



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



In the matter of:)	
)	
-----)	ISCR Case No. 10-04934
)	
Applicant for Security Clearance)	

Appearances

For Government: Stephanie Hess, Esquire, Department Counsel
For Applicant: *Pro se*

07/16/0212

Decision

MARSHALL, Jr., Arthur E., Administrative Judge:

On November 21, 2011, the Defense Office of Hearings and Appeals (DOHA) issued to the above-referenced Applicant a Statement of Reasons (SOR). The SOR enumerated security concerns arising under Guideline F (Financial Considerations). DOHA took action under 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) implemented by the DOD on September 1, 2006.

In a response dated December 15, 2011, Applicant admitted the three allegations raised under Guideline F and requested a hearing before a DOHA administrative judge. DOHA assigned the case to me on May 15, 2012. The parties proposed a hearing date of June 6, 2012. A notice setting that date for a video teleconference hearing was issued on May 23, 2012. The hearing was convened as scheduled. Applicant testified and offered one document that was accepted into the record without objection as exhibit (Ex.) A. The Government introduced four documents which were accepted into the record as Exs 1-4.

Applicant was given until June 13, 2012, to submit any additional materials. On June 11, 2012, he timely submitted to Department Counsel a letter and five documents. The transcript (Tr.) of the proceeding was received on June 12, 2012. On June 18, 2012, Department Counsel forwarded Applicant's submissions without objection. They were accepted into the record as Exs. B-G, and the record was closed. Based on a review of the testimony, submissions, and exhibits, I find Applicant met his burden of mitigating security concerns related to financial considerations. Clearance is granted.

Findings of Fact

Applicant is a 50-year-old computer technician research specialist who is currently unemployed. He has earned a bachelor's degree in computer science and two associate degrees. Applicant is a disabled veteran of the U.S. military, having honorably served in the United States Air Force from 1980 until 2000. He is married and has raised five children.

While serving in the Air Force in 1981, Applicant married his first wife. After having five children, they separated in late 1998 and divorced in June 1999. The divorce decree stipulated that they would split their two properties, thus enabling them to continue leasing the homes and sharing both the resultant costs and incomes. The couple worked out the terms of their child custody and support on their own. Initially, their agreement went smoothly. Then, around 2003, Applicant became unemployed for about a year and a half. Because he could not afford to pay his full monthly child support of \$890 as his period of unemployment continued, his ex-wife discussed alternative financial arrangements. He agreed to pay her half of his monthly child support payment in return for her deduction of his remaining child support balance from his current net income or equity interest in their jointly held properties.¹ Since they had thus far worked out their agreements orally, Applicant did not memorialize this arrangement in writing. However, the two began executing this arrangement as agreed.

Later, unbeknownst to Applicant, his ex-wife went to the state division of child services enforcement and claimed that Applicant was not paying her any child support. He was not given any credit for either his half payments of \$445, which were usually paid in cash, or the offset she acquired on his real estate interest in lieu of full child support.² In the end, Applicant felt forced to take his ex-wife to court over the matter. There, the judge "basically said, 'Well, child support and division of property are two different issues.'"³ Consequently, he was given neither relief nor credit for his diminished holding in their joint property or for his cash child support payments. He was ultimately found to be in arrears for approximately \$48,000, which included alleged sums predating their divorce and his loss of employment.

¹ Tr. 16. To date, Applicant has not received income from these properties. Tr. 22.

² Tr. 16-17.

³ Tr. 17.

Ultimately, Applicant was able to find sufficient evidence of payments to reduce the arrearage to about \$38,000. He pledged to stop fighting the matter and decided to pay the full amount ordered. He committed himself to doing what he could to honor his child support obligation until his children each reached at least 18 years of age. Between reduced payments and the near-depletion of his 401K account, Applicant reduced his debt. He became unemployed about three years ago, however, when his employer expanded its working areas and required all employees to have security clearances.⁴ He had been previously denied a security clearance “because they said they had not received some information from [him], which [he] had sent [but not by registered mail,] so [he] had no way of proving otherwise.”⁵ Without a clearance, he was laid off until he could secure one.⁶ He has since found it difficult to find alternative employment in his region, due to heavy competition for electronic technician and computer technician positions from current military personnel with security clearances. For a time, he received unemployment compensation. Since that time he has relied on disability payments from the Veteran’s Administration (VA) and partial payment on a pension, which is shared with his ex-wife as a consequence of his divorce. Despite limited income, he has been able to budget sufficient sums to satisfy his total child support arrearage, including the \$8,059 balance noted in the SOR at ¶ 1.a.⁷ A related lien was released by his state on March 8, 2012, indicating a zero balance on the child support account. Today, Applicant’s children are 21 years of age or older. Applicant no longer financially supports any of his children.

When Applicant and his first wife were divorcing in mid-1999, they had two credit cards with outstanding balances. They are represented in the SOR at allegations ¶¶ 1.b-1.c as judgments for \$9,527.67 and \$12,466.03 from 2006 and 2005, respectively.⁸ The amounts reflected represent increases due to the balloon interest rates of the debts upon default and subsequent litigation resulting in the related liens. Applicant and his ex-wife had agreed to each pay half of the debt, but that plan was never honored by his ex-wife.⁹ Applicant has been unable to make payments due to his lack of employment and his having made satisfying his child support arrearage a priority.¹⁰ However, he has kept his creditor apprised of his financial and employment situation.

⁴ Tr. 24.

⁵ Tr. 24.

⁶ Tr. 24.

⁷ Tr. 18-20, 23; Ex. A (Letter, dated Mar. 13, 2012).

⁸ Collection on these accounts is now handled by a law firm with a different name. See Ex. 4 (Credit Report, dated Oct. 5, 2011) and Exs. B, D-G.

⁹ Tr. 26.

¹⁰ Tr. 26.

Applicant provided copies of correspondence he sent to the law firm now representing this debt from 2011 and 2012. For example, on October 19, 2011, before he received the SOR of November 21, 2011, Applicant responded to an offer to settle the balance noted as owed.¹¹ In his response, Applicant offered to settle the sum for approximately 17 percent of the current balance reflected, noting that he was still unemployed, but eager to work with the creditor to settle the matter.¹² No response was received. On February 19, 2012, Applicant wrote the creditor, inquiring whether a decision had been made on his October 2011 offer and noting that he had now been unemployed for over two-and-a-half years.¹³ With no response forthcoming, Applicant wrote the creditor a third time on June 8, 2012. In that letter, he reminded the entity that he had yet to hear an answer regarding his response to its solicitation for an offer settlement, noted that he was into his third year of unemployment, and increased his offer to settle to slightly over 25 percent of the purported balance.¹⁴ To date, he has not received any communication from the creditor.

The judgments noted at SOR allegations ¶¶ 1.b-1.c are Applicant's only debts, despite his having been unemployed for over three years. He provided evidence that his other credit card reflects a zero balance.¹⁵ His credit report reflects a current mortgage with only one late payment (30 days) since September 2000. The majority of the other credit accounts reflected on his credit report are shown as "closed or paid account/zero balance."¹⁶ No delinquent accounts are currently noted.¹⁷

As noted, Applicant is currently laid off from work, but is still maintained on the books by his former employer because the employer "thinks highly of [him] and knows [he] can do a very good job at what" he does.¹⁸ Consequently, Applicant's job is being held open for him should he be granted a security clearance. If he returns to work,

¹¹ Ex. E (Settlement Proposal, dated Sep.23, 2011) and Ex. 6 (Response, dated Oct. 19, 2011).

¹² Ex. F (Response, dated Oct. 19, 2011).

¹³ Ex. G (Letter, dated Feb. 19, 2012).

¹⁴ Ex. D (Letter, dated Jun. 8, 2012). This increase appears to be the result of an increase in Applicant's available funds resulting from his having satisfied his child support arrearage in March 2012 and his willingness to completely deplete his remaining 401K balance. See Tr. 26-27, 42-43.

¹⁵ Ex. C (Credit Card Statement, period ending May 19, 2012).

¹⁶ Ex. 4 (Credit Report, dated Oct. 5, 2011).

¹⁷ Neither of the judgments at issue are noted in the credit report under the current collection entity's law firm's name or the name noted in the SOR at ¶¶ 1.b-1.c. However, the law firm is listed as having inquired about Applicant's credit in April 2010 and September 2011.

¹⁸ Tr. 31.

Applicant feels he could pay \$800 a month “no problem” on the remaining debt.¹⁹ Also as noted, Applicant is living off half of a retirement payment (\$784) and a 50 percent disability payment (\$824) from the VA.²⁰ Those payments provide sufficient funds to pay his monthly \$530 mortgage payment, utilities, and any minor charges he acquires.

Applicant lives simply. He has not received financial counseling. His current wife is presently unemployed, but draws a monthly disability check for \$400, from which she pays for their groceries and gas. Although the couple has a meager income, they have not acquired any additional debt. They currently pay their obligations as they are acquired. Applicant has no extraneous obligations such as car payments. He retains two small credit cards for emergency use only.²¹ When balances are accrued that cannot be paid off immediately, Applicant routinely pays more than the minimum balance owed to minimize interest.²² He hopes to have the division of his marital properties from his first marriage resolved soon, but is not sure when that will occur.²³ Applicant has been thoroughly consistent in his past statements and testimony regarding his debts, their acquisition, and his efforts to address them.²⁴ He is committed to satisfying his old debt. He is convinced he can readily address his debt once he returns to work.

Policies

When evaluating an applicant’s suitability for a security clearance, an administrative judge must consider the AG. In addition to brief introductory explanations for each guideline, the AG list potentially disqualifying conditions and mitigating conditions. 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. Under AG ¶ 2(c), this process is a conscientious scrutiny of a number of variables known as the “whole-person concept.” The administrative judge must consider all reliable information about the person, past and present, favorable and unfavorable, in making a decision.

¹⁹ Tr. 31 (“Oh, I could pay \$400 on each of them; \$800 a month with no problem.” These payments would come from the partial retirement and Veterans Administration disability payments he currently receives, plus a salary of approximately \$52,000 a year he would receive if he is permitted to return to work.)

²⁰ Applicant’s retirement distribution is shared with his ex-wife. Tr. 32.

²¹ Tr. 35.

²² Tr. 35-37.

²³ Tr. 37. Applicant’s ex-wife is fighting his pursuit of a formal division of their interests in the properties. He does not expect any progress to occur for three to six months. Tr. 37-38.

²⁴ Tr. 39-42.

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.

The Government must present evidence to establish controverted facts alleged in the SOR. An applicant is responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . .”²⁵ The burden of proof is something less than a preponderance of evidence. The ultimate burden of persuasion is on the applicant.²⁶

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 those 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 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). “The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”²⁷ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.²⁸

Analysis

Guideline F - Financial Considerations

Under Guideline F, “failure or an 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

²⁵ See *also* ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

²⁶ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

²⁷ *Id.*

²⁸ *Id.*

an individual's reliability, trustworthiness and ability to protect classified information."²⁹ It also states that "an individual who is financially overextended is at risk of having to engage in illegal acts to generate funds."³⁰ In his answer to the SOR, Applicant admitted to three debts amounting to approximately \$30,000. This is sufficient to raise Financial Considerations Disqualifying Condition AG ¶ 19(a) (*inability or unwillingness to satisfy debts*) and AG ¶ 19(c) (*a history of not meeting financial obligations*). With such conditions raised, it is left to Applicant to overcome the case against him and mitigate security concerns.

The debts at issue are multiple in number. They were acquired during, and in the wake of, Applicant's 1999 divorce from his first wife. The debts involve marital credit cards that were to be shared, but were not, and child support. The credit card balances became inflated due to interest, fees, and the judicial process leading to the acquisition of liens; the child support balance became inflated due to his failing to get full credit for cash payments or property interests he gave his ex-wife under an oral agreement she failed to honor. Consequently, the balances now reflected are significantly higher than the debts originally acquired. Applicant has had difficulty honoring these obligations due to a period of unemployment that occurred a couple of years after his divorce that lasted approximately a year-and-a-half, and a current period of unemployment that has lasted over three years.

Despite Applicant's significant periods of unemployment, he made tremendous strides in honoring his early commitment to satisfy his child support arrearage. He measuredly reduced an initial determination that his arrearage was about \$48,000 to zero. He similarly made an early commitment to satisfy his two remaining judgements, accounts remaining from marital credit cards. To that end, he showed that he has been keeping his creditor apprised of his state of unemployment and trying to accept his creditor's offer to settle his debt. He began that process before the SOR was issued. Applicant most recently offered a reasonable settlement of over 25 percent of the outstanding balance to satisfy the debt, despite his current financial situation. He is currently awaiting a response from his creditor. Despite his currently meager income, he has refrained from acquiring any new debt. Given these facts, Financial Considerations Mitigating Conditions AG ¶ 20(b) (*the conditions that resulted in the behavior 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*) and AG ¶ 20(d), (*the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts*) apply. However, because he has not received financial counseling, AG ¶ 20(c) (*the person has received or is receiving counseling for the problem and there are clear indications that the problem is being resolved or is under control*) does not apply.

²⁹ AG ¶ 18.

³⁰ *Id.*

Whole-Person Concept

Under the whole-person concept, an administrative judge must evaluate an applicant's eligibility for a security clearance 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). Under AG ¶ 2(c), the ultimate determination of whether to grant a security clearance must be an overall commonsense judgment based on careful consideration of the guidelines and the whole-person concept. In addition, what constitutes reasonable behavior in such cases, as contemplated by FC MC ¶ 20(b), depends on the specific facts in a given case.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case, as well as the whole-person factors. Applicant is a mature, well-educated, and highly credible professional. His explanations regarding his finances and personal life have been consistent throughout this process. He is currently remarried and has helped raise his five children. He honorably served in the United States military. Applicant and his wife live simply and do not spend money on extravagances. Despite significant periods of unemployment, his only delinquent debt at present are the two debts reflected at SOR allegations ¶¶ 1.b and 1.c.

During Applicant's divorce from his first wife, it was agreed that their two major marital credit card balances would be shared. It was also agreed as to how he would pay her child support. Applicant's ex-wife reneged on both agreements to Applicant's financial detriment. Despite having been unemployed for nearly half of the past decade, he was able to set forth a workable plan to satisfy his debts. He satisfied an attributed child support arrearage of about \$48,000 while continuing to pay child support for his children past their 18th birthdays and he has tried to work with his remaining creditor.

Since before the SOR was issued, Applicant has kept his remaining creditor apprised of his financial situation and unemployment status. He accepted an invitation to settle his balances three times, most recently offering to completely deplete the remainder of his 401K in order to offer payment of over 25 percent of the balance. To date, however, he has not received a response to the offer his creditor solicited from him. Regardless, he has continued to contact it to check on the status of his settlement offers and to apprise it of his situation.

Applicant is as ready and willing to return to work as his employer is to have him return full-time. Should he be able to return to work, he will receive a salary in excess of \$50,000 to complement his monthly \$1,608 payments from a pension and VA disability payments. With such combined income, Applicant clearly will have the ability to make regular and significant payments on his remaining debt balance. He demonstrated his commendable ability to honor his child support-related debt in the past, and he has credibly expressed similar commitment to honoring this balance when he has the available income. With his demonstrated efforts to satisfy this remaining debt predating the issuance of the SOR, his expressed commitment carries more weight than simple promises. Further, despite the past three years of unemployment and a limited income, Applicant has demonstrated his ability to live within his means and not acquire additional debt. More importantly for this process, Applicant has set forth a workable

plan to satisfy or resolve his debt which he has thus far implemented successfully. In light of his present financial and employment circumstances, the responsibility evidenced by his progress in satisfying his child support arrearage, and his honest efforts to work with his remaining creditor, I find that financial considerations security concerns are mitigated. Clearance is granted.

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.c:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with national interest to grant Applicant a security clearance. Clearance granted.

ARTHUR E. MARSHALL, JR.
Administrative Judge