



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



In the matter of:)	
)	
)	ISCR Case No. 10-10645
)	
Applicant for Security Clearance)	

Appearances

For Government: Philip J. Katauskas, Esquire, Department Counsel
For Applicant: *Pro se*

08/15/2012

Decision

ANTHONY, Joan Caton, Administrative Judge:

After a thorough review of the pleadings, testimony, and exhibits in this case, I conclude that Applicant mitigated security concerns under Guideline F, Financial Considerations. His eligibility for a security clearance is granted.

Statement of the Case

Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) on January 20, 2010. On April 27, 2012, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, Financial Considerations. DOHA acted 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.

On June 1, 2012, Applicant answered the SOR in writing and elected to have a hearing before an administrative judge. The case was assigned to me on June 29,

2012. I convened a hearing on July 30, 2012, to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant.

The Government called no witnesses and introduced four exhibits, which were marked Ex. 1 through 4 and entered in the record without objection. Applicant testified, called no witnesses, and introduced 14 exhibits, which were identified and marked as Applicant's Ex. A through N and entered in the record without objection. At the conclusion of the hearing, I left the record open until August 10, 2012, so that Applicant could, if he wished, provide additional information on the payment of his delinquent debts. Applicant timely filed a four-page exhibit. Department Counsel commented on the exhibit but did not object to its admission. Department Counsel's comments are identified as Hearing Exhibit (H.E.) 1. I marked Applicant's post-hearing submission as Ex. O and entered it in the record. DOHA received the hearing transcript (Tr.) on August 3, 2012.

Findings of Fact

The SOR contains six allegations of financial conduct that raise security concerns under AG ¶ 18, Financial Considerations (SOR ¶¶ 1.a. through 1.f.). In his Answer to the SOR, Applicant admitted all six allegations, which total approximately \$61,000. Applicant's admissions are accepted as findings of fact. (Answer to SOR.)

Applicant is 33 years old. He has a high school education and attended college from 1998 until 2002, but did not acquire a degree. (Ex.1.)

Applicant enlisted in the U.S. military in 2002 and served for four years. He received an honorable discharge from active duty in 2006. He continues to serve in the reserves. (Ex. 1; Ex. K; Tr. 70.)

In 2002, during his military service, Applicant was awarded a security clearance. He now seeks renewal of his security clearance; he is employed as a management consultant by a government contractor. (Tr. 69-71.)

Applicant married in 2002, when he was 23 years old. He is the father of an 11-year-old son. In 2006, Applicant and his wife purchased a home. In January 2008, Applicant and his wife separated. Applicant remained in the family home with their son, and his wife moved to an apartment. Applicant and his wife were unable to maintain two households and meet their ongoing financial obligations. They fell behind, and their debts became delinquent. (Ex. 1; Tr. 84-85.)

Applicant and his wife reconciled. She relinquished her apartment and returned to the family home. The couple sought marriage and financial counseling. They began to systematically address their financial delinquencies. (Ex. 2; Ex. N; Tr. 84-87.)

The SOR alleges at ¶ 1.a. that Applicant was responsible for a judgment, filed against him in January 2011 by a country club, for \$3,987. Applicant provided

documentation showing that, on April 30, 2012, he and his wife had entered into a settlement with the country club to pay the judgment amount as well as \$500 in attorneys' fees, \$68 in court costs, and 6% interest on the principal amount from the date of judgment. Additionally, Applicant and his wife agreed to pay \$1,744 in unpaid and outstanding membership dues, late fees, and finance charges incurred since the judgment. At the time of the settlement agreement, Applicant and his wife made an initial payment of \$200. They then agreed to make nine subsequent monthly payments of \$200 to satisfy the debt incurred since the settlement. Provided all payments were timely as of February 2013, Applicant would then make a balloon payment of \$4,630 to the creditor to satisfy the judgment debt. Applicant provided documentation corroborating monthly payments of \$200 to the creditor in May, June, and July, 2012. (Ex. A; Ex. O; Tr. 41-42.)

The SOR alleged at ¶ 1.b. that Applicant was responsible for a \$4,504 judgment entered against him by a university in October 2010. Applicant provided a page from his credit report of May 16, 2012, showing that the judgment had been satisfied in July 2011. (Ex. B; Tr. 42-43.)

The SOR alleged at ¶ 1.c. that Applicant owed a delinquent debt of \$5,206 to a credit card company. Applicant stated at his hearing that he intended to address the debt, but he had not yet done so. (Tr. 43, 47.)

The SOR alleged at ¶ 1.d. that Applicant owed a creditor \$18,917 on an account in collection status. Applicant provided documentation that he had reached a settlement agreement with the creditor and had made four payments consistent with the payment agreement. (Ex. C; Ex. M; Tr. 43.)

The SOR alleged at ¶ 1.e. that Applicant was indebted to a bank on a mortgage account that was approximately \$21,545 past due with a balance of approximately \$80,544. Applicant provided documentation from the creditor stating that he would receive a full forgiveness of the remaining principal balance of \$80,510 on his home equity loan. The creditor further explained that Applicant's home equity account had been approved for participation in a "forgiveness program offered as a result of the Department of Justice and State Attorneys General global settlement with major mortgage services, including [this bank]." (Ex. D; Ex. L; Tr. 43-44, 47-48.)

The SOR alleged at ¶ 1.f. that Applicant owed a creditor \$859 on an account in collection status. Applicant provided documentation showing that the debt, which had increased to \$1,384, was paid and satisfied in full in June 2011. (Ex. E; Ex. F; Tr. 45-46.)

Applicant provided documentation showing that his total fiscal year income for 2012, including salary and bonuses, would total \$135,000. He also provided documentation showing that he anticipated a total fiscal year income for 2013 of \$140,000. He stated that he intended to pay off the debt identified at SOR ¶ 1.c. with a portion of his fiscal year 2012 bonus income. (Ex. G; Ex. H; Ex. I; Ex. J; Tr. 51-56.)

Applicant provided a personal financial statement. He reported a net monthly income for himself of \$6,216, and a net monthly income for his wife of \$2,240. Applicant's net family monthly income is \$8,455. (Ex. 2.)

Applicant reported the following monthly expenses: groceries, \$250; clothing, \$40; utilities, \$300; car expenses, \$490; day care, \$280; and miscellaneous, \$550. Applicant's monthly living expenses total \$1,910. (Ex. 2.)

Applicant monthly debt payments are as follows: home mortgage: \$2,476; debt identified at SOR ¶ 1.a.: \$250; automobile payment for Applicant's vehicle: \$640; automobile payment for Applicant's wife's vehicle: \$280; and a credit card account: \$22 on a \$410 total debt. Applicant's total monthly debt payments total \$3,668, and his net monthly remainder is \$2,877. (Ex. 2.)

On his personal financial statement, Applicant reported bank savings of \$6,100 and stocks and bonds totaling \$12,400. Applicant's reported assets total \$18,500. (Ex. 2.)

Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security, and it has emphasized that "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information." *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant an applicant's eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.

When evaluating an applicant's suitability for a security clearance, an administrative judge must consider and apply the revised 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, the administrative judge applies these 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 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 about 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 relating to the guideline 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(a), an “inability or unwillingness to satisfy debts” is potentially disqualifying. Similarly, under AG ¶ 19(c), “a history of not meeting financial obligations” may raise

security concerns. Applicant accumulated substantial delinquent debt and was unable or unwilling to pay his creditors. This evidence is sufficient to raise these disqualifying conditions.

The guideline also includes examples of conditions that could mitigate security concerns arising from financial difficulties. Several Guideline F mitigating conditions could apply to the security concerns raised by Applicant's financial delinquencies. Unresolved financial delinquency might be mitigated if it "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." (AG ¶ 20(a)) Additionally, unresolved financial delinquency might be mitigated if "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." (AG ¶ 20(b)) Still other mitigating circumstances that might be applicable include evidence that "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" (AG ¶ 20(c)) or "the individual has initiated a good-faith effort to repay overdue creditors or otherwise resolve debts." (AG ¶ 20(d)) Finally, if "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 options to resolve the issue," then AG ¶ 20(e) might apply.

Applicant admitted a history of financial difficulties that arose when he and his wife separated in 2008. During the time of the separation, Applicant and his wife maintained separate households, which increased their expenses. After about ten months, the couple reconciled, sought marriage and financial counseling, and began to repair their credit by systematically paying, settling, or otherwise resolving their delinquent debts. Five of the six debts alleged on the SOR have been paid, are being paid pursuant to payment plans, or have been otherwise resolved. One debt remains unpaid, although Applicant stated he intended to satisfy it with his 2012 bonus.

While it is true that not all of Applicant's delinquent debts have been fully satisfied, DOHA's Appeal Board has explained that an individual's good-faith partial payment of debts need not be a bar to access to classified information:

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).

Applicant has acted responsibly in addressing his financial delinquencies. By his actions, he has demonstrated that he is serious about satisfying his creditors and avoiding future debt. While AG ¶ 20(e) does not apply in mitigation to the facts of Applicant’s case, I conclude that AG ¶¶ 20(a), 20(b), 20(c), and 20(d) are applicable in mitigation.

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. Applicant is a mature person of 33 years. His financial problems began when he and his wife separated and maintained separate households. When they reconciled, Applicant and his wife sought financial counseling and worked to resolve their financial delinquencies. Applicant provided documentation showing that he is systematically and responsibly paying his financial delinquencies. He has a plan for resolving the one remaining unsatisfied debt alleged in the SOR.

Overall, the record evidence persuades me that Applicant is mature, trustworthy, and capable of being entrusted with access to classified information. I conclude Applicant mitigated the security concerns arising from his financial delinquencies.

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 eligibility for a security clearance. Eligibility for access to classified information is granted.

Joan Caton Anthony
Administrative Judge