



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



In the matter of:)	
)	
XXXXXXXXXX, XXXXX)	ISCR Case No. 10-09061
)	
Applicant for Security Clearance)	

Appearances

For Government: William O'Neil, Esq., Department Counsel
For Applicant: *Pro se*

January 26, 2012

Decision

TUIDER, Robert J., Administrative Judge:

Applicant has mitigated security concerns pertaining to Guideline F (Financial Considerations). Clearance is granted.

Statement of the Case

On May 13, 2008, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP). On April 22, 2011, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing security concerns under Guideline F (Financial Considerations). 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 for SORs issued after September 1, 2006.

Applicant answered the SOR on June 1, 2011, and DOHA received his answer on June 6, 2011. Department Counsel was prepared to proceed on August 4, 2011. The case was assigned to me on August 23, 2011. DOHA issued a notice of hearing

on August 23, 2011, scheduling the hearing for September 13, 2011. The hearing was held as scheduled.

The Government offered Government Exhibits (GE) 1 through 4, which were received into evidence without objection. Applicant offered Applicant Exhibits (AE) A through F, which were received into evidence without objection, and he testified on his own behalf.

I held the record open until September 30, 2011, to afford the Applicant the opportunity to submit additional documents. Applicant timely submitted AE K through M, which were received into evidence without objection. Applicant subsequently requested an additional extension and for good cause shown, I granted Applicant an extension to submit additional documents until January 20, 2012. Applicant timely submitted AE N through Q, which were received into evidence without objection. DOHA received the hearing transcript (Tr.) on September 21, 2011. The record closed on January 20, 2012.

Findings of Fact

Applicant denied SOR ¶ 1, and admitted SOR ¶¶ 1a and 1b, with explanations. His answers and explanations are incorporated as findings of fact. After a thorough review of the evidence, I make the following additional findings of fact. I found Applicant's testimony to be credible.

Background Information

Applicant is a 46-year-old senior network engineer, who has worked for a defense contractor since November 2008. He seeks to retain his security clearance, which is a requirement of his current position. He was initially granted a security clearance in 1983 after enlisting in the U.S. Air Force. He estimates that he held a security clearance successfully at various levels for the past 12 out of 28 years. (Tr. 13-17, GE 1.)

Applicant graduated from high school in June 1983. He was awarded a Bachelor of Science degree in network communications management in February 2008. He served in the U.S. Air Force from July 1983 to March 1987, and was honorably discharged as a senior airman (pay grade E-4.) He served in the U.S. Army Reserve from July 1990 to July 1994, and was honorably discharged as a sergeant (pay grade E-5). Shortly after enlisting in the Army Reserve, he was deployed to the Mideast. Applicant served in the National Guard from October 1995 to May 1997, and was honorably discharged as a sergeant (pay grade E-5). He successfully held a security clearance in the Air Force, a security clearance in the Army Reserve, and a security clearance in the National Guard. (Tr. 17- 24, GE 1.)

Applicant was married from January 1984 to July 1987, and that marriage ended by divorce. He remarried in June 1997, and has been separated from his

second wife since October 2009, with a divorce pending. Applicant's wife is employed full-time as a shift manager at a fast food restaurant. They share joint custody of their two children -- an 11-year-old son and a 7-year-old daughter. (Tr. 24-29. GE 1, AE C - E.)

Financial Considerations

Applicant's background investigation addressed his financial situation and included the review of his May 2008 e-QIP, one set of February 2011 DOHA Interrogatories; as well as his May 2008 and July 2010 credit reports. (GE 1 – 4.) Applicant's SOR alleges two separate debts consisting of a mortgage foreclosure with a balance of \$192,514 and a second mortgage with a balance of \$40,495. Both mortgages are with the same lender. (SOR ¶¶ 1a – 1b.)

Applicant's financial problems stem from his separation and pending divorce. At the time he separated from his wife in October 2010, he was unable to maintain the costs of two households. Applicant purchased their home in August 2006 for \$249,900 and remained current on his first and second mortgage payments until January 2010. (Tr. 29-38, AE A – B.) When Applicant was unable to make his mortgage payments, he immediately contacted his lender, who referred him to a U.S. Government loan rehabilitation program that he was not eligible for. At the time Applicant stopped making mortgage payments to his lender in January 2010, the value of his house had declined to about \$120,000. In May 2010, Applicant was served with notice of foreclosure. (Tr. 38-40, 55-58, AE E.)

After being served with a foreclosure notice, Applicant sought a loan modification under his own name; however, his wife refused to sign a quitclaim deed. (Tr. 41-42.) He then applied to sell his house as a short sale under the HAFA program; however, he was notified on September 14, 2011 that he did not qualify for that program. Applicant then requested to sell his home as a "normal" short sale and on November 10, 2011, his lender authorized such a sale for \$76,000. On December 16, 2011, a final settlement statement was prepared with a sales price of \$76,249.05, and on the same day a warranty deed was issued transferring the property to the new owner. The deed was recorded by County Recorder on January 6, 2012. The lender has since released Applicant of further financial obligation with respect to the first and second mortgages and has agreed to report the debt as "paid in full for less than the full balance" as opposed to "foreclosure." Applicant was counseled by the lender to report the difference between the current amount due under his mortgage and the current market value of the property to the Internal Revenue Service on the appropriate 1099 Form. Applicant's first and second mortgages are resolved. (Tr. 43-47, AE K, M – Q.)

Applicant did not seek formal financial counseling. (Tr. 51-52.) He submitted a current budget reflecting a monthly income of \$8,248.06. Applicant pays his estranged wife monthly spousal and child support of \$1,183. After meeting all of his monthly expenses, he has a net remainder of \$582.12. Applicant leads a modest lifestyle and

is current on all of his debts. He owes no outstanding balances to any creditors. (AE L.) Before Applicant encountered his current difficulty with regard to his first and second mortgages, he had an excellent credit record. (GE 3 – 4, AE G.) In short, Applicant has resolved the two debts alleged and is “debt free.”

Character Evidence

Applicant submitted three reference letters. The first is from a 30-year friend; the second is from a 20-year friend, who is a deputy sheriff and Army Reserve chief warrant officer 3; and the third is from Applicant’s immediate supervisor.

The collective sense of these letters portrays Applicant as a committed family man, who leads a modest lifestyle. He is further described as honest, loyal, a patriot, and as a soldier who gave his all during his military service. His supervisor describes Applicant as his “right hand and the go to guy.” He is clearly a valued employee making a contribution to the national defense. All three individuals support Applicant for a security clearance. (Tr. 62-63, AE H - J.) Applicant kept his facility security officer apprised of his “predicament” throughout this entire process. (Tr. 63-64.)

Policies

When evaluating an applicant’s suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). 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.

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 in seeking 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 protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to 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

AG ¶ 18 articulates the security concern 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.

AG ¶ 19 provides two financial considerations disqualifying conditions that could raise a security concern and may be disqualifying in this case, “(a) inability or unwillingness to satisfy debts,” and “(c) a history of not meeting financial obligations.” Applicant’s history of delinquent debt is established by his admissions and the evidence presented. His home went through foreclosure in 2010 after his first and second mortgages became past due. The Government established the disqualifying conditions in AG ¶¶ 19(a) and 19(c).

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 conduct does not warrant full application of AG ¶ 20(a) because there is more than one delinquent debt and his financial problems are not isolated. His debt is a "continuing course of conduct" under the Appeal Board's jurisprudence. See ISCR Case No. 07-11814 at 3 (App. Bd. Aug. 29, 2008) (citing ISCR Case No. 01-03695 (App. Bd. Oct. 16, 2002)). Nevertheless, he receives partial credit under AG ¶ 20(a) because the debt occurred under circumstances that are unlikely to recur and does not cast doubt on his current reliability, trustworthiness, or good judgment.

Applicant merits full credit under AG ¶ 20(b) because his separation and pending divorce were circumstances beyond his control and he acted responsibly under the circumstances. Even though he did not have the funds to remain current on his debts, he remained in contact with his creditors and took reasonable steps to resolve his debts.¹

AG ¶ 20(c) is partially applicable even though Applicant did not seek formal financial counseling. He has, however, produced evidence that reflects he is living within his means and has regained financial responsibility. There are clear indications that his financial problems are resolved. Furthermore, there is sufficient information to establish partial if not full mitigation under AG ¶ 20(d).² Applicant diligently worked

¹"Even if Applicant's financial difficulties initially arose, in whole or in part, due to circumstances outside his [or her] control, the Judge could still consider whether Applicant has since acted in a reasonable manner when dealing with those financial difficulties." ISCR Case No. 05-11366 at 4 n.9 (App. Bd. Jan. 12, 2007) (citing ISCR Case No. 99-0462 at 4 (App. Bd. May 25, 2000); ISCR Case No. 99-0012 at 4 (App. Bd. Dec. 1, 1999); ISCR Case No. 03-13096 at 4 (App. Bd. Nov. 29, 2005)). A component is whether he maintained contact with his creditors and attempted to negotiate partial payments to keep his debts current.

²The Appeal Board has previously explained what constitutes a "good-faith" effort to repay overdue creditors or otherwise resolve debts:

with his lender to resolve his first and second mortgage debts when it became clear that he could no longer remain current on his payments. Applicant's first and second mortgages are satisfied as a result of a lender-approved short sale. His lender has cleared him of further liability with regard to these debts. Given his financial situation, Applicant has done all that can reasonably be expected of him. AG ¶ 20(e) is not applicable.

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.

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. AG ¶ 2(c). The discussion in the Analysis section under Guideline F is incorporated in this whole-person section. However, further comments are warranted.

Applicant's military service, service as a defense contractor employee, and his record of approximately 12 years of successfully holding a security clearance weigh heavily in his favor. He is a law-abiding citizen and a productive member of society. He is current on his day-to-day expenses, lives within his means, and his SOR debts

In order to qualify for application of [the "good-faith" mitigating condition], an applicant must present evidence showing either a good-faith effort to repay overdue creditors or some other good-faith action aimed at resolving the applicant's debts. The Directive does not define the term 'good-faith.' However, the Board has indicated that the concept of 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 or she relied on a legally available option (such as bankruptcy) in order to claim the benefit of [the "good-faith" mitigating condition].

(internal citation and footnote omitted) ISCR Case No. 02-30304 at 3 (App. Bd. Apr. 20, 2004) (quoting ISCR Case No. 99-9020 at 5-6 (App. Bd. June 4, 2001)).

have been addressed. The Appeal Board has addressed a key element in the whole-person analysis in financial cases stating:

In evaluating Guideline F cases, the Board has previously noted that the concept of “meaningful track record” necessarily includes evidence of actual debt reduction through payment of debts.” However, 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. 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.” The Judge can reasonably consider the entirety of an applicant’s financial situation and his actions in evaluating the extent to which that applicant’s plan for the reduction of his outstanding indebtedness is credible and realistic. See Directive ¶ E2.2(a) (“Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination.”) There is no requirement that a plan provide for payments on all outstanding debts simultaneously. Rather, a reasonable plan (and concomitant conduct) may provide for the payment of such debts one at a time. Likewise, there is no requirement that the first debts actually paid in furtherance of a reasonable debt plan be the ones listed in the SOR. ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) (internal citations omitted).

The record is replete with Applicant’s good-faith efforts to work with his lender throughout the entire process. Fortunately for Applicant, his home did sell, albeit as a short sale at a substantial loss. His lender has cleared him of further liability under the terms of his first and second mortgages. He is making a significant contribution to the national defense. His company fully supports him and recommends him for a security clearance. Due to circumstances beyond his control, his debts became delinquent. Despite Applicant’s recent financial setback, it is clear from his actions that he is on the road to a full financial recovery. These factors show responsibility, rehabilitation, and mitigation.

Both the mitigating conditions under Guideline F and the whole-person analysis support a favorable decision. I specifically considered Applicant’s military service, his service as a defense contractor, and his years of successfully holding a security clearance. I considered his years of financial responsibility before falling into debt, his financial recovery, and substantial steps he has taken to resolve his financial situation. I considered his potential for future service as a defense contractor, the mature and responsible manner in which he dealt with his adverse situation, his reference letters, and his testimony and demeanor. After weighing the disqualifying and mitigating conditions, and all the facts and circumstances, in the context of the whole-person, I conclude he has mitigated the financial considerations security concerns.

I take this position based on the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), my careful consideration of the whole-person factors and

supporting evidence, my application of the pertinent factors under the adjudicative process, and my interpretation of my responsibilities under the adjudicative guidelines. Applicant has fully mitigated the financial considerations security concerns. For the reasons stated, I conclude he is eligible for access to classified information.

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 1a and 1b: For Applicant

Conclusion

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

ROBERT J. TUIDER
Administrative Judge