



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



In the matter of:)	
)	
)	ISCR Case No. 10-07691
)	
Applicant for Security Clearance)	

Appearances

For Government: Richard Stevens, Esq., Department Counsel
For Applicant: Christopher Graham, Esq.

12/13/2012

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant mitigated the Government’s security concerns under Guideline F, financial considerations. Applicant’s eligibility for a security clearance is granted.

Statement of the Case

On May 18, 2012, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F. The action was taken under Executive Order 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) effective within the Department of Defense on September 1, 2006.

Applicant answered the SOR on June 18, 2012, and requested a hearing before an administrative judge. The case was assigned to me on October 15, 2012. DOHA issued a notice of hearing on October 24, 2012. I convened the hearing as scheduled

on November 27, 2012. The Government offered Exhibits (GE) 1 through 7, and they were admitted into evidence without objection. Applicant offered Exhibits (AE) A through F, and they were admitted into evidence without objection. The record was held open until December 3, 2012, to allow Applicant to submit additional documents. He submitted AE G and it was admitted into evidence without objection.¹ DOHA received the hearing transcript (Tr.) on December 5, 2012.

Findings of Fact

Applicant admitted all SOR allegations with explanations. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is 51 years old. He has a bachelor's degree and has worked in the software engineering field for the same employer since 2003, but he has had periods of unemployment because of the contractual nature of his job. He married in 1986 and divorced in 2009. He has a 22-year-old son and a 21-year-old daughter from the marriage.²

Applicant had debts discharged in bankruptcy in 1997. He had accepted an employment position in another location, and he was unable to sell his house. He rented the house, but the tenants did not pay their rent. This affected his finances, so he used credit cards to keep up with the mortgage payments. He explained he financed his expenses with credit cards because he needed to feed his family and to save the equity he had in the house. The debt owed on the house was included in the bankruptcy discharge. He believed the bank eventually sold the house. He had about \$44,000 in unsecured debt discharged.³

Applicant stated that his ex-wife's primary focus was that the children receive whatever they wanted, including items that were considered unnecessary or a luxury. Applicant was frustrated with her spending habits, and in May 2006, he cut all of their credit cards. He took out a home equity line of credit for \$26,000 (SOR ¶ 1.c; \$20,590) to pay their debts. He noticed that his wife started to slowly obtain new credit cards that she would keep secret from him. She would make purchases and hide the items from him. She would also contact the credit card companies to extend their line of credit. This pattern continued and their delinquent debt increased. On February 13, 2007, Applicant closed their joint checking account and told his wife she could not be trusted regarding their finances. In April 2008, they separated. Under state law they had to remain separate for a year before a divorce could be granted.⁴

¹ Hearing Exhibit I is Department Counsel's memorandum email.

² Tr. 20-23.

³ Tr. 23-27.

⁴ Tr. 27-31-34, 58.

Applicant supported his wife during their separation, which impacted his finances. She was earning about \$600-\$650 a month and he provided her with \$1,000 a month for four months. He decreased the amount for eight to nine months while he made her car payments instead. He estimated he paid at least \$6,000 to her from April 2008 to November 2009.⁵

The following details the current status of the delinquent debts alleged in the SOR. The debt in SOR ¶ 1.b (\$21) is paid. The debt in SOR ¶ 1.c (\$20,590) is for the \$26,000 line of credit Applicant obtained. He has an agreement with the creditor to pay \$375 a month. He indicated the current balance is \$18,500. The creditor has agreed to settle the debt for \$7,500, but Applicant wants to pay what he can afford to pay and does not want to settle the debt for a reduced amount.⁶

Pursuant to Applicant's divorce settlement he was awarded the family home. He attempted to sell the property for several years, but due to the economy he was unable to sell it. His realtor suggested he rent the house. He did so with a month-to-month lease, hoping he could sell it. Because Applicant was no longer the primary resident, the mortgage company proceeded to foreclose on the property. The mortgage company would accept a short sale of the property, but the offer it received was too low. The house was foreclosed in October 2011. It eventually sold in February 2012. Applicant contacted the mortgage company and it advised him the house sold for \$132,000. The original mortgage was for \$136,000. This debt is listed in SOR ¶ 1.d. Applicant indicated the problem with maintaining the mortgage payments on his house was also due to a cash-flow situation. He fell behind on his mortgage payments when he was providing marital support to his separated wife. Applicant is waiting to receive an Internal Revenue Service (IRS) 1099-C cancellation of debt form for the \$4,000 deficiency that he intends to file with his tax return.⁷

The debt in SOR ¶ 1.e (\$12,964) is for a car loan. Applicant cosigned the loan for his wife's car. She was to make the \$400 monthly payments. She failed to do so and the car was repossessed. Applicant negotiated a settlement with the creditor where he would pay \$5,000, which was half of the settlement amount, and his wife would be responsible for the remaining half. Applicant took a loan from his 401k to pay this debt. He received confirmation from the creditor in October 2010 that the debt was settled and satisfied. He received an IRS Form 1099-C for the cancellation of the debt and filed it with his 2010 tax return. He indicated his wife did not pay her half of the debt.⁸

⁵ Tr. 30.

⁶ Tr. 34, 36-37; AE C.

⁷ Tr. 38-41, 46-50, 54; Answer to SOR; GE 4.

⁸ Tr. 41-46, 63-66; Answer to SOR; AE G.

Applicant does not believe the debt in SOR ¶ 1.f belongs to him. He suspected it belonged to his daughter. It is reported as paid on his credit report.⁹

When Applicant and his wife separated he assumed most of the delinquent debts. Their divorce was final in November 2009. He was ordered to pay his wife \$500 a month for 24 months. He paid her that amount for 25 months because the final month was December and he wanted her to have extra money to ensure she had her rent paid. He does not have any other debt issues. He had sought financial counseling and arranged a debt consolidation plan. He was able to pay some of his delinquent bills through this plan.¹⁰

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 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, 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. 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, 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 and 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

⁹ Tr. 34-35; AE F.

¹⁰ Tr. 46, 50, 62-63.

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 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).

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. I have considered all of the disqualifying conditions under AG ¶ 19 and the following two are potentially applicable:

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

Applicant had debts discharged in bankruptcy in 1997. He and his wife accumulated delinquent debts because of her spending habits. I find there is sufficient evidence to raise the above disqualifying conditions.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. The following mitigating conditions under AG ¶ 20 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's financial problems were attributed to his wife's overspending. Despite his efforts to curb her ability to spend, he was unsuccessful. He and his wife divorced. He has been actively addressing his delinquent debts. His financial problems occurred under such circumstances that they are unlikely to recur. He took drastic measures to stop his wife from overspending by cutting up the credit cards and removing her from their joint accounts. I find his financial issues do not cast doubt on his current reliability, trustworthiness, and good judgment. AG ¶ 20(a) applies.

Applicant's wife's overspending was beyond his control. He made valid attempts to stop it, but she continued to thwart his efforts. Eventually, they divorced, which also impacted his finances. He has a payment agreement for the line of credit he obtained and has been making payments. He has resolved the other debts. I find the conditions that resulted in Applicant's financial problems were beyond his control and he acted responsibly under the circumstances. AG ¶ 20(b) applies.

Applicant has received financial counseling and has paid or is paying his delinquent debts. I find he initiated a good-faith effort to repay his creditors and resolve his debts. I find his financial problems are under control. AG ¶¶ 20(c) and 20(d) apply.

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 the 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 Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

Applicant is 51 years old. His wife was overspending and he attempted to stop her by destroying their credit cards and removing her from their joint accounts. She continued to spend without telling Applicant, by applying for new credit cards and getting the credit limit increased. Applicant filed for divorce and provided his wife marital support during their separation. During this time he had difficulty maintaining two households and his finances suffered. He acted responsibly by paying some of his delinquent debts, setting up a payment plan on another, and negotiating and paying a settlement. Despite a difficult situation, he has managed to put his finances back in order. I find his finances are not a security concern. Applicant has met his burden of persuasion. Overall, the record evidence leaves me with no questions or doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising under the financial considerations guideline.

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.f: 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 grant Applicant a security clearance. Eligibility for access to classified information is granted.

Carol G. Ricciardello
Administrative Judge