



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



In the matter of:)
)
) ISCR Case No. 10-05180
)
)
Applicant for Security Clearance)

Appearances

For Government: William O’Neil, Esquire, Department Counsel

For Applicant: *Pro se*

March 7, 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 Case

On August 12, 2010, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) detailing security concerns addressed in the Directive under Guideline F (Financial Considerations) of the Adjudicative Guidelines (AG).¹ In his answer to the SOR, notarized on September 2, 2010, Applicant

¹ Adjudication of this case is controlled by the Adjudicative Guidelines (AG) that were implemented by the Department of Defense on September 1, 2006. The AG supersede the guidelines listed in Enclosure 2 to the Directive, and they apply to all adjudications or trustworthiness determinations in which an SOR was issued on or after September 1, 2006.

admitted all allegations in the SOR, and requested a hearing before an administrative judge.² Department Counsel was prepared to proceed on September 14, 2010, and the case was assigned to me on September 20, 2010. DOHA issued a Notice of Hearing on September 24, 2010, and I convened the hearing as scheduled on October 21, 2010.

The Government offered five exhibits, which I admitted as Government Exhibits (GE) 1 through 5. Applicant testified and offered five exhibits, admitted as Applicant's Exhibits (AE) A through E. I held the record open to allow Applicant to submit additional documentation. He timely filed two documents, which I admitted as AE F and G. DOHA received the transcript (Tr.) on October 27, 2010.

Findings of Fact

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

Applicant, 38 years old, has been married since 2001 and has four children. They range in age from 3 months to six years. He holds a bachelor's degree in computer science. He has worked for defense contractors in the information technology field since the late 1990s. He began working for his current employer two years ago. He has held a security clearance without incident since 2000. (GE 1; Tr. 22-29)

Applicant's financial situation was stable until he decided, in late 2006, to purchase undeveloped land and have a house constructed on it for his family. Applicant obtained a loan to purchase the land, and a second loan for the home construction. Both loans were from the same bank, and the total amount to be financed was approximately \$550,000. Applicant intended to combine the two loans into a single mortgage loan when construction was complete. Early in the process, the project costs began to go significantly over budget because of excavation issues, right-of-way costs, permits, surveying, and other expenses. Applicant met with the lender and found that the loan amount would have to be adjusted to approximately \$800,000. He could not afford the increased expense and cancelled the project. (AE B, C: Tr. 30-36, 50-53)

During and after the construction project, Applicant's debts started to become delinquent.³ To begin resolving them, he put the undeveloped land up for sale in 2008; it sold for less than he owed in December 2009. He contacted a credit union debt

² Applicant's Answer included three documents identified in this decision as Answer Document (AD) 1 – payments made to Applicant's debt consolidation plan from March to August, 2010; AD 2 – summary of Applicant's payouts for nine debts; AD 3 - payment plan for debt listed at allegation 1.b.

³ Applicant was also unable to afford his federal income tax of approximately \$5,000 in tax year 2008. Two months after he received the notice from the IRS, he established an installment agreement. He has been making payments of \$250 per month, and is current on that plan. (GE 2; AE A; Tr. 83-84)

consolidation program in March 2009. He also began working a second job, on a part-time basis. (GE 3)

In early 2009, Applicant began to feel ill but continued working two jobs. He suffered a stroke in May 2009. He spent one week in the hospital, and four months recovering at home. He then returned to his primary job, but with limited conditions. He did not return to his second job. Applicant's medical insurance paid a large portion of the medical cost of \$97,000. Applicant testified that he believes his share of the medical debts was approximately \$15,000. He used credit cards to pay his family's living expenses. (Answer; AE D; Tr. 70-77)

In February 2010, he contracted with his current debt consolidation program. He pays \$897 per month, which is placed in escrow. The company negotiates settlements with the creditors where possible, makes payment arrangements, and pays them monthly from the escrow account. Applicant submitted documentation showing that he was current with his payments from March 2010 through October 2010. A status sheet from the company dated August 2010 showed that the plan included the debts at allegations 1.c. f, g, h, i, j, k, l, and o. The company negotiated lower settlements on two debts (allegations 1.c. and 1.l.), and has made one or more payments to four creditors (allegations 1.c., f, g, and o). At the hearing, Applicant noted that he had removed the debts at allegations 1.j, 1.k, 1.l. and 1.o. from the plan and was making other arrangements for those debts. The company does not handle debts to the government, or student loans. (AD 1, 2; AE A, G; Tr. 55-61, 85-91)

Applicant's net monthly income in July 2010 was \$7,852. His monthly expenses were \$2,200, and debt payments were \$3,776. The debt list in his personal financial statement includes the payments on his debt consolidation plan, his separate plan for allegation 1.b., his IRS payments, and his student loan payments. After paying his monthly expenses and these debt payments, Applicant has a net monthly remainder of \$1,875. He is current on his mortgage payments. (Tr. 83) His wife was employed, but was on maternity leave at the time of the hearing. Her coworkers have been furloughed, and Applicant does not expect her to return to her company. He does not have a car. (GE 2; AE E; Tr. 70, 83)

The status of Applicant's SOR debts follows. Applicant's credit reports of July 2010 and February 2009 list the debts, and indicate that they became delinquent in 2008 and 2009. (GE 4, 5)

Construction debt, \$7,442 (allegation 1.a.) – **DISPUTED**. Applicant believes this debt may be related to the house construction, but does not recognize it. When he met with the creditor to cancel the construction and set up a payment plan for the house-related debts, this debt was not discussed. He has contacted the collection agency for information, and also disputed it with the credit reporting agency. (Answer; AE F; Tr. 36-39, 49-50)

Equity loan, \$78,000 (allegation 1.b.) – **PAYMENT PLAN.** Applicant secured a loan against his existing home for the new house construction. He established a payment plan in August 2010 for this debt. He has been paying \$500 per month through a collection agency. He missed one payment and is working with the company to include it in his upcoming payments. (AD 3; Tr. 39-48, 84-85)

Credit card, \$9,786 (allegation 1.c.) – **PAYMENT PLAN.** Applicant used this credit card for construction costs and education expenses. This debt is included in Applicant's debt consolidation program. (Tr. 54-55)

Student loans, \$23,113 (allegations 1.d. and 1.e.) - **PAYMENT PLAN.** Applicant's debt consolidation program does not handle student loans, so these two debts are not included in the plan. Applicant has been paying on his student loans since 1999. He had a break in 2000 to 2002. Since 2002, he paid consistently until he missed some payments in 2008 and 2009. Depending on the applicable interest rate, his payments vary between \$120 and \$150 per month. (Tr. 60-63, 92-94)

Construction debts, \$52,500 (allegations 1.f., 1.g., 1.h.) – **PAYMENT PLAN.** These three debts are included in Applicant's debt consolidation plan. (AD 1; Tr. 63-65)

Credit card, \$8,834 (allegation 1.i.) – **PAYMENT PLAN.** This debt is included in Applicant's debt consolidation program. (AE A, C; Tr. 38-39, 64-67)

Credit cards, \$1,743 (allegations 1.j., 1.l.) – **UNPAID.** Applicant contacted both creditors in about September 2010. He arranged a settlement of \$500 for the \$573 debt owed to the creditor at allegation 1.j. He also arranged to pay \$1,000 to the creditor for the \$1,170 debt at allegation 1.l. He is working on arranging a payment plan for each debt. (Tr. 65-69)

Credit card, \$258 (allegation 1.k.) – **PAYMENT PLAN.** Applicant contacted the creditor and arranged a plan. As of the hearing date, he had paid \$158. (Tr. 66-68)

Medical debt, \$291 (allegation 1.m.) – **UNPAID.** Applicant is unsure about the basis for this debt, but it may relate to follow-up treatments after his stroke. His medical treatment was covered in part by his health insurance. He has been making payments on the doctor's and hospital bills resulting from his stroke. (AE D; Tr. 70-76)

Medical debt, \$1,267 (allegation 1.n.) – **UNPAID.** This debt relates to fees for doctor's services at the hospital during Applicant's stroke. He has been in touch with the creditor and also with the hospital's human resources department to work out a plan for payment, but had not begun payments as of the date of the hearing. (AE D; Tr. 76-78)

Credit card, \$6,567 (allegation 1.o.) – **PAYMENT PLAN.** This account belongs to Applicant's wife. They no longer have the credit card, but it had been used for family and educational expenses. She requested that he remove it from the debt consolidation

program. She made a payment plan with the creditor, and has been paying \$220 per month. She had been receiving her salary while on maternity leave. When leave pay ends, Applicant will assume the monthly payments. (Tr. 78-83)

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.⁴ 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 is not determinative of a conclusion for or against an Applicant. However, specific applicable guidelines should be followed whenever 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 security concerns and adjudicative factors addressed under Guideline F (Financial Considerations).

A security clearance decision is intended only to resolve the question of whether it is clearly consistent with the national interest⁵ 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.⁶ A person who has access to classified information enters into a fiduciary relationship with the Government based on trust and confidence. Therefore, the 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 his 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.⁷

⁴ Directive. 6.3.

⁵ See *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

⁶ See *Egan*, 484 U.S. at 528, 531.

⁷ See *Egan*; Adjudicative Guidelines, ¶ 2(b).

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 had good credit until 2006. At that time, he decided to have a home built for his family, and incurred unexpected problems that raised the cost beyond what he could afford. He wisely ended the venture, but had already taken on two loans to finance the construction. He used credit cards to pay the family's living and educational expenses. Disqualifying conditions AG ¶ 19(a) (*inability or unwillingness to satisfy debts*) and AG ¶ 19(c) (*a history of not meeting financial obligations*) apply. The record contains no evidence of other disqualifying conditions such as frivolous spending, or debts related to alcoholism, gambling, or deceptive practices.

The Financial Considerations guideline also contains conditions that can mitigate security concerns. In this case, the following conditions are relevant:

(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; and

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

Applicant's delinquencies, which began in 2008, are recent, as at least some of them remained delinquent until early 2010. However, his delinquencies resulted from

his ill-fated decision to construct a house for his family. Because of the strain this decision caused on his finances, Applicant is unlikely to engage in such a situation in the future. Applicant was proactive in setting up plans to meet his obligations. He has been paying on all but three debts. He has consulted the creditors to set up payment plans for the unpaid debts, which represent the relatively small amount of \$1,743. His actions reflect favorably on his current reliability and good judgment. AG ¶ 20(a) and (d) apply.

Applicant had good credit before his construction venture. He was financially capable of taking on the project, and was approved for the two necessary loans. Applicant could not foresee the events that intervened and significantly raised the cost. Moreover, he made diligent efforts to pay his accounts through selling the land, working a second job, and retaining a debt consolidation company, and making regular payments to it. He did not spend money in a negligent or frivolous manner. Applicant's situation and his response support application of AG ¶ 20(b).

Whole-Person Analysis

Under the whole-person concept, an administrative judge must evaluate an applicant's security eligibility by considering the totality of the 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 was candid and forthright about his debts. His financial situation was stable before 2006, when he decided to purchase land to have a home built for his family. It was within his means at the time, based on the expected cost. However, the project quickly became significantly more costly than he could foresee or afford. Applicant took on a second job in addition to his full-time job. He also attempted to resolve his situation by putting the land up for sale, but it sold for less than he owed. In the midst of this financial crisis, he suffered a stroke. He required one week of hospital

care, and four weeks of recovery time at home. He incurred medical expenses for the portion of his treatment that his insurance did not cover. He returned to his full-time job, but under restrictions. He also could not continue with his second job. In February 2010, long before the SOR was issued, he retained a debt consolidation company to assist him in paying down his debts. He also arranged a payment plan for his largest construction-related debt, and provided proof of consistent payments from February through October 2010, when the hearing occurred. Applicant owes money for student loans, but has paid consistently on this debt over several years. He has a sufficient monthly remainder to meet the payments that will resolve his debts. The Appeal Board has held that 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.⁸ (citations omitted)

Here, Applicant has shown judgment and maturity in his efforts to resolve the debts that resulted from his short-lived venture into home-building, and his unexpected ill health.

Overall, the record evidence satisfies the doubts raised about Applicant’s suitability for a security clearance. For all these reasons, I conclude Applicant has mitigated the security concerns arising from the cited adjudicative guideline.

Formal Findings

Paragraph 1, Guideline F	FOR APPLICANT
Subparagraphs 1.a. – 1.o.	For Applicant

⁸ ISCR Case No. 07-06482 at 2 (App. Bd. May 21, 2008).

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to allow Applicant access to classified information. Applicant's request for a security clearance is granted.

RITA C. O'BRIEN
Administrative Judge