



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



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|----------------------------------|---|------------------------|
| In the matter of: |) | |
| |) | |
| |) | ISCR Case No. 10-00100 |
| |) | |
| |) | |
| Applicant for Security Clearance |) | |

Appearances

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

October 19, 2010

Decision

HEINY, Claude R., Administrative Judge:

Applicant has paid or is making payment on six debts listed in the Statement of Reasons (SOR). He is attempting to locate the current holder of his student loan obligation. Applicant has rebutted or mitigated the security concerns under financial considerations. Clearance is granted.

Statement of the Case

Applicant contests the Defense Department's (DoD) intent to deny or revoke his eligibility for an industrial security clearance. Acting under the relevant Executive Order and DoD Directive,¹ the Defense Office of Hearings and Appeals (DOHA) issued a

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.

Statement of Reasons (SOR) on April 6, 2010, detailing security concerns under financial considerations.

On April 29, 2010, Applicant answered the SOR and requested a hearing. On June 4, 2010, I was assigned the case. On June 7, 2010, DOHA issued a Notice of Hearing for the hearing held on June 28, 2010.

The Government offered Exhibits (Ex.) 1 through 4, which were admitted into evidence without objection. Applicant testified and submitted Exhibits A and B, which were admitted into evidence without objection. Three additional witnesses testified on Applicant's behalf. The record was held open to allow additional information from Applicant. On July 7, 2010, additional material was submitted. Department Counsel had no objection to the material, which was admitted into the record as Ex. C. On July 7, 2010, DOHA received the hearing transcript (Tr.).

Findings of Fact

In Applicant's Answer to the SOR, he admitted the factual allegations in ¶¶ 1.c and 1.d of the SOR. He denied the remaining factual allegations. Applicant's admissions 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 49-year-old help-desk specialist who has worked for a defense contractor since September 2009, and is seeking to obtain a security clearance. From August 1978 to August 1981, Applicant was on active duty with the United States Marine Corps. The individual in charge of quality assurance at Applicant's job stated Applicant is a quiet person who has done a good job in all tasks asked of him. (Tr. 24) Applicant's supervisor, the contracting officer's technical representative, states Applicant does everything above the call of duty for Information technology (IT) support. (Tr. 27) His supervisor has full confidence Applicant will do the right thing and states Applicant is a really good worker. (Tr. 29, 30) Applicant's division superintendent, who is also an alternate security manager, states he has heard many good comments about Applicant. Applicant is the "go-to guy" for telephone issues. (Tr. 33)

In January 2002, Applicant was living in a United States territory and was laid off from his job of 15 years due to lack of work. (Tr. 40) He had worked in warehouse inventory control. (Tr. 44) In February 2002, he moved to Chicago with his family, to attend a technical university. (Tr. 45) From March 2002 to June 2007, he attended school, majoring in computer information systems, while maintaining a full-time job as a maintenance coordinator. (Tr. 45) After obtaining his degree, he obtained a job earning \$46,000 annually. His wife was earning \$20,000 annually. (Ex. B)

Applicant incurred a number of student loans: \$67,914 (SOR ¶ 1.c), \$1,363 (SOR ¶ 1.e), and \$754 (SOR ¶ 1.f). He believes the total amount borrowed was approximately \$70,000. (Tr. 59) Applicant made all his student loans through Sallie Mae and does not recognize the creditor for the last two student loans (SOR ¶ 1.e and 1.f) listed in the

SOR. (Tr. 58) Applicant contacted the creditor listed for the larger student loan (SOR ¶ 1.c) and was told it had been sold to another collection agency. When he contacted the agency he was told it was sold to another collection agency. (Tr. 56) The collection agency has not contacted him about repaying his student loan. His plans to address the smaller debts before addressing the student loan debt. (Tr. 42, 56) At the hearing, Applicant stated he would obtain documentation about consolidation of his student loans and the current status of his student loan obligation. (Tr. 59)

In February 2009, Applicant became unemployed, his wife left her job, they separated², she returned to the location of her former home, and he moved to another state. His income went from an annual household income of more than \$60,000 to \$700 per month in unemployment compensation. (Tr. 42) When his sister obtained an overseas contract position, he house-sat for her. (Tr. 47) In March 2009, he moved to his current location. (Tr. 47) Applicant obtained a job inspecting apartments. When called, he would work full time and then be out of work for days. From June through August 2009, he worked five weeks total being paid \$100 per day when working. (Tr. 49)

Applicant's car was repossessed and sold. He listed the repossession on his August 2009, Electronic Questionnaires for Investigations Processing (e-QIP). Also on his e-QIP he listed an account in collection and a credit card account that was 90 days past due. Applicant owed \$7,462 following the repossession and established a \$200 automatic withdrawal from his account each month to pay the debt. (Ex. 3, Tr. 57) Between September 2009 and June 2010, he made ten monthly payments on this account paying \$1,850. (Ex. C)

Before moving to Chicago, he incurred a \$207 telephone bill (SOR ¶ 1.g), which he asserts he paid. The \$131 medical debt (SOR ¶ 1.c) was incurred while he lived in Chicago. As of March 2010, he had contacted the creditor and requested a written statement concerning the account. (Ex. 3) Applicant owes a discount department store \$1,950 on a credit card account (SOR ¶ 1.b), which the creditor offered to settle for \$1,200. (Ex. 3) In October 2009, the creditor offered to settle this for \$1,200, which he accepted. (Ex. 3, Tr. 55) Between October 2009 and February 2010, Applicant has paid \$1,254.85 on this debt. (Ex. C)

Applicant had a \$229 insurance debt placed for collection (SOR ¶ 1.i). As of March 2010, he had contacted the creditor and requested a written statement concerning the account. (Ex. 3) As of the hearing, he had yet to receive a response from the creditor. Applicant was 120 days past due on a credit card account (\$840, SOR ¶ 1.a). He agreed to monthly \$120 automatic debits of his checking account. (Tr. 53) A December 2009 letter from the creditor states, "Thank you for your consistent payments. We appreciate your willingness to pay on this account." (Ex. 3) The debt was listed at \$4,129 in Applicant's September 2009 CBR. (Ex. 2, Tr. 54) Between January

² They had married in 1988. There were two children of the marriage. Both are deceased. (Tr. 45,46)

2010 and May 2010, Applicant had made six monthly payments of \$120 each for a total of \$720. (Ex. C)

In September 2009, he obtained his current job. He currently maintains two jobs; his full-time job with a defense contractor, and a part-time job in which he works 6:00 p.m. to 1:30 a.m. Friday and Saturday nights at a gasoline convenience store. (Tr. 51, 52) His monthly net income is \$2,500 and his monthly expenses total \$1,529. (Ex. A) Applicant intends to pay all his delinquent accounts. (Ex. 3) He is not receiving any calls or letters from creditors demanding payment on past due obligations. (Tr. 67)

Applicant makes regular monthly payments on two other accounts. Between October 2009 and April 2010, Applicant paid \$1,473 on a Honda account, which is now paid in full. (Ex. C) Between September 2009 and February 2010, Applicant made six monthly payments of \$105 each on a furniture account.

A summary of Applicant's judgment, accounts charged off, accounts placed for collection and other unpaid obligations and their current status follows:

| SOR | Creditor | Amount | Current Status |
|-----|---|----------|---|
| a | Credit card account 120 days past due. | \$840 | Paying. Between January and May 2010, Applicant made six monthly payments of \$120. (Ex. C) |
| b | Discount store credit card collection account. | \$839 | Paid. Between October 2009 and February 2010, Applicant paid \$1,254. (Ex. C) |
| c | Student loan placed for collection. | \$67,914 | Applicant contacted the creditor who had sold the student loan to another collection agency. (Tr. 56) He is currently attempting to pay off the smaller debts before addressing his student loan obligation. (Tr. 56) |
| d | Vehicle repossession. | \$6,095 | Paying. Applicant pays \$200 monthly on this debt. (Ex. 3) Between September 2009 and June 2010, Applicant made ten monthly payments paying \$1,850 on this debt. (Ex. C) |
| e | Student loan account more than 120 days past due. | \$1,363 | The creditor has not contacted Applicant about this student loan. (Tr. 59) See c above. |
| f | Student loan account more than 120 days past due. | \$754 | See c and e above. |

| SOR | Creditor | Amount | Current Status |
|-----|--|----------|--|
| g | Telephone account placed for collection. | \$207 | Applicant paid this debt. (Tr. 62) |
| h | Medical account placed for collection. | \$131 | Applicant had medical insurance which should have paid this medical bill. (Tr.63) He called the creditor and asked the company to send information about this debt. He is awaiting the creditor's response. (Tr. 65) |
| l | Automobile insurance account collection. | \$229 | Applicant had auto insurance with this company, but was never delinquent on the account. (Tr. 63) |
| | Total debt listed in SOR | \$78,372 | |

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 about 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 about 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. He had nine past due or delinquent accounts which totaled approximately \$78,000. Three of the past-due accounts were for student loans and totaled approximately \$70,000. Disqualifying Conditions AG ¶ 19(a),

“inability or unwillingness to satisfy debts” and AG ¶ 19(c), “a history of not meeting financial obligations,” apply.

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.

The mitigating conditions under AG ¶ 20(a) have limited applicability. Applicant has paid two debts (SOR ¶ 1.b) and is making monthly payments on two other accounts (SOR ¶¶ 1.a and 1.d). He has yet to address his student loans obligation.

Applicant's inability to repay his debts was the result of factors beyond his control. In 2002, Applicant was laid off from his job after 15 years of employment. He moved to a new location, worked full-time, and attended school full-time. In February 2009, Applicant became unemployed, his wife left her job, they separated, he moved to another state, and his wife returned to another location. His income went from an annual household income of more than \$60,000 to \$700 per month. From June 2009 through August 2009, he worked five weeks total receiving \$100 per day when he worked. These factors—unemployment, underemployment, and separation—were beyond his control. When he obtained his current job in September 2009, he began repaying his delinquent accounts. The mitigating factors listed in AG ¶ 20(b) apply.

Applicant asserted he paid three small debts (SOR ¶ 1.g, \$207, ¶ 1.h, \$131, and ¶ 1.i, \$229), but failed to provide any documentation establishing payment. Even without documented proof of payment, these three debts total less than \$600 and are

sufficiently small so as not to raise security concerns about his current reliability, trustworthiness, or good judgment.

Of the nine SOR debts of concern, Applicant is making monthly payments on two of them, has paid four others, and the three remaining debts are his student loans. Applicant is also making regular, routine monthly payments on two additional debts not listed in the SOR. He is attempting to locate the collection company which currently holds his student loan obligation. He has contacted various collections agencies only to be told they have transferred the note to another collection agency. The holder of the student loans has yet to contact him. When he knows who currently holds the note, he will start repaying his obligation. Most student loan repayment plans require the monthly payment of several hundred dollars, which Applicant can afford.

Applicant is living within his means, has been steadily employed since September 2009, and has been making routine, monthly payments on the majority of his debts since that time. He made a decision to address the smaller debts first, before tackling the larger student loan. The mitigating conditions in AG ¶ 20(c) and ¶ 20(d) apply.

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. 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. The largest and yet—to—be—addressed debt, is his student loan. The systematic way Applicant has addressed his other financial obligations since obtaining his current job gives positive indication that he will continue to meet his

financial obligations and will address his student loan obligations once the smaller obligations have been paid and he locates the current holder of the student loan.

The issue is not simply whether all his debts are paid—it is whether his financial circumstances raise concerns about his fitness to hold a security clearance. (See AG ¶ 2(a)(1).) Applicant’s past and present conduct gives assurance he will address his student loans. From 2002 to 2007, Applicant worked full-time while he attended school full-time. Currently, he works full-time at his contractor job and also works 6:00 p.m. to 1:30 a.m. Friday and Saturday nights at a gasoline convenience store. Maintaining a part-time job while having a full-time job shows a strong desire by Applicant to address his financial obligations.

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.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.

CLAUDE R. HEINY II
Administrative Judge