



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



In the matter of:)
)
) ISCR Case No. 10-02088
)
Applicant for Security Clearance)

Appearances

For Government: Tovah Minster, Esquire, Department Counsel

For Applicant: *Pro se*

July 13, 2011

Decision

O'BRIEN, Rita C., Administrative Judge:

Based upon a review of the case file, pleadings, exhibits, and testimony, I conclude that Applicant has mitigated the security concerns raised under the guideline for Financial Considerations. Accordingly, his request for a security clearance is granted.

Statement of the Case

Applicant requested a security clearance by submitting an Electronic Questionnaire for Investigations Processing (SF 86) on January 16, 2008. After reviewing the results of the ensuing background investigation, adjudicators for the Defense Office of Hearings and Appeals (DOHA) were unable to make a preliminary affirmative finding¹ that it is clearly consistent with the national interest to grant

¹ Required by Executive Order 10865, as amended, and DoD Directive 5220.6 (Directive), as amended.

Applicant's request. On November 22, 2010, DOHA issued to Applicant a Statement of Reasons (SOR), which specified the basis for its decision: security concerns addressed in the Directive under Guideline F (Financial Considerations) of the Adjudicative Guidelines (AG).²

In his Answer to the SOR, dated January 18, 2011, Applicant denied 14 allegations of the 19 SOR allegations. He also requested a hearing before an administrative judge. Department Counsel was prepared to proceed on February 8, 2011, and I received the case on February 24, 2011. DOHA issued a Notice of Hearing on February 28, 2011. I convened the hearing as scheduled on March 15, 2011.

During the hearing, the Government offered 14 exhibits, which I admitted as Government Exhibit (GE) 1 through 14. Applicant testified, and offered 28 exhibits, which I admitted as Applicant's Exhibit (AE) A through BB. I held the record open to allow Applicant to submit additional documentation. He timely submitted five documents, which I admitted as AE CC through GG. Applicant's comments on his post-hearing submissions, and Department Counsel's response, taken together, are marked as Hearing Exhibit I.

Findings of Fact

Applicant's admissions to the SOR allegations are incorporated as findings of fact. After a thorough review of the pleadings, Applicant's response to the SOR, and the record evidence, I make the following additional findings of fact.

Applicant, 48 years old, is a high school graduate. He married in 1987, and divorced in 1996. He has two sons, 18 and 21 years old. Applicant completed a bachelor's degree in computer science in 1985. He also earned credits toward a master's degree, but did not complete it. In the early 1980s, Applicant worked on a federal program and held a secret security clearance. (GE 1; Tr. 39-42)

From 1989 to 2003, Applicant was a firefighter, paramedic, and hazardous materials technician for a county fire department. Due to injuries sustained while working as a firefighter, he retired on a medical disability in 2003, and his pay was significantly reduced. For several years, he operated his own business, which focused on communications engineering. In 2008, he obtained salaried employment with a federal contractor for about one year as a senior program analyst. From December 2009 to June 2010, Applicant was unemployed. He began his current employment with a defense contractor in June 2010. He was a program manager, but in approximately

² Adjudication of this case is controlled by the Adjudicative Guidelines, which supersede the guidelines listed in Enclosure 2 to the Directive. They apply to all adjudications or trustworthiness determinations in which an SOR was issued on or after September 1, 2006.

September 2010, as a result of the security clearance process, he was re-assigned to the position of subject matter expert. In 2010, Applicant accepted a second job involving "intermittent employment" as a telecommunications specialist. (GE 1, 2; AE BB, FF; Tr. 42-46)

Applicant and his wife were granted joint legal custody of their children following their divorce in 1996. Applicant was granted primary physical custody of the two children. His ex-wife was required to pay \$500 per month child support. She paid inconsistently, two or three times per year. She paid no child support from 2006 to 2008. In 2008, at a hearing on the child support issue, his ex-wife was \$30,000 in arrears. They negotiated the debt to the current balance of \$25,000. Applicant's ex-wife was to pay \$150 toward the arrearage, in addition to the \$500 per month. After the hearing, Applicant received three payments, but he has received no further child support since 2008. (GE 2, 5; AE R, S; 48-50)

In 2001, Applicant started his own business to provide extra income, in light of the lack of child support. However, he could not work at it consistently because of the time constraints of his job, and the demands of being a single parent. He decided to file a Chapter 13 bankruptcy petition in an effort to re-organize and resolve his debts (allegation 1.a). The bankruptcy included debts totaling approximately \$63,000. After paying a total of \$11,500, Applicant requested that the bankruptcy be dismissed in 2004, because he had been promised a full-time job that would enable him to pay his debts. The bankruptcy was dismissed in June 2004. (GE 2, 3, 13; Tr. 60-62)

While working as a firefighter, Applicant suffered burn injuries that required treatment at a shock-trauma unit. He was also exposed to substances that caused lung damage. In 2003, while performing a rescue, Applicant broke his knee in six places. He was not able to perform his duties as a firefighter, or his special operations duties as a hazardous materials technician. He was placed on reduced work status, and remained at home. He required four reconstructive surgeries. While on reduced work status, his salary was significantly reduced. He received a 55 percent disability benefit starting in 2003. (GE 5; Tr. 46-48)

Applicant bought his home in 2000 for \$209,000. After retiring on his medical disability in 2003, he used the funds from his 401k account to meet daily living expenses and try to avoid foreclosure on his home. However, in 2005, the lender foreclosed and the home was subsequently sold. The sale garnered more than the loan balance, resulting in a surplus. In June 2006, Applicant received \$109,520, which he divided equally with his then-fiancée. With approximately \$54,000, he was able to pay several debts, fund his business, and pay rent. (GE 5; AE J – O; Tr. 56-59)

Applicant has sought help in resolving his debts. In 2001, he filed the Chapter 13 bankruptcy, in order to reorganize and resolve his debts. In July 2008, he retained a company that provided advice on repairing credit; it did not negotiate settlements or

consolidate debts. He cancelled the contract the same day he signed it. He testified that he believed he could work with creditors and pay his debts without assistance. (GE 2, 5; Tr. 97-99)

Applicant's March 2011 income and expense worksheet lists income from three sources: wages of \$54.47 per hour as a subject matter expert; intermittent employment as a telecommunications specialist for a federal agency at \$36 per hour; and a disability retirement payment of \$2,464 net monthly. His income as a subject matter expert fluctuates, but in February 2011, he earned \$5,434 net income. He estimated monthly income of \$2,400 from the telecommunications position. The three sources yield roughly \$10,300 per month.³ After expenses of \$6,585, his current net remainder appears to be approximately \$3,715, although the telecommunications specialist job is intermittent and might not provide income every month. He has a 2001 car that he bought for \$4,000 cash in 2009. His oldest son lives on his own and supports himself. Applicant supports his younger son, who started college in 2010. He pays \$600 per month in tuition and approximately \$200 per month for books and other costs. He also spent funds assisting in the care of his elderly parents, before his father passed away. (AE FF, GG; Tr. 53-56)

The current status of Applicant's debts follows. Unless otherwise noted, the debts appear in Applicant's credit bureau reports of October 2008, April and October 2010 and March 2011. (GE 7, 8, 9)

Allegations 1.b (\$19,456); 1.c (\$16,735)⁴ – tax lien. RELEASED; PAYMENT PLAN

The IRS filed tax liens against Applicant because of problems with Applicant's returns in tax years 1994 through 1998. Applicant testified that the problems stemmed from two events: his ex-wife claimed their two children as her dependents on her return, even though Applicant was the custodial parent. In addition, Applicant's private child-care provider gave him false information, which he provided to the IRS; the IRS subsequently denied his child-care credit. Applicant later resolved the dependents' issue by providing the IRS with receipts showing that he was his children's physical custodian and paid for their support. At the hearing, Applicant provided IRS documents showing all tax liens have been released.⁵ AE A also shows that Applicant's tax returns for 1988 through 1996 and 1998 through 2009 have been filed and the taxes are paid in full. An outstanding balance remains for one tax year--1997. Applicant provided a letter from the IRS confirming that he has a payment plan in place, has been paying \$500 per

³ Applicant listed \$6,700 in wages from his position as a subject matter expert. However, his earnings statement shows net income of \$5,434 after taxes and deductions. (AE FF, GG)

⁴ The IRS documents show an original outstanding balance of \$19,456 for tax years 1994 through 1998, but do not show a lien for \$16,735. Applicant's 2011 credit report shows a lien for \$16,735, and lists it as paid. The IRS documentation shows that all years from 1988 through 2009 are paid in full, except for 1997. The tax for that year was \$8,752. I find that the debt alleged at ¶ 1.c is not a separate lien, but included in the amount alleged at ¶ 1.b. (AE A, C, CC, EE)

⁵ As Applicant divorced in 1996, this situation would have affected tax years 1996 through 1998. (GE 1)

month, and is in compliance with the tax law. As of the date of the hearing, he had reduced the remaining balance for 1997 to \$3,895. (GE 2, 5, 11, 12; AE A, C, U, AA, CC; Tr. 62-68)

Allegation 1.d (\$576) - cable – PAID

At his security interview in 2008, Applicant stated he did not know this cable debt was delinquent. At the hearing, he provided a receipt showing he paid \$588.99 on December 27, 2010. His March 2011 credit report shows the debt is paid. (GE 2, 4; AE F, EE; Tr. 68)

Allegations 1.e (\$50)- medical; 1.f (\$108) – UNRESOLVED

Applicant testified that he paid both debts on December 28, 2010 through a deduction from his checking account in the amount of \$114. He did not provide supporting documentation. His March 2011 credit report shows both debts as delinquent and in collection. (GE 2; AE EE; Tr. 68-70)

Allegations 1.g (\$560); 1.h (\$166) - Insufficient funds - UNRESOLVED

The same creditor holds both debts. Applicant testified he paid both using a check-by-phone in December 2010 in the amount of \$750.86. He did not provide supporting documentation. The debts are listed in his October 2010 credit report, but not in his March 2011 credit report. (GE 2, 7; AE EE; Tr. 70-71, 106)

Allegation 1.i (\$917) – credit card – PAID

Applicant testified that he paid this credit card balance in December 2010 through an electronic transfer from his checking account. His March 2011 credit report shows a current balance of \$29. (AE EE; Tr. 71-74)

Allegation 1.j – (\$990) – credit card - PAYMENT PLAN

Applicant has been paying on this debt since December 2010 through automatic electronic debit, and the debt has been reduced to \$697. He provided proof of payments of \$167.83 in December 2010, and January and February 2011. His hand-written notes indicate a balance of \$502.49 as of March 2011. (AE H, T, EE; Tr. 71-76)

Allegation 1.k (\$353) – Insufficient funds - UNRESOLVED

Applicant does not recognize this debt, and is researching it to determine if it is valid. His 2011 credit report shows it relates to a purchase at a used auto parts store, and is unpaid. (AE EE; Tr. 76-77)

Allegation 1.l (\$1,041) – telephone – UNRESOLVED

Applicant contacted the creditor in February 2010, and paid \$1,022 on a total debt of \$2,064, which left the remaining balance of \$1,041. He contacted the creditor later in 2010, and explained that he could not make additional payments because he was unemployed and his son's tuition was due at the time. He testified he paid the remainder on January 23, 2011 by electronic debit. He provided documentation showing

his February 2010 payment of \$1,022, but not the final payment in 2011. His credit report of March 2011 shows a balance due of \$1,041. (AE I, EE; Tr. 77)

Allegation 1.m (\$612) – credit card - UNRESOLVED

Applicant testified he paid this debt in 2010, but he did not provide documentation to support his claim. His March 2011 credit report shows it as unpaid. (AE EE; GE 7, 8, 9; Tr. 79-81)

Allegation 1.n – Insufficient funds - RESOLVED

The debt relates to a purchase of parts for Applicant's truck. He testified that he paid the debt with cash in 2010. His March 2011 credit report shows that the balance is zero. (AE EE; Tr. 81-82)

Allegation 1.o (\$486) – credit card - PAID

Although Applicant does not recognize this debt, he testified that he sent a cashier's check in the full amount on December 23, 2010. He did not receive correspondence from the creditor subsequent to the payment. His 2011 credit report shows the account is closed with a balance of zero. (AE EE; Tr. 82-83)

Allegation 1.p – (\$1,034) – payday loan - UNRESOLVED

Applicant needed funds to pay his utility bill in 2008 and procured a "payday loan." He believes he paid this loan in 2009. He provided a hand-written note listing the creditor's name and telephone number, but no proof of payment. His March 2011 credit report shows the debt as unpaid. (GE 2; AE DD, EE; Tr. 83-84)

Allegation 1.q (\$18,060) – auto repossession - UNRESOLVED

The SOR debt listed at ¶ 1.q is the original amount owed on a 1999 car loan. Applicant testified that during the child support hearing in 2008, he had a receipt showing the car was sold for \$10,000 after it was repossessed. He could not provide the receipt. He believes the current balance is \$8,000. He testified that when he recently contacted the creditor, the company could not provide information on the current status of the debt. His 2011 credit report lists a 2008 judgment for \$13,600. (GE 5; AE P, W, X, Y, Z, BB, EE; Tr. 84-89, 94)

Allegation 1.r (\$13,840) – Judgment – DISMISSED

In 2005, Applicant paid a deposit equivalent to four months' rent, or approximately \$12,800, when he leased an apartment. In his security interview of March 2008, he stated he had funds for the rent because he had recently won a large contract for his business. His company later lost the contract, and Applicant informed management he was unable to keep up with the rental payments. He was told he would not be penalized if he left the premises before the end of 2006, which he did. In 2007, he was sued for the unpaid rent. In landlord/tenant court, he showed evidence of his substantial deposit, his rental payments, and a letter stating that he would not be pursued if he vacated by December 2006, as requested. The judge dismissed the case in October 2007. The debt does not appear in his credit bureau reports of 2008 or 2010,

but is listed in his 2011 credit report. He has not been contacted by the creditor since the dismissal. (GE 2, 3, 10; AE Q, EE; Tr. 88-94)

Allegation 1.s – Insufficient funds – RESOLVED

In March 2005, Applicant performed work for one of his clients and deposited the client's payment. He then purchased goods at a local store using his own check. It did not clear because the check that his client had written was drawn on an account with insufficient funds. On January 31, 2006, a felony arrest warrant was issued. Applicant testified that he was unaware of the warrant until after he paid the debt. Applicant provided documentation showing that he repaid the debt, plus fees, four years ago on June 15, 2006. The prosecution *nol prossed* the case on March 28, 2008. Applicant has retained an attorney to assist him in having his record expunged. His 2011 credit report lists the debt as paid. (GE 2, 5, 14; AE D, E, EE; Tr. 94-97)

Policies

Each security clearance decision must be a fair, impartial, and commonsense determination based on examination of all available relevant and material information, and consideration of the pertinent criteria and adjudication policy in the AG.⁶ Decisions must also reflect consideration of the “whole-person” factors listed in ¶ 2(a) of the guidelines.

The presence or absence of a disqualifying or mitigating condition does not determine a conclusion for or against an applicant. However, specific applicable guidelines are followed when a case can be measured against them as they represent policy guidance governing the grant or denial of access to classified information. In this case, the pleadings and the information presented by the parties require consideration of the adjudicative factors addressed under Guideline F (Financial Considerations).

A security clearance decision is intended only to resolve the questions of whether it is clearly consistent with the national interest⁷ for an applicant to either receive or continue to have access to classified information. The Government bears the initial burden of producing admissible information on which it based the preliminary decision to deny or revoke a security clearance for an applicant. Additionally, the Government must be able to prove controverted facts alleged in the SOR. If the Government meets its burden, it then falls to the Applicant to refute, extenuate or mitigate the Government's case. Because no one has a “right” to a security clearance, an applicant bears a heavy burden of persuasion.⁸ A person who has access to classified information enters into a fiduciary relationship with the government based on trust and confidence. Therefore, the

⁶ Directive. 6.3.

⁷ See *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

⁸ See *Egan*, 484 U.S. at 528, 531.

government has a compelling interest in ensuring each applicant possesses the requisite judgment, reliability, and trustworthiness of one who will protect the national interests as his or her own. The “clearly consistent with the national interest” standard compels resolution of any reasonable doubt about an applicant’s suitability for access in favor of the government.⁹

Analysis

Guideline F (Financial Considerations)

AG ¶18 expresses the security concern pertaining to financial considerations:

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 over-extended is at risk of having to engage in illegal acts to generate funds. Compulsive gambling is a concern as it may lead to financial crimes including espionage. Affluence that cannot be explained by known sources of income is also a security concern. It may indicate proceeds from financially profitable criminal acts.

Applicant has accrued significant debts over the past ten years. He filed a Chapter 13 bankruptcy petition, had numerous debts in collection status, and some debts remain unpaid. The record supports application of the following disqualifying conditions under AG ¶19:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

The Financial Considerations guideline also contains factors that can mitigate security concerns. I have considered the mitigating factors under AG ¶ 20, especially the following:

- (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;

⁹ See *Egan*; Adjudicative Guidelines, ¶ 2(b).

(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; and,

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

Several factors affected Applicant's finances. Except for sporadic payments, his ex-wife failed to pay child support since 1996, and as of 2008, she owed approximately \$25,000 in arrears. In addition, Applicant's job as a firefighter led to serious medical injuries, including burns, damage to his lungs, and four reconstructive surgeries on a broken knee sustained during a rescue. Following this accident, he lived on a 55 percent disability benefit, and income from his own business. He could not predict or control his ex-wife's failure to meet her financial obligations, or that he would be retired on a medical disability, all of which had a substantial negative impact on his ability to meet his debts. He started his own company in part to provide a source of income to support his family. AG ¶ 20(b) applies.

Applicant has been making efforts to resolve his financial situation. He is currently working two jobs. Although he ultimately decided to resolve his debts on his own, he initially sought assistance from a consumer credit agency. He has paid five debts in full. He has payment plans in place for two debts, including the largest debt in the SOR. He has been making payments on the tax debt, which occurred because of errors rather than a desire to avoid his tax obligations. Although the SOR alleged that he owed \$36,191, the actual tax debt was \$19,456. His payments have reduced that amount to \$3,854. The IRS provided letters noting that he is in compliance and maintaining his payment plan. He also has been making payments on a payment plan for a credit card debt. After deducting the duplication at allegation 1.c, his reduction of the tax debt, and the debts Applicant has paid, he has reduced the alleged SOR debt by \$53,318, or 71 percent. This figure does not include several debts that Applicant stated he paid, but could not find the supporting documentation. Applicant has made a good faith effort, resulting in substantial progress in resolving his financial situation. AG ¶ 20 (c) and (d) apply.

Whole-Person Analysis

Under the whole-person concept, an administrative judge must evaluate the applicant's security eligibility by considering the totality of an applicant's conduct and all the circumstances. An 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.

AG ¶ 2(c) requires that the ultimate determination of whether to grant a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. Under the cited guideline, I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case.

Applicant has supported himself and two children on reduced income, without assistance from his ex-wife, for the past 14 years. Nevertheless, the amount he currently owes is significantly less than the total alleged in the SOR. He has income from one full-time and one intermittent job, plus a disability payment, which leaves him with a solid monthly net remainder to continue his payment plans and resolve the remaining debts. Applicant had made a good-faith effort to reduce his debt, but he has not yet resolved every debt listed in the SOR. However, the Appeal Board has addressed this situation, 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 demonstrates 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.¹⁰

Applicant’s testimony was credible and sincere. He has provided a valuable public service, from which he sustained multiple injuries that affected his ability to support his family. However, he has successfully reduced the resulting debt, and has

¹⁰ ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) (internal citations omitted).

