



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



In the matter of:)	
)	
)	ISCR Case No. 10-06483
)	
Applicant for Security Clearance)	

Appearances

For Government: Alison O’Connell, Esq., Department Counsel
For Applicant: *Pro se*

June 16, 2011

Decision

LOUGHRAN, Edward W., Administrative Judge:

Applicant mitigated financial considerations and personal conduct security concerns. Eligibility for access to classified information is granted.

Statement of the Case

On November 11, 2010, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines F (financial considerations) and E (personal conduct). The action was taken under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) implemented by the Department of Defense on September 1, 2006.

Applicant answered the SOR on December 15, 2010, and February 24, 2011, and requested a hearing before an administrative judge. The case was assigned to me on March 15, 2011. DOHA issued a notice of hearing on March 30, 2011, and the hearing was convened as scheduled on April 21, 2011. The Government offered

Exhibits (GE) 1 through 4, which were admitted without objection. Applicant testified and submitted Exhibits (AE) A through F, which were admitted without objection. The record was held open for Applicant to submit additional information. Applicant timely submitted documents that were marked AE G through Q and admitted without objection. Department Counsel's memorandums forwarding Applicant's exhibits are marked Hearing Exhibits (HE) I and II. DOHA received the hearing transcript (Tr.) on May 4, 2011.

Procedural Rulings

Applicant affirmatively waived his right under ¶ E3.1.8 of the Directive to 15 days notice before the hearing.

Findings of Fact

Applicant is a 68-year-old employee of a defense contractor. He has worked for his current employer, or a predecessor contractor, for more than 25 years. He seeks to retain a security clearance that he has held for many years. He attended college for a period but did not earn a degree. He has been married for more than 45 years. He has one adult child.¹

The SOR alleges three delinquent debts with balances totaling about \$21,800, and that Applicant was 90 days past due on his first and second mortgage.

Applicant and his wife took their then 18-year-old grandson into their home in about 2008, when his mother no longer wanted him living in her home. He had legal problems, and Applicant recently discovered he also has drug problems. He rarely worked, and Applicant and his wife paid some of the costs associated with his legal problems. He also stole from Applicant. The grandson is currently in an inpatient drug rehabilitation program.²

Applicant had financial problems before his grandson came to live with them. He had some medical costs that were not covered by insurance. Applicant also admitted that he and his wife spent more than they earned. His wife managed the finances, and she liked to shop on-line. He has earned a good salary for many years, and his wife worked for a large company before she retired.³

Applicant and his wife sought the assistance of a debt settlement company in September 2008 and enrolled their debts in the company's credit negotiator program (CNP). He agreed to pay \$714 each month to the company, which would hold the money, minus their fees, in trust until the company had negotiated a settlement with the creditor. He paid \$714 per month into the CNP from September 2008 through

¹ Tr. at 41-44; GE 1.

² Tr. at 21-27; Applicant's response to SOR; GE 2.

³ Tr. at 27-29, 49-51; GE 2.

September 2009. The company withheld more than \$4,400 in fees during that period. Applicant's monthly deposit was reduced to \$505 in November 2009. The company continued to withhold about \$265 in monthly fees until May 2010. Since that time, the monthly fees have been greatly reduced, to about \$8 a month. Between February 2009 and August 2010, the company settled seven accounts for about \$3,745. Applicant is still in the debt settlement program, and has consistently paid \$505 every month.⁴

SOR ¶ 1.a alleges a \$1,368 debt to a department store. The balance on this debt was \$13,543 in March 2010. Applicant settled the debt with a payment of \$6,772 in March 2010, followed by weekly \$150 payments through January 2011.⁵

Applicant and the law firm handling the debt alleged in SOR ¶ 1.b agreed on a payment plan in October 2009. He agreed to pay the balance of \$6,357, at 10% interest, with a \$1,590 payment in October 2009, followed by monthly \$209 payments until the debt was paid. In October 2009, Applicant paid \$668 to the law firm, and an additional \$922 was paid from his CNP account. After the \$922 payment, Applicant withdrew the debt from the CNP and made the monthly payments outside the program. He submitted proof that the payments have been made every month. The law firm reported that as of April 2011, Applicant had paid \$5,143 toward the debt.⁶

SOR ¶ 1.c alleges an \$18,033 debt to a collection company on behalf of a bank. This debt is listed for settlement with the debt settlement company. Applicant stated the collection company agreed to settle the debt for \$6,000. As part of that settlement, his debt settlement company paid the collection company \$2,100 in March 2011 and \$460 in April 2011.⁷

Applicant has brought current his first and second mortgages. He stated that his grandson will not be moving back in with them after he is released from rehabilitation, as they have had enough of him. He stated that he and his wife have reached an agreement to limit their spending. He has not received formal financial counseling. He credibly testified that he plans to pay all his delinquent debts and rectify his financial problems.⁸

Applicant submitted a questionnaire for national security positions (SF 86) in January 2009. He did not list any delinquent debts under any of the pertinent financial questions. Applicant credibly testified that he thought he answered the questions correctly. He did not have a real grasp on how the debt settlement company was

⁴ Tr. at 35-39, 52, 55-57; Applicant's response to SOR; GE 2; AE A, D, H-J.

⁵ Tr. at 29-35, 59, 67; Applicant's response to SOR; GE 2; AE C-F.

⁶ Tr. at 59-60, 67; Applicant's response to SOR; GE 2; AE K, L.

⁷ Tr. at 61-65, 69; Applicant's response to SOR; GE 2; AE I, J.

⁸ Tr. at 27-28, 40, 65, 69, 73-75, 80; Applicant's response to SOR; GE 2; AE B, M, Q.

addressing his debts. He thought they were paying the accounts each month, and the debts were not delinquent. I find that Applicant did not intentionally falsify the SF 86.⁹

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, administrative judges apply the guidelines in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all available, 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.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel." The applicant has the ultimate burden of persuasion to obtain a favorable security decision.

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 extrapolation of potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that adverse decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the

⁹ Tr. at 35-38, 46-48, 52-54, 68, 75-79; GE 1.

applicant concerned.” See also EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline F, Financial Considerations

The security concern for financial considerations is set out in AG ¶ 18:

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 overextended is at risk of having to engage in illegal acts to generate funds.

The guideline notes several conditions that could raise security concerns under AG ¶ 19. Two are potentially applicable in this case:

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

Applicant accumulated a number of delinquent debts and was unable or unwilling to pay his financial obligations. The evidence is sufficient to raise AG ¶¶ 19(a) and 19(c).

Conditions that could mitigate financial considerations security concerns are provided under AG ¶ 20. The following are potentially applicable:

- (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;
- (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.

Applicant had some medical costs that were not covered by insurance. He and his wife took their then 18-year-old grandson into their home in about 2008. The grandson had drug and legal problems, and he stole from Applicant. Those events qualify as conditions that were outside his control. To be fully applicable, AG ¶ 20(b) also requires that the individual act responsibly under the circumstances. Not all of Applicant's financial problems were caused by events that were outside his control. He admitted that he and his wife spent more than they earned.

In September 2008, Applicant and his wife sought the assistance of a debt settlement company and enrolled their debts in the company's credit negotiator program. He has consistently paid into the program since then, and he has also addressed some debts outside the program. He credibly testified that he plans to pay all his delinquent debts and rectify his financial problems.

A security clearance adjudication is not a debt collection procedure. It is a procedure designed to evaluate an applicant's judgment, reliability, and trustworthiness. See ISCR Case No. 09-02160 (App. Bd. Jun. 21, 2010). An applicant is not required, as a matter of law, to establish resolution of every debt alleged in the SOR. An applicant need only establish a plan to resolve the financial problems and take significant actions to implement the plan. There is no requirement that an applicant make payments on all delinquent debts simultaneously, nor is there a requirement that the debts alleged in the SOR be paid first. See ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008).

I find that Applicant acted responsibly under the circumstances; there are clear indications his financial problems are being resolved and are under control; and he has made a good-faith effort to repay his creditors. AG ¶ 20(b) is partially applicable. AG ¶¶ 20(c) and 20(d) are applicable.

Guideline E, Personal Conduct

The security concern for personal conduct is set out in AG ¶ 15:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. The following is potentially applicable:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities.

Applicant did not intentionally falsify his SF 86. AG ¶ 16(a) is not applicable. SOR ¶ 2.a is concluded for Applicant.

Whole-Person Concept

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

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I have incorporated my comments under Guidelines F and E in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but some warrant additional comment.

I found Applicant to be honest and candid about his finances. He knows that he should have paid more attention to his finances. I believe he is sincere about getting his finances in order. As indicated above, an applicant is not required to establish that he has paid 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. I find that Applicant has established a plan to resolve his financial problems and has taken significant action to implement that plan. His finances do not constitute a security concern.

Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. I conclude Applicant has mitigated financial considerations and personal conduct security concerns.

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.e:	For Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraph 2.a:	For Applicant

Conclusion

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

Edward W. Loughran
Administrative Judge