



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



In the matter of:)	
)	
XXXXXXXXXXXX, XXXXX)	ISCR Case No. 09-08108
SSN: XXX-XX-XXXX)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Alison O’Connell, Esq., Department Counsel
For Applicant: *Pro se*

October 29, 2010

Decision

TUIDER, Robert J., Administrative Judge:

Applicant has mitigated security concerns pertaining to Guideline F (financial considerations). Clearance is granted.

Statement of the Case

On August 24, 2009, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP). On March 12, 2010, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing security concerns under Guideline F (financial considerations) for Applicant. 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 for SORs after September 1, 2006.

Applicant answered the SOR on April 1, 2010. Department Counsel was prepared to proceed on May 21, 2010. The case was assigned to me on May 28,

2010. DOHA issued a notice of hearing on June 2, 2010, scheduling the hearing for June 23, 2010. The hearing was held as scheduled.

The Government offered Government Exhibits (GE) 1 through 6, which were received without objection. The Applicant offered Applicant Exhibits (AE) A through C, which were received without objection, and he testified on his own behalf.

I held the record open until July 2, 2010, to afford the Applicant the opportunity to submit additional documents. Applicant timely submitted AE D through K, which were received without objection. DOHA received the hearing transcript (Tr.) on June 30, 2010. The record closed on July 2, 2010.

Findings of Fact

Applicant admitted SOR ¶¶ 1.a. and 1.d., and denied SOR ¶¶ 1.b. and 1.c. His answers are incorporated as findings of fact. After a thorough review of the evidence, I make the following additional findings of fact.

Background Information

Applicant is a 31-year-old infrastructure generalist, who has worked for a defense contractor since February 2008. He seeks to renew his top secret security clearance. Applicant previously held a security clearance while he was on active duty in the U.S. Navy, discussed *infra*. He has never had a security violation on active duty or as a civilian employee. (GE 1, Tr. 17-, 23-24.)

Applicant was home-schooled and was awarded his high school diploma in August 1996. (Tr. 20.) He has been attending a technical university since April 2008 and is “four classes away from [his] associate’s [degree].” He also attended various Navy service schools and job-related training courses. (GE 1, Tr. 21-22.)

Applicant served in the Navy from January 1997 to December 2006, and was honorably discharged as an Information Systems Technician First Class (Surface Warfare) (pay grade E-6). He was assigned to sea duty approximately seven out of the almost ten years he served in the Navy. (GE 1, Tr. 18-20.)

Applicant was previously married from June 1998 to August 2001. That marriage ended by divorce. He remarried in February 2002. Applicant has five children – an 11-year-old daughter born during his first marriage, a 10-year-old son he adopted from his second wife’s previous marriage, and three sons born during his second marriage, ages 7, 6, and 4. All five children live with him and his second wife, including his 11-year-old daughter from his first marriage. Applicant’s wife does not work outside the home. Applicant is solely responsible for supporting his wife and five children. (GE 1, Tr. 13-17, 24-25.)

Financial Considerations

Applicant's background investigation addressed his financial situation and included the review of his August 2009 e-QIP; his February 2010 Responses to DOHA Interrogatories; as well as his April 2004, August 2009, March 2010, and April 2010 credit reports. Applicant's SOR identified four separate debts totaling \$37,933. (GE 1 – 6; SOR ¶¶ 1.a. – 1.d.)

Applicant has settled, paid, or attempted to resolve in good faith the four debts alleged. A brief summary of each debt follows:

SOR ¶ 1.a. is a charged-off account for a \$12,000 line of credit loan that Applicant secured to bridge his income gap, discussed *infra*. In July 2009, Applicant enrolled this debt with a debt consolidation firm (DCF) and was making monthly payments until April 2010. He was no longer able to afford the \$400 monthly payments and accompanying fees required by the DCF and disenrolled from the program. He has sought alternative professional help and continues in his attempts to resolve this debt. (Response to SOR, Tr. 32-33, 35-36.);

SOR ¶ 1.b. is a \$16,000 past-due balance on a home mortgage loan. This account was satisfied following the proceeds netted in a foreclosure sale in March 2010. (Response to SOR, Tr. 30-31, 56-58, AE C.);

SOR ¶ 1.c. is a charged-off credit card account for \$4,711. This debt had also been enrolled with the DCF. However, Applicant settled and paid this account in December 2009. (Response to SOR, Tr. 34-35, 55-56, AE B.); and

SOR ¶ 1.d. is the balance of \$5,222 owed on a vehicle repossession. Applicant negotiated a settlement through the DCF and was making monthly payments with the creditor. The final payment was due in October 2010. (Response to SOR, Tr. 39-40.)

Applicant attributes his financial problems to a job change that resulted in a substantial income reduction, a cross-country move, and the costs associated with maintaining two households following his cross-country move. Specifically, when Applicant left the Navy in 2006, he was making approximately \$55,000 per year. After leaving the Navy in December 2006, he made approximately \$170,000 per year working for a subcontractor. In February 2008, he left his subcontractor because of long working hours and lengthy separation from his family, and began working for his current employer. His change of employment also resulted in his salary being reduced to approximately \$120,000 per year, which was later reduced to \$58,000 per year when he left a shipboard working environment. In September 2008, he accepted a cross-country transfer. He was unable to sell his home after being transferred and was unable to afford maintaining two homes in two locations. (Tr. 25-28, 42-52.)

To address his indebtedness, Applicant enrolled his debts with a DCF, borrowed against his 401k, refinanced his vehicle, worked overtime at every

opportunity, and consulted a bankruptcy attorney. He has kept his Facility Security Officer apprised of his situation. (Tr. 38-41, 45-46, AE A, AE B, AE J.)

Applicant's budget, although strained, reflects that he maintains a modest lifestyle and is able to "keep his head above water." He has little discretionary income left over after paying all the monthly expenses associated with supporting a spouse and five children. Applicant envisions his career with his company as upwardly mobile. (GE 2, Tr. 51-53, 60.)

In conclusion, Applicant has paid, settled, made a good-faith effort to repay his creditors, or resolved or intends to resolve all debts alleged. Given his resources, it appears Applicant is doing as well as can be expected and has addressed the majority of his debts. He remains current on the rest of his monthly bills.

Character Evidence

Applicant submitted 11 award citations from his Navy service and civilian employment. These awards document significant events or exceptional service. One commendatory award spoke of his service as a member of the Multi-National Force boarding teams while deployed to the Mideast. He participated in 25 boardings in August 1999, was placed in harm's way, and while participating in these boardings conducted himself with "impeccable attention to detail" and served with distinction. The remainder of the awards are equally complimentary. (AE D.) Applicant also submitted his 2008 and 2009 employee evaluations. They document above-average performance and his contribution to the defense industry. (AE E.) Applicant's enlisted performance evaluations are equally complimentary and also document his ten years of sustained honorable service. (AE F.)

Lastly, Applicant submitted four work-related reference e-mails, two from supervisory personnel and two from co-workers. All four individuals describe Applicant as trustworthy and support his being granted a clearance. (AE G, AE H, AE I, AE K.)

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 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.

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

Upon consideration of all the facts in evidence, and after application of all appropriate legal precepts, factors, and conditions, including those described briefly above, I conclude that a relevant security concern exists under Guideline F (financial considerations). AG ¶ 18 articulates the security concern 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.

AG ¶ 19 provides two financial considerations disqualifying conditions that could raise a security concern and may be disqualifying in this case: “(a) inability or unwillingness to satisfy debts,” and “(c) a history of not meeting financial obligations.” Applicant’s history of delinquent debt is established by his admissions and the evidence presented. As indicated in SOR ¶¶ 1.a. to 1.d., he had four delinquent debts totaling \$37,933 that had been in various states of delinquency for at least several years. The Government established the disqualifying conditions in AG ¶¶ 19(a) and 19(c).

Five financial considerations mitigating conditions under AG ¶¶ 20(a) through (e) are potentially applicable:

(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’s conduct does not warrant full application of AG ¶ 20(a) because there is more than one delinquent debt and his financial problems are not isolated. Therefore, his debt is “a continuing course of conduct” under the Appeal Board’s jurisprudence. See ISCR Case No. 07-11814 at 3 (App. Bd. Aug. 29, 2008) (citing ISCR Case No. 01-03695 (App. Bd. Oct. 16, 2002)). He receives partial credit under AG ¶ 20(a) because the debt “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.”

Under AG ¶ 20(b), he receives credit because his reduction in income and subsequent work-related move and costs associated with his move were largely

beyond his control and he acted responsibly under the circumstances. Even though he did not have the funds for full repayment, he did remain in contact with his creditors during this timeframe.¹

AG ¶ 20(c) is not applicable because Applicant did not seek financial counseling. He has, however, produced evidence that reflects he is living within his means and is on the road to regaining financial solvency. Furthermore, there is sufficient information to establish full mitigation under AG ¶ 20(d).² Applicant has paid, is paying, or attempting to resolve his debts. AG ¶ 20(e) is not applicable because Applicant did not dispute the validity of any of his debts.

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,

¹“Even if Applicant's financial difficulties initially arose, in whole or in part, due to circumstances outside his [or her] control, the Judge could still consider whether Applicant has since acted in a reasonable manner when dealing with those financial difficulties.” ISCR Case No. 05-11366 at 4 n.9 (App. Bd. Jan. 12, 2007) (citing ISCR Case No. 99-0462 at 4 (App. Bd. May 25, 2000); ISCR Case No. 99-0012 at 4 (App. Bd. Dec. 1, 1999); ISCR Case No. 03-13096 at 4 (App. Bd. Nov. 29, 2005)). A component is whether he maintained contact with his creditors and attempted to negotiate partial payments to keep his debts current.

²The Appeal Board has previously explained what constitutes a “good-faith” effort to repay overdue creditors or otherwise resolve debts:

In order to qualify for application of [the “good-faith” mitigating condition], an applicant must present evidence showing either a good-faith effort to repay overdue creditors or some other good-faith action aimed at resolving the applicant's debts. The Directive does not define the term ‘good-faith.’ However, the Board has indicated that the concept of good-faith ‘requires a showing that a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation.’ Accordingly, an applicant must do more than merely show that he or she relied on a legally available option (such as bankruptcy) in order to claim the benefit of [the “good-faith” mitigating condition].

(internal citation and footnote omitted) ISCR Case No. 02-30304 at 3 (App. Bd. Apr. 20, 2004) (quoting ISCR Case No. 99-9020 at 5-6 (App. Bd. June 4, 2001)).

exploitation, or duress; and (9) the likelihood of continuation or recurrence.

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. AG ¶ 2(c).

There is evidence against mitigating Applicant's conduct. The SOR lists four debts totalling \$37,933 that were at one time or another in various states of delinquency. For several years, he failed to keep his accounts current or negotiate lesser payments, showing financial irresponsibility and lack of judgment. His lack of success in resolving delinquent debt until recently raises sufficient security concerns to merit further inquiry.

The mitigating evidence under the whole-person concept is more substantial. Applicant's record of ten years of honorable military service, family involvement, and good employment with a defense contractor weighs in his favor. There is no evidence of any security violation during the time Applicant held a security clearance, which includes his Navy service and employment with a defense contractor. He is a law-abiding citizen. Although he is not debt-free, there is sufficient evidence that he is putting forth his best effort given the resources available to him. I did not detect any recalcitrance or reluctance on his part to address his past debts. On the contrary, Applicant views this process seriously and recognizes his failure to regain financial responsibility can adversely affect his future employment. His monthly expenses are current. The Appeal Board has addressed a key element in the whole-person analysis in financial cases, stating:

In evaluating Guideline F cases, the Board has previously noted that the concept of "meaningful track record" necessarily includes evidence of actual debt reduction through payment of debts." However, 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. All that is required is that an applicant demonstrate that he has ". . . established a plan to resolve his financial problems and taken significant actions to implement that plan." The Judge can reasonably consider the entirety of an applicant's financial situation and his actions in evaluating the extent to which that applicant's plan for the reduction of his outstanding indebtedness is credible and realistic. See Directive ¶ E2.2(a) ("Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination.") There is no requirement that a plan provide for payments on all outstanding debts simultaneously. Rather, 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 2-3 (App. Bd. May 21, 2008) (internal citations omitted). Applicant is making a significant contribution to the national defense. His company fully supports him and recommends him for a security clearance. He made mistakes, and debts became delinquent. There is, however, simply no reason not to trust him. He has put forth a noteworthy effort to resolve his debts and has established a “meaningful track record” of debt payments. These factors show responsibility, rehabilitation, and mitigation. After weighing the disqualifying and mitigating conditions, and all the facts and circumstances in the context of the whole-person, I conclude he has mitigated the financial considerations security concerns.

I take this position based on the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), my careful consideration of the whole person factors and supporting evidence, my application of the pertinent factors under the adjudicative process, and my interpretation of my responsibilities under the adjudicative guidelines. Applicant has fully mitigated or overcome the Government’s case. For the reasons stated, I conclude he is eligible for access to classified information.

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. to 1.d.: 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 or continue Applicant’s eligibility for a security clearance. Eligibility for a security clearance is granted.

Robert J. Tuidor
Administrative Judge