The firm is beginning to send out settlement offers to his creditors included in the debt recovery program. (Tr. 62, 78-83; AE B; Gov 2)

When attempting to contact the creditor alleged in SOR ¶ 1.f, he discovered the creditor had gone out of business. His facility security officer (FSO) helped with his research and verified that the creditor had gone out of business. (Tr. 42-43, 81-82)

Applicant's financial problems were the result of incurring medical expenses without having health insurance, a 2002 divorce, several periods of unemployment, and a period of under-employment. From April 2005 to July 2005, he lived with his brother in another state and helped him set up a business. His brother paid him room and board. He received no other income and did not collect unemployment. In July 2005, at his sister's request, he moved to another state where his elderly mother resided in order to help with his mother's care. He worked for a large retail center and helped care for his mother in his spare time until she passed away in 2007. After his mother's death, he moved to his current state of residence because it is where his children lived. From August 2008 to April 2009, he worked 35 hours a week as a janitor. He was then hired by his current company. (Tr. 63-70)

When Applicant started working for his employer, his annual salary was \$29,000. His salary has increased to \$37,918. He works overtime when possible. His net monthly income is \$2,200. His son lives with him and pays him \$500 a month in rent. His total monthly income is \$2,700. His total monthly expenses are \$1,790. (His grocery bill has been reduced by half because his son buys half the groceries.) He has three open credit cards that have a total balance of \$1,000. He only uses them for emergencies and pays \$50 towards each credit card account each month, which totals \$150 each month. He pays \$448 towards his debt recovery program. His total monthly payments are \$2,388. He has \$312 left over each month for discretionary spending. (Tr. 70 – 73; Gov 2; Gov 3; AE A; AE B)

The Vice President of Human Resources of Applicant's employer testified on his behalf. She is also the FSO. (She will be referred to as the FSO.) She assisted Applicant with his security clearance application. Applicant was hired as a media clerk. He has since progressed to the position of mechanical technician. His salary increased when he assumed additional responsibilities. The FSO does not work with Applicant on

a daily basis. Her interaction with him consists of his hiring, his promotion, and his security clearance process. She is aware of the allegations in the SOR as well as Applicant's past financial problems. Applicant has been very proactive when trying to clear up his debts. He initially tried to settle accounts on his own. She suggested that he look into a debt settlement company. She helped Applicant attempt to locate the creditor alleged in SOR ¶ 1.f. They discovered the creditor had gone out of business. She has no questions about Applicant's reliability or judgment. (Tr. 29-43)

Applicant's supervisor testified. He has known Applicant for two years. Applicant was working for another company. His supervisor admired his work ethic and hired him when there was an opening. Applicant is reliable, punctual, and willing to stay until the job gets done. His supervisor states that Applicant needs to be more confident, but has progressed during the year and half that he has worked for the company. He interacts with Applicant about two to three times a week. Applicant has no performance issues. He is the "go-to" guy for working off-shifts, weekends, and holidays. He is aware of the issues in the SOR because Applicant told him about his financial problems. He also saw Applicant attempting to resolve his debts with his creditor over the phone during the lunch hour. Applicant works over-time when he has the opportunity to do so. Applicant's supervisor has no concerns about Applicant's judgment or reliability. (Tr. 44-56)

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 must be considered when determining 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 as to 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 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 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.

The guideline notes several disqualifying conditions that could raise security concerns. I find AG ¶ 19(a) (an inability or unwillingness to satisfy debts); and AG ¶ 19(c) (a history of not meeting financial obligations) apply to Applicant’s case. Applicant encountered financial difficulties since 1998 when he filed for bankruptcy under Chapter 7. The SOR alleged seven delinquent accounts totaling \$15,716. Of that amount, \$10,475 consisted of medical bills.

The Government’s substantial evidence and Applicant’s own admissions raise security concerns under Guideline F. The burden shifted to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the security concerns. (Directive ¶E3.1.15) An applicant has the burden of proving a mitigating condition, and the burden

of disproving it never shifts to the Government. (See ISCR Case No. 02-31154 at 5 (App. Bd. September 22, 2005))

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. The following mitigating conditions potentially apply:

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) is not applicable. Applicant has had financial problems for the past 12 years. While Applicant has a debt settlement plan in place, and has shown a five-month history of timely payments, his debts are not settled yet. It is too soon to conclude that all of the debts will be resolved. Applicant's past financial history, to include a previous bankruptcy in 1998, raise questions about his reliability, trustworthiness, and good judgment.

AG ¶ 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) partially applies. Applicant's recent financial problems were the result of his 2002 divorce, several medical bills incurred when he had no health insurance, and several periods of unemployment or under-employment. Of the total amount of debt owed, the majority consists of medical bills. This mitigating condition is given less weight because some of Applicant's periods of unemployment were voluntary. He chose to be unemployed when he lived with his brother from April 2005 to July 2005. He admits that his 1998 bankruptcy was the result of incurring a lot of credit card debt. I cannot conclude that Applicant has always acted responsibly under the circumstances. It is noted that his recent efforts to resolve his delinquent accounts indicate that he is beginning to act responsibly towards his finances.

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) applies. Applicant has not received financial counseling. However, he has been enrolled with the debt settlement company since May 2010. He has made regular payments towards the plan. All of his delinquent accounts are included in the plan. There are clear indications the problem is being resolved. He has a good job that provides health insurance. He is capable of meeting his monthly financial obligations.

AG ¶ 20(d) (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts) applies. Applicant initiated a good-faith effort to resolve his delinquent debts. He attempted to resolve his delinquent debts on his own but decided the best option was to enter into an agreement with a debt settlement company in May 2010. He has made his monthly payments under the agreement. All of the creditors alleged in the SOR are included in the agreement. The debt alleged in SOR ¶1.f was included in the agreement, but it was discovered the company is out of business. Applicant made an effort to contact the creditor and should not be penalized for the

creditor going out of business. Applicant made a good-faith effort to resolve his delinquent accounts. Applicant has mitigated the concerns raised under Guideline F.

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 the 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 considered Applicant's record of favorable duty performance with his current employer. While Applicant has not always made the best financial decisions in the past, I considered that his recent financial problems were caused by periods of unemployment and under-employment. I also considered that the majority of the delinquent debt balance arose from medical bills incurred when Applicant did not have health insurance. Applicant entered into a debt settlement agreement in May 2010 and has made consistent payments towards that agreement. He initiated a good-faith effort to resolve his delinquent accounts. Applicant understands the security concerns that are raised by his financial situation. He has told his supervisor and his FSO about his financial problems. Applicant developed a plan to resolve his delinquent debts. He earns enough income to meet the terms of the debt settlement plan. He mitigated the concerns raised under 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, Guideline F:	FOR APPLICANT
Subparagraphs 1.a -1.h:	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.

ERIN C. HOGAN
Administrative Judge