



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



In the matter of:)	
)	
)	ISCR Case No. 10-08477
)	
Applicant for Security Clearance)	

Appearances

For Government: Eric H. Borgstrom, Esq., Department Counsel
For Applicant: *Pro se*

02/29/2012

Decision

HEINY, Claude R., Administrative Judge:

Until January 2010, Applicant paid all of his financial accounts in a timely manner. A lack of overtime pay, his separation agreement, and advice from a law firm he employed to address his financial problems resulted in him stopping payments to three credit card companies and, instead, making payments thereafter to the law firm. Actions by the law firm were ineffective and Applicant had to seek bankruptcy protection. In July 2011, the three debts were discharged. Applicant has rebutted or mitigated the security concerns under financial considerations. Clearance is granted.

Statement of the Case

Applicant contests the Department of Defense's (DoD) intent to deny or revoke his eligibility for an industrial security clearance. Acting under the relevant Executive Order and DoD Directive,¹ the Defense Office of Hearings and Appeals (DOHA) issued

¹ Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (DoD) Directive 5220.6, *Defense Industrial Personnel Security*

a Statement of Reasons (SOR) on September 21, 2011, detailing security concerns under Guideline F, financial considerations.

On October 5, 2011, Applicant answered the SOR and elected to have the matter decided without a hearing. Department Counsel submitted the Government's case in a File of Relevant Material (FORM), dated November 26, 2011. The FORM contained 12 attachments. On December 26, 2011, Applicant received a copy of the FORM, along with notice of his opportunity to file objections and submit material to refute, extenuate, or mitigate the potentially disqualifying conditions.

Responses to the FORM are due 30 days after receipt of the FORM. Applicant's response was due on January 25, 2012. As of February 13, 2012, no response had been received. On February 13, 2012, I was assigned the case.

Findings of Fact

In Applicant's Answer to the SOR, he admitted all of the factual allegations in the SOR, and his admissions are incorporated herein. After a thorough review of the pleadings and exhibits, I make the following findings of fact.

Applicant is a 66-year-old customer service representative who has worked for a defense contractor since November 1969. In his Electronic Questionnaires for Investigations Processing (e-QIP), he indicates he was issued a top secret clearance in October 2008 and a confidential level clearance in February 2009. Applicant offered no documents and no work or character references.

Applicant owed approximately \$50,000 on three charged-off credit card accounts. Specifically, he owed \$13,694 (SOR 1.a), \$10,959 (SOR 1.b), and \$25,849 (SOR 1.c) on credit card accounts that were charged off. (Item 5, 6, 7, 8)

In September 2001, Applicant and his spouse separated. (Item 4) The separation agreement² required him to make payments to his spouse of half of his base pay. In October 2009, his financial problems started when lack of overtime pay reduced his wages. (Item 4) As of August 2010, his net monthly income (income less deductions and payments) was \$2,402. (Item 4) Per his separation agreement he paid his spouse \$2,454. He asserts his divorce resulted in him depleting his 401(k) retirement fund (\$20,000) and savings (\$12,000) before he started using credit cards to meet his daily needs. (Item 2 and 4)

Applicant's October 2005 credit bureau report (CBR) lists 16 accounts being "paid as agreed" and 2 accounts being too new to rate. (Item 9) None of his accounts

Clearance Review Program (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the DoD on September 1, 2006.

² The record fails to contain any divorce decree, but there are indications the division of Applicant's base pay continued following his divorce.

were delinquent. His November 2008 CBR lists 28 accounts being "paid as agreed" and 3 accounts being too new to rate. (Item 8) None of his accounts were delinquent. His June 2010 CBR lists 19 accounts being "paid as agreed" and 1 account being too new to rate. (Item 7) The three accounts listed in the SOR are listed as 120 days or greater past due. The last timely payment on these three accounts was made in January 2010. (Item 7) The three charged-off accounts are listed in his December 2010 and April 2011 CBRs. (Items 5, 6)

As of August 2010, the amounts owed on the three delinquent accounts were: a credit card account (SOR 1.a) past due in the amount of \$1,345 with a balance due of \$12,694; a credit card account (SOR 1.c) past due in the amount of \$2,277 with a balance due of \$25,351; and a credit card account (SOR 1.b) past due in the amount of \$1,849 with a balance due of \$12,911. (Item 4) He last used the three credit cards in October 2009. He listed all three delinquent accounts when he completed his Questionnaire for National Security Positions, Standard Form (SF) 86. (Item 3)

In December 2009, he sought financial assistance from a law firm that was to negotiate lower payments on his three credit card accounts, for which the firm was paid \$9,000. He had agreed to pay the law firm \$650 monthly for 42 months to pay his debts. These payments started in January 2010. (Item 4) The law firm instructed him to stop paying his credit card accounts. (Item 4) As referenced above, it was January 2010, when he made his last timely payment on the three delinquent accounts. The firm was to negotiate with the creditors to reduce the principal owed on the three delinquent accounts to approximately 40%. The services provided by the firm were negligible. Applicant now acknowledges, with hindsight, that it would have been better to have paid the \$9,000 on his debts and not to have engaged the law firm. (Item 2)

In February 2011, Applicant talked with a bankruptcy attorney. (Item 2) In June 2011, he filed for Chapter 7 bankruptcy protection and in July 2011, his debts were discharged. (Items 2, 4, 11) The only liabilities listed in his bankruptcy were the three delinquent credit card accounts listed in the SOR. (Item 11)

In August 2010, during a personal subject interview (Item 4) Applicant indicated he was spending approximately \$134 monthly for satellite TV, a fitness club, and videos through the mail. He estimated he was paying \$100 to \$200 monthly for trips/vacations, not further described. (Item 4) At that time, he was sending \$650 monthly to the law firm anticipating the money would address his three delinquent credit card accounts.

He asserted in his answer to the SOR (Item 2) that in October 2011, he was moving to an apartment closer to work, which was a 15-mile-round-trip commute instead of his previous 130-mile commute. He also asserted that in December 2011, he would start receiving full Social Security benefits. He asserted he had no debts, no credit cards, and his vehicle (a 2003 Jeep) was paid for. (Items 2, 11)

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 must be considered 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 interests of 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 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 Executive Order (EO) 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

Adjudicative Guideline (AG) ¶ 18 articulates the security concerns relating to financial problems:

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.

Additionally, an individual who is financially irresponsible may also be irresponsible, unconcerned, negligent, or careless in properly handling and safeguarding classified information. Behaving responsibly or irresponsibly in one aspect of life provides an indication of how a person may behave in other aspects of life.

A person's relationship with his creditors is a private matter until evidence is uncovered demonstrating an inability or unwillingness to repay debts as agreed. Absent substantial evidence of extenuating or mitigating circumstances, an applicant with a history of serious or recurring financial difficulties is in a position of risk that is inconsistent with holding a security clearance. An applicant is not required to be debt free, but is required to manage his finances to meet his financial obligations.

Applicant has a history of financial problems, which started in January 2010. Applicant has had to resort to bankruptcy protection to address the three delinquent credit card accounts listed in the SOR. Disqualifying Conditions AG ¶ 19(a), "inability or unwillingness to satisfy debts" and AG ¶ 19(c), "a history of not meeting financial obligations," apply.

Five Financial Considerations 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;

(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's separation agreement in which his spouse was entitled to half of his base pay and his loss of overtime pay contributed to his financial problems. These events resulted in him using credit cards to meet his daily living expenses. In October 2009, he stopped using the cards. He was able to pay all of his credit accounts until January 2010 as evidenced by his 2005 and 2008 CBRs. In these CBRs no delinquencies are noted. In January 2010, following the advice of a law firm he employed to help him with the three delinquent accounts, he stopped making payments to the credit card companies and started paying the law firm \$650 monthly by allotment. His June 2010 CBR is the first time any delinquencies were shown. It is in that CBR that the three SOR accounts are first listed as being more than 120 days past due. He received little for the \$9,000 paid to the law firm and acknowledged he would have been better served simply applying that amount to the three SOR debts. In 2011, he sought and received Chapter 7 bankruptcy protection. The three SOR debts have been discharged.

Under AG ¶ 20(a), Applicant's delinquent accounts were limited to three accounts. Until January 2010, he was paying all of his accounts, including the three SOR debts, "as agreed." He was following the advice of the law firm he employed when he stopped making payments on the three credit card account and started sending monthly payments to the law firm. The debts were discharged in July 2011. The financial difficulties in Applicant's life may have started with his 2001 separation, but he was able to pay his debts in a timely manner until January 2010. His inability to meet his financial obligations was limited to the 19-month time period between January 2010 and July 2011. AG ¶ 20(a) applies.

Under AG ¶ 20(b), his separation, divorce, and lack of overtime pay were factors beyond his control. He must also act in good-faith and in a reasonable manner in addressing his delinquent debts. Good-faith requires a showing that a person acts in a way that shows reasonableness, prudence, honesty, and adherence to duty or obligation. Accordingly, an applicant must do more than merely show that he relied on a legally available option (such as bankruptcy or the statute of limitation) in order to claim the benefit of the good-faith mitigating condition. ISCR case No. 02-30304 at 3 (App. Bd. April 20, 2004) (quoting ISCR Case No. 99-9020 at 5-6 (App. Bd. June 4, 2001)).

Applicant has acted reasonably by exhausting his 401(k) retirement plan and his savings to pay his debts. It was also reasonable that he stopped using the credit cards in 2009 and made timely payments on all his credit accounts until January 2010. It was not unreasonable for him to follow the advice he received from the law firm he employed to stop paying the credit card companies and start paying the law firm so that negotiations could be made with the credit card companies. Applicant has acted reasonably and AG ¶ 20(b) applies.

Applicant is no longer financially overextended. The three debts have been discharged in bankruptcy. His only delinquent accounts were the three SOR debts and with their discharge there are no indications of any other financial problems and it appears his finances are under control. He has no credit cards, his vehicle is paid, and he is not living beyond his means. AG ¶ 20(c) applies.

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. Due to Applicant's separation agreement and the lack of overtime pay, he was unable to meet his living expenses without resorting to the use of credit cards. He was unable to make timely payments on his debts during the 19 months from January 2010 until July 2011. This is a short period of time when considering the financial history of a 66-year-old individual. In his bankruptcy he did not have numerous delinquent accounts. The only obligations listed were the three SOR debts. Since the bankruptcy, he has no outstanding debt, no credit cards, no car payments, no loan payments, and is attempting to lower his living costs by moving to an apartment closer to his job. He has not and is not living beyond his means. His vehicle is a 2003 Jeep.

The debts having been discharged cannot be a source of improper pressure or duress. Of course, the issue is not simply whether all his debts are paid—it is whether his financial circumstances raise concerns about his fitness to hold a security clearance. (See AG ¶ 2 (a)(1).) Overall, the record evidence leaves me without 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 from his financial considerations.

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, Financial Considerations: FOR APPLICANT

Subparagraphs 1.a – 1.c: 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 grant Applicant a security clearance. Eligibility for access to classified information is granted.

CLAUDE R. HEINY II
Administrative Judge