



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



In the matter of:)	
)	
XXXXXXXXXXXX, XXXXX)	ISCR Case No. 09-08493
SSN: XXX-XX-XXXX)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Caroline H. Jeffreys, Esq., Department Counsel
For Applicant: *Pro se*

November 8, 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 June 25, 2009, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP). On April 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 March 3, 2010. Department Counsel was prepared to proceed on May 6, 2010. The case was assigned to me on May 28, 2010.

DOHA issued a notice of hearing on June 4, 2010, scheduling the hearing for June 29, 2010. The hearing was held as scheduled.

The Government offered Government Exhibits (GE) 1 through 4, which were received without objection. The Applicant offered Applicant Exhibits (AE) A and B, which were received without objection, and he testified on his own behalf.

I held the record open until July 14, 2010, to afford the Applicant the opportunity to submit additional documents. Applicant submitted AE B through AE G, which were received without objection. DOHA received the hearing transcript (Tr.) on July 7, 2010.

Findings of Fact

Applicant admitted SOR ¶¶ 1.a. through 1.l., 1.p. through 1.q., and denied 1.m. through 1.o. 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 34-year-old aviation electronics technician, who has worked for a defense contractor since February 2009. He seeks a secret security clearance, which is a requirement of his continued employment. He 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. 26-27.)

Applicant graduated from high school in June 1995. He has completed "several college-level courses" since graduating from high school. He also attended various Navy service schools and job-related training courses. (GE 1, Tr. 28-30.)

Applicant served in the Navy from July 1998 to July 2006, and was honorably discharged as an aviation electronics technician second class (pay grade E-5). During his Navy career, he went on two deployments to the Middle East. (GE 1, GE 2, Tr. 24-26.)

Applicant is currently unmarried. He was married the first time from December 1996 to June 1998, and was married a second time from December 1999 to June 2007. Both marriages ended by divorce.

Applicant has two children: a 14-year-old daughter born during his first marriage, and a 6-year-old daughter born during his second marriage. His first wife's parents have custody of his older daughter, and his second wife has custody of his younger daughter. He pays \$210 and \$250, respectively, in child support for each daughter. (GE 1, Tr. 18-24.)

Financial Considerations

Applicant's background investigation addressed his financial situation and included the review of his June 2009 e-QIP, his February 2010 Responses to DOHA Interrogatories, as well as his July 2009 and February 2010 credit reports. The SOR identified 16 separate debts and a 2000 Chapter 7 bankruptcy. (GE 1 – 4; SOR ¶¶ 1.a. – 1.q.)

Applicant filed for Chapter 7 bankruptcy protection in November 2000, and was awarded a discharge in February 2001. He filed for bankruptcy protection while married to his first wife to recover from pre-service debt “and [to] just start over again.” (Tr. 51-52.) His debts primarily consist of credit card debt and debts related to maintaining a household. Before the hearing, Applicant settled and paid the debts alleged in SOR ¶¶ 1.m. through 1.o. (Response to SOR, GE 2, Tr. 57, 60.)

Applicant attributes his financial problems to the costs associated with his second divorce, being unemployed from August 2007 to November 2007, and being underemployed from November 2007 to February 2009. It was not until he began working for his present employer that he was able to earn a “living wage.” His annual salary is \$52,000. When he was unemployed and underemployed, he used his credit cards to bridge his income gap. He remained in contact with his creditors. (Tr. 28, 61-66.)

Post-hearing, Applicant submitted documentation that he had sought the services of a debt consolidation firm (DCF). The DCF provided Applicant with financial counseling, developed a budget for him, and enrolled his debts in a 36-month repayment plan. Applicant provided documentation that he is making monthly payments to the DCF by direct debit. (AE C through AE G.) Additionally, he has kept his supervisor apprised of his situation. (Tr. 57.)

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 of his monthly expenses and child support for two children living in separate households. He envisions his career with his company as upwardly mobile. (AE D.)

In conclusion, Applicant has paid, settled, made a good-faith effort to repay his creditors, resolved, or intends to resolve all debts alleged. Given his resources, it appears he 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 a reference letter from his supervisor. His supervisor discussed Applicant's performance and character. In particular, his supervisor stated that Applicant “has displayed true professionalism and passion for his trade.” With

regard to his supervisor's assessment of Applicant's suitability for a clearance, his supervisor stated, "there is no doubt in my mind that [Applicant] would never be considered a risk for negotiating secret information for financial gain." His supervisor expressed familiarity with his financial situation and noted that he is doing everything reasonably possible to address his financial situation. (AE B.)

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.p., he had 16 delinquent debts that have been in various states of delinquency for at least several years. Additionally, he filed for Chapter 7 bankruptcy in 2000. The Government established the disqualifying conditions in AG ¶¶ 19(a) and 19(c).

Five financial considerations mitigating conditions under AG ¶¶ 20 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." See ISCR Case No. 09-08533 at 4 (App. Bd. Oct. 6, 2010).

Under AG ¶ 20(b), he receives credit because his divorce-related costs, unemployment and underemployment 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 applicable because Applicant sought financial counseling. The DCF assisted Applicant in developing a plan to effectively manage his money as well as developing a viable budget. Applicant produced evidence that 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)

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

is not applicable because Applicant did not dispute the validity of any of his debts. The 2000 Chapter 7 bankruptcy filing lacks security significance because of the passage of time.

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.

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 16 debts that were at one time or another in various states of delinquency, as well as a 2000 Chapter 7 bankruptcy. 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 eight 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 has held a security clearance. 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,

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)).

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.q.: 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