



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



In the matter of:)
)
) ISCR Case No. 10-05272
)
Applicant for Security Clearance)

Appearances

For Government: Tovah Minster, Esquire, Department Counsel

For Applicant: *Pro se*

January 31, 2012

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

On October 21, 2011, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) that detailed security concerns under Guideline F (Financial Considerations). This action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DoD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992) as amended; and the Adjudicative Guidelines (AG) implemented by the Department of Defense on September 1, 2006.

In his Answer to the SOR, dated November 8, 2011, Applicant denied the six allegations in the SOR. He also requested a hearing before an administrative judge. Department Counsel was prepared to proceed on November 29, 2011, and I received the case on December 7, 2011. DOHA issued a Notice of Hearing on December 21, 2011. I convened the hearing as scheduled on January 11, 2012. The Government offered four exhibits, which I admitted into evidence as Government Exhibits (GE) 1 through 4. Applicant testified, offered the testimony of one witness, and nine exhibits, which I admitted into evidence as Applicant Exhibits (AE) A through I. DOHA received the transcript (Tr.) on January 22, 2012.

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 is 43 years old. He attended community college for two years, and has also earned several certifications at local universities. He joined the Navy in 1985. He held a security clearance without incident during his military service. He damaged both knees during action in the Persian Gulf. He was honorably discharged on a medical disability in 1991. He has been employed by a defense contractor since 2008 as a fiber-optic splicer/joiner. (GE 1; AE H, I; Tr. 24-28, 97)

Applicant married in 1989, and divorced in 1994. He has two children aged 21 and 22. Applicant's divorce in the mid-1990s started his financial problems. He paid more than \$700 per month in child support starting in 1994. He also shared the substantial expense for braces for both children, and maintained their medical and dental insurance. His obligation ended in 2009, when his youngest child reached 18 years of age. During his community college years in the 1990s, and later while he took additional courses, he dropped from full-time employment to part-time employment, which also contributed to his lack of funds. In 2007, he was unemployed for several months, and supported himself with unemployment compensation. He was unable to overcome his income deficit until about 2008, when he began to earn substantially more income. By 2009, he had his recurring monthly expenses under control. In 2010, he was able to tackle his delinquent debts. As of August 2011, he had paid several delinquencies that totaled approximately \$4,300, and do not appear in the SOR. (GE 1, 2; AE A; Tr. 25, 29-30, 38, 45-50)

Applicant purchased a small townhouse in the late 1990s to renovate with the intention of living there. He admits he was not in a sound financial position to purchase the house at the time. The lender in allegation 1.d financed the \$85,000 loan. He has not lived in or rented the property, but he paid his property taxes, and has been involved in the neighborhood's revitalization projects. In 2006, a property became available next door to his mother's home, and he decided to purchase it. It is now Applicant's primary residence. He financed \$136,000 of the \$170,000 price. He has been current on that mortgage for the past several years. (Tr. 41-45, 63)

Applicant hired a credit repair company in November 2010. It reviewed his credit report and contacted creditors. It also contacted the credit reporting agencies to dispute inaccuracies in Applicant's credit report and have them corrected. Approximately 32 percent of Applicant's disputed accounts were fixed or deleted from his credit report. Applicant submitted documentation showing the company's actions on his behalf. His credit score has increased to an average of 668, which is in the "Good" range. (AE B; Tr. 73-74, 82)

Applicant created a detailed budget that includes his income, expenses, and debt payments. He has strictly adhered to it since September 2010. Both when at home and while deployed, he pays his bills using online banking and automatic deductions from his bank accounts, to ensure timely payment. His car payment and insurance, two student loans, utilities, land line, and cell phone service are paid automatically from his bank accounts. He is current on his monthly expenses. (AE A; Tr. 30-33, 38-39, 46-47)

Applicant travels extensively for his job, approximately six to nine months per year. He receives substantially more pay when he is deployed. His gross income for 2010 was \$95,889, and slightly more in 2011 – approximately \$97,000. Because of the depressed economy, he was deployed only six months in 2011, and expects to be deployed for approximately six months in 2012. Applicant also receives a disability payment from the Veterans' Administration of \$235 per month. (AE F; Tr. 28, 34-36)

In September 2011, Applicant completed a personal financial statement (PFS) listing monthly net income of \$3,600. With his VA benefit, his monthly total is \$3,835. He listed monthly expenses of \$1,650 and debt payments of \$840. His monthly net remainder was approximately \$1,300. However, Applicant actually has a lower remainder, because this does not include Applicant's contributions to his mother's support. He pays for her cell phone, cable-internet, and basic home improvements, including a new roof in 2011, a new stove, and front door. At the hearing, he testified that he prefers to use any funds remaining at the end of the month to pay additional amounts on his accounts, so that he has a credit balance. He has approximately \$30,000 in his 401(k) account. (GE 2; AE A, F; Tr. 37-39)

Applicant's SOR debts, excluding the duplicate at subparagraph 1.f, total approximately \$49,000. The Government's evidence supporting these debts appears in GE 3 and 4, unless otherwise noted. The status of Applicant's SOR debts follows.

1.a. – credit card, \$3,856 – UNRESOLVED. Applicant used this account for home remodeling expenses in 2006. In 2007, he was paying substantial child support and near the end of the year he became unemployed. He could not afford to pay the balance and meet his monthly expenses. In June 2009, the creditor was awarded a judgment against Applicant. He contacted the creditor in 2009 to negotiate a settlement, but they could not reach an agreement, and he could not afford to make the full payment. He again contacted the creditor in July 2011 to negotiate, but the creditor

would not agree to a settlement. This is a duplicate of the debt listed at allegation 1.f. (GE 2; AE B; Tr. 51-57)

1.b. – credit card, \$5,389 – PAID. Applicant negotiated a settlement that combined the debts in allegation 1.b and allegation 1.c., which are both owed to the same company. He used accumulated savings from his deployments during 2010 to make a one-time payment of \$4,269 in July 2011. He provided documentation from the creditor showing that both debts are paid. (AE D; Tr. 58-62)

1.c. – personal loan, \$3,102 – PAID. See allegation 1.b.

1.d. – mortgage, \$28,104 – UNRESOLVED. This debt was 120 days past due when the SOR was issued. Applicant had problems meeting the payments since about 2008. Between about 2006 and 2008, he made attempts to sell the property, but had no offers. He has not attempted a short-sale. In about 2004 or 2005, Applicant requested a modification and was informed he did not qualify. He contacted the creditor in July 2011, formally requesting a modification. (GE 2) While Applicant was deployed during the December holidays, the lender forwarded a form letter offering to discuss options. As of the hearing date in early January, he had not been in touch with the lender. Applicant has paid the property taxes and filed building permits, as required, during his ownership. (GE 3, 4; AE C, E; Tr. 62-68)

1.e. – mortgage, \$9,903 – DISPUTES. The August 2011 credit report shows that this account is \$2,403 in arrears. The debt is part of the mortgage loan listed at subparagraph 1.d. Applicant believes that in about 2008, this creditor passed funds to the lender to bring Applicant's account current. He is unsure about how the process worked:

It was very, very sketchy. I couldn't explain how it worked if my life depended on it, I'm not sure. All I know is that [lender] says that I owe them, the last time I spoke with [lender], that I owe them the remaining balance on the mortgage. (Tr. 70)

In July 2011, he contacted the creditor, who would not agree to anything less than full payment of the arrearage. Applicant believes he owes the entire mortgage balance to the lender, rather than this creditor. He provided documentation showing that he has disputed this debt with the credit reporting agencies. His credit report shows the account is "closed due to transfer or refinance." (GE 2; AE B, C; Tr. 68-72)

1.f. – credit card, \$3,962 – DUPLICATE. This debt, owed to the same creditor as the debt at 1.a, is a duplicate of that debt. (GE 3)

Applicant's performance evaluations of 2010 and 2011 describe him as an innovative and organized employee who has integrity and works well with other team members. Applicant also offered witness testimony. His witness is a law enforcement

officer, and has held a top secret clearance in the past. He is careful about the character of those with whom he associates. He has known Applicant for ten years, and they are in contact several times per week. He has always been confident associating with Applicant because of his high ethical standards. He trusts Applicant completely and has provided him with keys to his home. He understands the obligations of those who hold security clearances, and has no doubt in Applicant's ability to uphold those obligations. (AE G; Tr. 99-112)

Policies

Each security clearance decision must be an impartial, commonsense determination based on examination of available relevant and material information, and consideration of the pertinent criteria and adjudication policy in the AG.¹ 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 only to resolves the question of whether it is clearly consistent with the national interest² 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. Additionally, the Government must prove controverted facts alleged in the SOR. If the Government meets its burden, it falls to the Applicant to refute, extenuate, or mitigate the Government's case. Because no one has a “right” to a security clearance, applicants bear a heavy burden of persuasion.³ 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 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.⁴

¹ Directive. 6.3.

² See *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

³ See *Egan*, 484 U.S. at 528, 531.

⁴ 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 has had financial difficulties for several years, and a number of debts have been placed with collection agencies. 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:

- (c) the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control;
- (d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts; and
- (e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

Applicant was unable to overcome his delinquencies until his child support obligation ended and he began making significantly more income in the late 2000s. Over the past one-and-one-half years, he has taken numerous steps to resolve his financial situation. He retained a credit repair company. It has disputed numerous

debts on Applicant's behalf, and has been successful in having inaccuracies removed from his credit report, and significantly improving his credit score. AG ¶ 20(e) applies. On his own, Applicant worked on accumulating savings, and developing a budget to track his income and expenses. He set up automatic deductions to pay his monthly expenses timely. In 2011, he paid more than \$4,000 to satisfy several delinquent debts, which do not appear on the SOR.

Two allegations relate to Applicant's outstanding mortgage loan. Over the years, Applicant has been in contact with the lender. He sought and was denied a loan modification in the past. Nevertheless, he has kept his real estate taxes current, and the lender has not attempted to foreclose. In response to his most recent inquiry, the company offered in late December 2011 to discuss the situation with him. As of the hearing in early January, they had not discussed future action. Although this debt is unresolved, Applicant has made good-faith efforts, 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.

Once Applicant's child support obligation ended about two years ago, and his income improved, he was able to accumulate savings and reduce his debt. Long before the SOR was issued, he took steps to resolve his financial situation. He has paid several debts not in SOR, has had inaccuracies deleted from his credit report, and has increased his credit score to the "Good" range. He makes a substantial salary when deployment is available, and he expects to have at least six months of deployment in 2012, which will afford him the funds to deal with his mortgage loan. I

conclude, based on his resolution of debts over the past two years, his consistent adherence to his budget, his current good standing on his monthly bills, that he will continue to work on resolving the remaining debt. 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. He must only show that he has a plan to resolve his debts and taken significant actions to implement it. (See ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008)).

In evaluating the whole person, I considered evidence of Applicant's good character, including his support of his mother, his service to his country, and his sustainment of a medical injury during military action. Applicant was candid about his financial problems, and his testimony was credible and sincere.

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 raised by the cited adjudicative guideline.

Formal Findings

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

Conclusion

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

RITA C. O'BRIEN
Administrative Judge