



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



In the matter of:)	
)	
)	ISCR Case No. 10-10161
)	
Applicant for Security Clearance)	

Appearances

For Government: Daniel Crowley, Esq., Department Counsel
For Applicant: *Pro se*

03/28/2012

Decision

HEINY, Claude R., Administrative Judge:

Applicant had three accounts placed for collection, three charged-off accounts, and four past due accounts that totaled approximately \$55,000. All accounts have been paid or brought current. Applicant has rebutted or mitigated the security concerns under financial considerations. Clearance is granted.

History 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 a Statement of Reasons (SOR) on September 15, 2011, detailing security concerns under Guideline F (Financial Considerations).

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

On October 28, 2011, Applicant answered the SOR and requested a hearing. On January 12, 2012, I was assigned the case. On January 19, 2012, DOHA issued a Notice of Hearing for the hearing held on February 2, 2012.

The Government offered exhibits (Ex.) 1 through 7, which were admitted into evidence without objection. Applicant testified and submitted Exhibits A through I, which were admitted into evidence without objection. The record was held open to allow Applicant to submit additional information. Additional material was submitted in a timely manner. Department Counsel had no objection to the material, it was admitted into the record as Exs. L through O. On February 13, 2012, DOHA received the hearing transcript (Tr.).

Findings of Fact

In Applicant's Answer to the SOR, he denied the factual allegations in the SOR. After a thorough review of the pleadings, exhibits, and testimony, I make the following additional findings of fact:

Applicant is a 37-year-old business manager who has worked for a defense contractor since June 2009 and is seeking to retain a secret security clearance. (Tr. 31) His annual salary is between \$105,000 and \$110,000. (Tr. 40) His wife graduates this semester with a degree in social work. (Tr. 39)

During 1994, within four months of graduating high school, Applicant had married, his wife had a baby, and he joined the Air Force. (Tr. 20) He and his wife have two children ages 17 and 10. At age 20, he bought his first home. (Tr. 20) In 1996, he was discharged from the Air Force for medical reasons due to an inner-ear disorder. (Tr. 32)

In May 2005, he obtained his master's degree. In 2007, he and his wife separated and his financial problems began. Prior to their separation, his wife handled the family's finances. After he moved out, his wife was afraid to tell him she was having trouble paying the bills thinking it would impact on the restoration of their marriage. (Tr. 36) They had agreed Applicant would spend so much each month and the rest would be used by the family. However, his wife needed to use credit cards to maintain household expenses. (Tr. 36) By the time they moved back together, they were unable to make even the minimum payments. (Tr. 36) His wife signed up for a debt consolidation. (Tr. 37)

Applicant contacted each of his creditors. The only creditor to respond indicated they would write off the debt and refer it to a collection agency. (Tr. 37)

Since moving back together, all of the SOR obligations have been paid except for the student loans, which he is currently paying. (Tr. 21) In order to pay the debts Applicant did something he did not want to do. He took money from a savings account that had been set aside for his daughter's college education. (Tr. 38)

In the past, Applicant's wife has suffered from depression necessitating multiple hospital stays. (Tr. 33) Her last episode was April 2010. She had a two-day hospital stay due to severe anxiety. The stay was not covered by insurance. (Tr. 33) Prior to January 2008, Applicant and his wife were going to counseling three times a week at a cost of \$100 to \$150 per session. Counseling continued until June of 2009. The employee assistance program paid for the first ten visits. (Tr. 34)

Applicant is current on his \$990 monthly house payments. (Tr. 40) He is current on his \$614 monthly car payments for the 2011 Mazda purchased in May 2011. (Tr. 57) He owes no money on his other vehicles, a 2004 Dodge and 2006 Toyota. (Tr. 40) He is not receiving calls or letters from creditors demanding money. He has no credit cards. He is current on his \$307 monthly payments on his student loan. (Tr. 41)

A summary of Applicant's SOR accounts follows:

	Creditor	Amount	Current Status
a	Collection account for electrical service at prior location. (Tr. 43)	\$108	Paid. (Exs. A and K) When Applicant left his previous state, the electric utility provided a letter of good standing to his new utility company so he did not have to provide a \$500 deposit. (Tr. 38)
b	Collection account for cable service.	\$122	Paid. (Ex. L) Applicant paid the account by telephone. The company was unwilling to provide Applicant with proof of payment. (Tr. 45)
c	Charged-off account.	\$2,572	Paid. (Ex. B) Account settled for \$1,543. (Tr. 46)
d	Bank credit card account charged off.	\$6,690	Paid. (Exs. C and AN-4) His credit reports list a zero balance. (Tr. 50)
e	Department store charged-off account.	\$437	Account settled and paid. (Exs. D and 7, Tr. 51-52)
f	Student loan account over 180 days past due.	\$17,582	Account is current. (Exs. E, F, N, AN 5, and AN 6, Tr. 52)
g	Student loan account over 180 days past due.	\$21,711	Account is current. (Exs. E, F, N, AN 5, and AN 6, Tr. 52)
h	Collection account for cell phone.	\$69	In March 2009, Applicant paid \$272 on his telephone account when he moved to a new state. (Exs. O and AN 7, Tr. 52) He is current on his account with this same telephone company. (Tr. 52)

	Creditor	Amount	Current Status
i	Credit card account past due.	\$2,102	Paid in October 2011. (Exs. 2, G, and AN 8)
j	Account over 120 days past due. High credit on the account was \$3,748.	\$3,748	Paid. (Exs. M, AN 3, AN-9, Ex. 2, Tr. 48)
	Total debt listed in SOR	\$55,141	

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 had three collection accounts, three charged-off accounts, and four past-due accounts, which totaled approximately \$55,000. Disqualifying Conditions AG ¶ 19(a), “inability or unwillingness to satisfy debts” and AG ¶ 19(c), “a history of not meeting financial obligations,” apply.

Four 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

More than seventy percent of Applicant's past-due accounts, approximately \$40,000 of the \$55,000 of debt, were two student loans, which have now been brought current. He has paid or brought current all of the collection, charged-off, and past-due accounts.

AG ¶ 20(a) has limited applicability because the delinquent debts were recently paid and there were ten of them. Now that they have been paid or brought current, they no longer cast doubt on Applicant's current reliability, trustworthiness, or good judgment.

Under AG ¶ 20(b), Applicant's wife suffers from depression, which necessitated multiple hospital stays. Neither her most recent hospital stay nor the tri-weekly counseling was covered by insurance. Importantly, Applicant has acted appropriately by paying and bringing current his obligations. AG ¶ 20(b) applies.

Under AG ¶ 20 (c) and ¶ 20 (d), Applicant has paid or brought current all of the SOR accounts. This shows his financial problems have been resolved and are under control. Additionally, he initiated a good-faith effort to repay overdue creditors or otherwise resolve debts. 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 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. The debts incurred were not the type that indicates poor self-control, lack of judgment, or unwillingness to abide by rules and regulations. Money was not spent frivolously. The majority of the past-due accounts were student loans, now brought current. All of the debt of concern listed in the SOR have been paid or brought current. 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.i: 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