



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 10-05387

Appearances

For Government: Tovah Minster, Esquire, Department Counsel

For Applicant: William S. Aramony, Esquire

November 10, 2011

Decision

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

On January 19, 2011, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) enumerating 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) effective within the DOD on September 1, 2006.

In a February 23, 2011, response, Applicant admitted 12 of the 14 allegations raised in the SOR under Guideline F. He also requested a hearing before a DOHA administrative judge. DOHA assigned the case to me on June 15, 2011. Scheduling of the hearing was protracted as Applicant prepared to return to the United States from an overseas assignment. Waiving the 15-day notice requirement, Applicant agreed to a July 19, 2011, hearing. A notice setting that date for the hearing was issued on July 12, 2011. I convened the hearing as scheduled.

Applicant gave testimony and offered 14 documents, which were accepted into the record without objection as exhibits (Ex.) A-N. He was given through July 27, 2011, to submit any additional documents. The Government introduced six documents, which were accepted into the record without objection as Exs. 1-6. The transcript (Tr.) of the proceeding was received on July 28, 2011. In the interim, on July 22, 2011, Department Counsel forwarded two documents that were accepted into the record without objection as Exs. O-P. The record was then 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 47-year-old field engineer who has worked for the same government contractor since January 2010. He is a high school graduate with considerable technical experience. Applicant is currently single and has no children.

Applicant grew up in a large family with several siblings. He was taught to be independent at an early age. Applicant also started working at an early age. When he completed high school, he entered the U.S. Army, where he served with distinction as a paratrooper between 1983 and 1986. After he was honorably discharged at the rank of sergeant [E5] Applicant had no credit history. He had never established credit, preferring instead to budget and use cash. Soon thereafter, he purchased a car with the help of a loan and started work as a car audio and electronics installer. He quickly paid off his car loan and lived simply, managing his bills as they came in.¹

By 1987 or 1988, Applicant was working at a car stereo installation service that was located at the gateway to a major military installation. He continued to work in similar industries in the same area. Although he made about \$1,800 a month, he usually saved about \$500 to \$800 a month after all expenses. His expenses were low. He did not enjoy the party scene, preferring instead to be active at his church. Around this time he acquired an American Express card for emergencies. During this time he was told by an employer that times were tight and that he could not timely pay him about \$1,800 in back salary. However, when Applicant discovered the employer had just bought a Porsche, he quit the job.

Using his savings and money borrowed from family members, Applicant opened a competing store near the same base by which he had worked for several years. He diligently repaid his family members over the next few years. Applicant entered into an agreement with an auto supply company to use its name and to purchase inventory from its headquarters. He hired two full-time employees and a subcontractor. The business was a success and he regularly made payroll. Meanwhile, he contentedly continued to live a simple lifestyle in a modest apartment and drive an older model car. Despite the fact he dealt strictly in cash and did not offer financing, his solid reputation soon spread amongst soldiers and the military complex.

¹ Tr. 23-24.

In 1990-1991, the first Gulf War occurred. Soldiers were deployed and the town became a “ghost town.”² First traffic, then business dried up. He went from earning about \$30,000 in business to about \$10,000. To make ends meet, he cut corners where he could, simplified his personal needs, and reduced his own salary. In so doing, he continued in business and acquired no debts. By March 1991, soldiers began to return home and business picked up. By May 1992 the situation was stabilized. With his excellent credit, he purchased a \$96,500 house, on which he always made timely payments.³ In about 1995, he purchased a limousine service, improved it, and quickly sold it for a profit after much personal effort. He then bought a nightclub. Through his own time and effort during weekends and his time off from the auto supply shop, he worked to improve the business. After personally toiling over aspects ranging from general management to the nightly cleaning of the establishment, he sold it in about 2000 for a \$40,000 profit. Despite these side ventures, he continued to preserve his good credit and avoid acquiring any debt.

In 2001, using the nightclub profits, Applicant moved his auto supply shop into a larger facility even closer to the military installation. Initially, business boomed. Then the market share for smaller entities began to suffer while Internet sales in that sector began to grow. To maximize profit potential, he began using his American Express account to prepay for supplies, knowing that he could meet his monthly obligation on the card before payment was due at the end of the 30-day cycle. The area’s dynamics, however, changed after September 11, 2001. The military installation was “lock downed” and all the neighboring businesses “took a nose dive.”⁴ Things worsened when the troops went into battle in 2001, then again in 2003, and deployment periods were extended. To meet the resultant decline in customers, Applicant again cut corners and reduced his inventory. He then funneled his savings into the business. Although he fared better than most of his retail neighbors and the competition, the business was on a downward trend that began to peak in 2006, when the region started experiencing poor economic times.

In late 2005, Applicant paid his business insurance premium. Unbeknownst to him, the agent, who had drug problems, diverted the funds for his own personal use and never renewed Applicant’s policy.⁵ In mid-2006, a disgruntled customer, unhappy with a video installation job, secured a judgment against Applicant personally for \$5,000 (SOR allegation ¶ 1.b). Applicant explained to the court that it was a corporate issue, not a personal one. The judge was unmoved, and the business debt was found against Applicant in his personal capacity. On December 6, 2006, Applicant’s store was robbed and about \$43,000 in merchandise was stolen. Suspiciously, a day or two later, one of his staff disappeared and was never seen again. When Applicant went to file an insurance claim, he discovered that his agent had never renewed his policy.

² Tr. 30.

³ Tr. 32.

⁴ Tr. 36.

⁵ Tr. 39.

Consequently, he lacked insurance and could not be reimbursed for the \$43,000 loss.⁶ Between the judgment and the theft, Applicant faced significant debt. He disregarded suggestions that he declare bankruptcy. Instead, Applicant borrowed against his house, satisfied the judgment, and prospectively paid several months of rent.⁷ It was his hope to recoup the loss that was incurred due to the theft through more aggressive business.

By 2007, Applicant was broke. He had expended all his personal savings and resources toward saving the business and meeting his debts. He again refused to pursue bankruptcy. Instead, he closed the business, liquidated inventory, and immediately started looking for a job. An associate offered him a job in a nearby state, but Applicant was unsure he could sell his house without first making some improvements, and he did not want to default on his mortgage.⁸ The associate accepted the deed to the house in exchange for making upgrades to the home and covering the mortgage until it sold. While the associate held up his end of the bargain, one of Applicant's creditor's (SOR allegation ¶ 1.c) acquired a judgment against the house for about \$11,700. The associate satisfied the judgment. With Applicant's agreement, he then secured a judgment against Applicant for an equal amount, then sold the house. Meanwhile, Applicant worked for the associate, from whom he made a net income of about \$900 every two weeks.

While he was relieved that he had avoided bankruptcy and foreclosure, Applicant began to realize how dire his financial situation had become. He noted, "I never had to live like that in my entire life. And it was a real eye opener. So I adjusted my whole life to learning how to be even more frugal than I already was."⁹ While he appreciated the relationship he maintained with his associate, he realized that the man had an abusive temper and was not a good employer. Applicant worked long hours, but earned no overtime. In November 2008, after feeling misused as both an employee and an individual, he quit. Not long thereafter, the associate was financially forced to close his own businesses.

Applicant struggled along by doing freelance home theater work for a while. He found roommates and took a job as an electrician in 2009. That job, however, offered erratic hours and pay based on whatever project Applicant was assigned.¹⁰ However, the opportunity gave him the chance to start to save money through extreme frugality. In January 2010, Applicant started working for his current employer. When interviewed with regard to his application for a security clearance application, Applicant gave

⁶ Tr. 40-41.

⁷ Tr. 42-43. The debt continued on Applicant's credit report despite his payment and the affirmation of the creditor's wife. It is currently in dispute for removal. See Ex. C.

⁸ Tr. 43-44.

⁹ Tr. 46-47.

¹⁰ Tr. 75.

investigators notice of his debts, many of which were not then noted in his credit report.¹¹

With stable employment regained and some savings available to expend, Applicant made contact with his various creditors. He explained his situation and solicited their help in working with him. Shortly thereafter, he started to work with them in earnest when he was sent abroad to work, where he worked seven days a week in 11-hour shifts. Given the time change and his availability, however, contact became erratic.¹²

By November 2010, Applicant had repaid small loans taken from his family and a tax debt. He then reinitiated contact with his creditors and started repaying his debts, the same debts later enumerated in the January 19, 2011, SOR. In June 2011, he sought financial counseling with a credit counselor (ACC), through which he has been in repayment on the debts noted at SOR ¶¶ 1.e, 1.f, 1.g, 1.j, and 1.k since July 2011.¹³ That repayment plan is poised for completion by no later than December 2014.

Working abroad has been particularly lucrative for Applicant, given the extra deployment pay and per diem income it entails. He currently has about \$33,000 in his bank account and about \$14,000 in a stock market account. Such resources have helped him satisfy the debts noted at SOR ¶¶ 1.d, 1.h, 1.i, and 1.m, in addition to making payments on his payment plans and permitting him to meet his regular obligations. Since returning to financial stability, he has expended considerable effort to specifically address the debts at issue in the SOR.¹⁴

Applicant is currently stationed in the United States through the end of the year. While his return to the United States in late July 2011 caused a drop in his income, his expenses here are greatly reduced and he currently lives in inexpensive housing. In general terms, Applicant is currently taking home a net sum significantly higher than what is needed to meet his current monthly expenses, make his debt repayment allotments, and reserve additional cash for savings.¹⁵

¹¹ Tr. 76; Ex. 6 (Credit report, dated Feb. 2010).

¹² Tr. 51.

¹³ Ex. F (Counseling repayment plan paperwork).

¹⁴ See, e.g., Tr. 92. ("There seems to be a substantial amount of evidence showing that the Applicant is making [a] good faith effort to pay creditors back or has already paid several of these accounts off and there doesn't seem to be a danger of Applicant falling into this kind of financial difficulty in the future.")

¹⁵ Tr. 80-88, 92. Applicant had a net remainder of approximately \$2,100 per month when he was last residing in the United States. He described this figure as being based on "guaranteed income." He believes that figure should closely represent his current net income through the end of 2010. Tr. 85; Ex. 2 (Interrogatories, dated Oct. 29, 2010) at 6.

Debt		Status	Ex./Tr.
1.a	Judgment (\$13,459) - Debt earlier acquired to pay off 1.c, below.	In repayment. \$5,500 paid to date.	B, M, K; 55, 72
1.b	Judgment (\$5,000) - Balance on car damaged on Applicant's lot.	Paid, 2006.	58-61
1.c	Judgment (\$11,703) - Debt for credit card balance.	Paid, 2009.	D; 62
1.d	Collection (\$34) – Electric bill balance.	Paid, 2011.	E; 62
1.e	Credit Card Balance (\$3,872).	In repayment with ACC; \$78/mo. Pay-off expected 12/2014.	F; 63-66
1.f	Credit Card Balance (\$9,982).	In repayment with ACC; \$241/mo. Pay-off expected 12/2014.	F; 63-66
1.g	Credit Card Balance (\$11,156).	In repayment with ACC; \$235/mo. Pay-off expected 12/2014.	F; 63-66
1.h	Disputed Bank Charge (\$418).	Paid, 2011.	G; 66
1.i	Credit Card Balance (\$2,026).	In repayment; \$450 paid to date. Pay-off expected 12/2011.	H; 66-67
1.j	Credit Card Balance (\$8,881).	In repayment with ACC; \$196/mo. Pay-off expected 12/2014.	F; 64
1.k	Credit Card Balance (\$8,033).	In repayment with ACC; \$170/mo. Pay-off expected 12/2014.	F; 64
1.l	Past-Due Balance (\$125).	Paid, 2011.	K, O; 68
1.m	Credit Card Balance (\$750).	Paid, 2011.	I; 69-70
1.n	Collection Account (\$12,451). Duplicate collection effort for 1.f, above. See Tr. 70-71.	In negotiations by credit counselors	J; 70-72

	(1.n continued)	for repayment plan inclusion. Duplicate collection effort.	
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At work, Applicant is highly regarded for his unique expertise. He is respected for both his work and his personal attributes. He is described as “a valuable asset” who is “open” and “honest.”¹⁶

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.

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. . . .”¹⁷ The burden of proof is something less than a preponderance of evidence. The ultimate burden of persuasion is on the applicant.¹⁸

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

¹⁶ Ex. N (Letter, dated Jul. 18, 2011).

¹⁷ See also ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

¹⁸ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

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.”¹⁹ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.²⁰

Based upon my consideration of the evidence, Guideline F (Financial Considerations) is the most pertinent to this case. Conditions pertaining to this AG that could raise a security concern and may be disqualifying, as well as those which would mitigate such concerns, are set forth and discussed below.

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 an individual’s reliability, trustworthiness and ability to protect classified information.”²¹ It also states that “an individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.”²² Applicant admitted that he had acquired at least 12 delinquent debts. This fact is sufficient to raise Financial Considerations Disqualifying Condition (FC DC) AG ¶ 19(a) (*inability or unwillingness to satisfy debts*) and FC DC 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. While the vast majority of those debts have been paid or are currently in repayment, much of the activity toward satisfying them occurred in the past year. Moreover, although the majority of the debts arose when Applicant was self-employed and he is now employed by a major company, there is no evidence that he intends to refrain from independent ventures in the future. Therefore, despite his diligence in trying to handle his business-related debts when his company and the economy took a downward spiral, Financial Considerations Mitigating

¹⁹ *Id.*

²⁰ *Id.*

²¹ AG ¶ 18.

²² *Id.*

Condition (FC MC) AG ¶ 20(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)* does not apply.

From the on-set, Applicant has been frugal with money and used a budget. He has not wasted money on extravagances, nor has he ventured into business areas in which he lacked some degree of knowledge or expertise. His business's proximity to a military installation after September 11, 2001, and the souring of the economy in the mid-2000s, however, adversely impacted his company. In addition, he relied on an insurance professional and an employee to perform their functions appropriately. When their malfeasance resulted in a lack of insurance coverage and theft, Applicant was left with significant debt. Despite his best efforts to economize and cover his teetering business finances with his personal savings and assets, delinquent debt was acquired. Such facts are sufficient to raise FC MC 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)*.

Applicant has maintained contact with his creditors for some time in order to demonstrate his good faith toward his debts. He purposefully chose not to pursue bankruptcy, preferring instead to honor his debts the best he could. Once he found stable employment, he started saving money and reinitiated contact with his creditors. He began addressing his debts while he received financial counseling. He developed a workable plan to address his debts. Through his efforts toward the 14 debts at issue, one was identified as a duplicate entry, six have been paid, and seven are in timely repayment. Applicant has the financial resources, strategy, and resolve to complete his repayment plans until his remaining debt is satisfied. FC MC 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)* and FC MC AG ¶ 20(d) *(the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts)* apply. None of the other FC MCs apply.

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 highly credible and candid 47-year-old engineer who is gainfully employed at a company which values him as an employee. He is single and has no

dependents. Since childhood, he has been frugal and has always lived simply, devoid of frivolities and wasteful spending habits. He has an apparent knack for both business and sales, as well as expertise in engineering. His streak of success as an independent business owner was never challenged until September 11, 2011, had a devastating impact on his military-dependent city, and recent economic problems impacted his business. When interviewed for a security clearance in 2010, he self-reported the fact that he had acquired significant business debt during that era, thus putting investigators on notice that finances might be an issue.

Not one to avoid his obligations, Applicant chose not to pursue bankruptcy when faced with adverse business conditions. He also chose to maintain his commitment to his mortgagors when his home became his last viable asset. He dealt with a costly business theft and adverse judgment with appropriate professionalism and by depleting his personal resources. In the face of such obstacles, Applicant persevered to honor his debts, resorting to underpaid employment in an effort to keep financially afloat in a time of fiscal duress. Through such diligence, he creatively saved his home from foreclosure, found stable work, and was able to acquire sufficient savings to address his delinquent, business-related debt. Today, by utilizing a practical and workable strategy, several of those debts are paid and the remainder are in timely repayment. He has both the fortitude and financial resources to see his remaining debt satisfied through such structured repayment plans. In light of his on-going business and financial diligence, his practical method for addressing his debts, and the success he has thus far achieved in addressing his debts, I conclude that Applicant is exhibiting responsible behavior. Given all these considerations, there is sufficient evidence to mitigate Guideline F security concerns. 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.n: 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