



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



In the matter of:)
)
) ISCR Case No. 10-10631
)
Applicant for Security Clearance)

Appearances

For Government: Julie R. Mendez, Esquire, Department Counsel

For Applicant: *Pro se*

September 30, 2011

Decision

O'BRIEN, Rita C., Administrative Judge:

Based upon a review of the pleadings, exhibits, and testimony, I conclude that Applicant has mitigated the security concerns raised under the guideline for Financial Considerations. Accordingly, his request for a security clearance is granted.

Statement of the Case

Applicant requested a security clearance by submitting an Electronic Questionnaire for Investigations Processing (SF 86) dated June 14, 2010. After reviewing the results of the ensuing background investigation, adjudicators for the Defense Office of Hearings and Appeals (DOHA) were unable to make a preliminary affirmative finding¹ that it is clearly consistent with the national interest to grant Applicant's request. On April 13, 2011, DOHA issued to Applicant a Statement of

¹ Required by Executive Order 10865, as amended, and DoD Directive 5220.6 (Directive), as amended.

Reasons (SOR), which specified the basis for its decision: security concerns addressed in the Directive under Guideline F (Financial Considerations) of the Adjudicative Guidelines (AG).²

In his Answer to the SOR, dated June 8, 2011, Applicant admitted six of the seven SOR allegations. He also requested a hearing before an administrative judge. Department Counsel was prepared to proceed on June 23, 2011, and I received the case on July 5, 2011. DOHA issued a Notice of Hearing on July 27, 2011. I convened the hearing as scheduled on August 16, 2011.

During the hearing, the Government offered four exhibits, which I admitted as Government Exhibit (GE) 1 through 4, and one demonstrative exhibit, which I marked as Hearing Exhibit I. Applicant testified, and offered nine exhibits, which I admitted as Applicant's Exhibit (AE) A through I. I held the record open to allow Applicant to submit additional documentation. He timely submitted four documents, which I admitted as AE J through M. Department Counsel's responses to Applicant's post-hearing submissions, dated August 31, 2011 and September 2, 2011, taken together, are marked as Hearing Exhibit II. DOHA received the transcript on August 24, 2011.

Procedural Matters

At the hearing, I amended the SOR, *sua sponte*, to correct the numbering. The last SOR allegation, which follows allegation 1.f, was incorrectly labeled 1.h. The allegation is now numbered 1.g.

Findings of Fact

Applicant's admissions to the SOR allegations are incorporated as findings of fact. After a thorough review of the pleadings, Applicant's response to the SOR, and the record evidence, I make the following additional findings of fact.

Applicant is 49 years old. He has four biological children who are 20 through 29 years of age. They do not live with him. He provides monthly support to his 20-year-old daughter, who is about to start college. Applicant lived with a girlfriend for about eight years. She had three children, and Applicant supported them until they separated. In 2011, he married for the first time. His wife has four children, 17 to 22 years of age, all of whom live with Applicant. (GE 1; Tr. 25-30, 58)

² Adjudication of this case is controlled by the Adjudicative Guidelines, which supersede the guidelines listed in Enclosure 2 to the Directive. They apply to all adjudications or trustworthiness determinations in which an SOR was issued on or after September 1, 2006.

Applicant is a high school graduate, and has received technical training as a welder. He worked part time for about a year and a half from 2003 to 2004. He was unemployed from August 2004 to August 2005. He began working for his present employer in 2005. He is a heavy equipment mechanic and also transports military equipment. In 2010, he was promoted to lead technician. This is his first application for a security clearance. His company plans to transfer him to Afghanistan following resolution of his security clearance status. (GE 1, 4; Tr. 25-30, 58)

Applicant's December 15, 2010 pay statement shows a year-to-date gross income of \$45,602. Applicant's June 2011 pay statement shows that his net monthly income is \$2,738. Based on his testimony, he estimates his expenses are \$1,455, leaving a monthly net remainder of \$1,283. However, this estimate did not include other expenditure: his youngest daughter's cell phone, the \$100 monthly allowance he sends her, and the financial help he provides to his four grandchildren. He has approximately \$10,000 in a 401(k) account. He does not use credit cards. (GE 2; AE I; Tr. 62-68, 75)

While Applicant lived with his girlfriend and her three children, from 2002 to approximately 2010, he co-signed on his girlfriend's daughter's cell phone account (allegation 1.a), her apartment lease (allegation 1.c), and her auto loan (allegation 1.g). He also co-signed on his own daughter's credit card account (allegation 1.e). He testified that he has learned a lesson from the delinquencies that resulted from these actions, and, "That'll never happen again." (Tr. 46-47)

The debts listed in the SOR total \$19,206. The current status of the debts follows. The debts appear in Applicant's credit bureau reports of March 2011 and June 2010. (GE 2, 3)

Allegation 1.a (\$1,013) – cell phone – UNRESOLVED

Applicant agreed to co-sign on his girlfriend's daughter's cell phone account. She did not pay the amount owed, and the debt now appears on Applicant's credit report. Applicant had not paid the debt as of the date of the hearing. (Tr. 30-31, 41-42)

Allegation 1.b (\$10,217) – auto loan – RESOLVED

Applicant purchased a 1998 Ford in 2006 for \$15,000. He voluntarily returned it when he could no longer make the payments. He was informed he would not owe any further balance, and he was not contacted by the creditor after returning the vehicle. After learning the debt was on his credit report, Applicant contacted both the creditor and the collection agency and learned that the car had been sold. The credit report listed the full amount of the loan as delinquent. Applicant disputed the debt with the creditor, and with the reporting agency. TransUnion shows the debt has been deleted from his credit report and Experian shows the debt as paid, with a zero balance. (GE 2, 3, 4; AE D, E, F, H, M; Tr. 31-36)

Allegation 1.c (\$1,774) – unpaid rent – UNRESOLVED

Applicant's girlfriend and her daughter needed a place to live, and Applicant co-signed on an apartment lease for them. He lived in the apartment with them temporarily. When he left, Applicant believed his \$1,700 balance was covered by the \$1,900 security deposit that the company retained. The apartment company filed suit for \$1,774. When Applicant learned of the judgment, he contacted the apartment leasing agent and the apartment complex manager, who provided a record showing a debt of \$3,681. He disputed the debt with the credit agencies. Equifax verified the debt as belonging to Applicant. (GE 2, 4; AE C, E, H, M; Tr. 36, 41-42)

Allegation 1.d (\$1,225) – credit card – RESOLVED

Applicant did not recognize this credit card debt, and disputed it with the credit reporting agencies. After Equifax verified the account as Applicant's, he negotiated a settlement of \$387.24, to be paid in monthly payments of \$129.08. Applicant provided proof that he has paid the debt in full. (GE 2, 3; AE E, G, H, K, M; Tr. 42-44)

Allegation 1.e – (\$1,005) – credit card – UNRESOLVED

Applicant gave this credit card, in his name, to one of his biological daughters as a gift. He testified that he thought he had one account, with two credit cards on it--this card and the one at allegation 1.d. He also believed that they were listed on his credit report as two separate accounts in error. He contacted the creditor and the collection agency. He disputed this account with the credit reporting agencies. He believed he had resolved both the debts at allegations 1.d and 1.e by paying 1.d. However, the credit report lists two separate account numbers and this debt is not resolved. (GE 2, 3, 4; AE E; Tr. 43-52)

Allegation 1.f (\$299) – medical debt – RESOLVED

Applicant believed his health insurance would pay this debt related to a hospital visit. He received a settlement offer of \$204 from the collection agency. He provided evidence that he paid the settlement amount on August 18, 2011. (AE B, J; Tr. 52)

Allegation 1.g (\$3,673) – auto loan – RESOLVED

Applicant co-signed on an auto loan for his girlfriend's daughter. After a year, she returned the car to Applicant because it was having mechanical problems. Applicant assumed the payments, but subsequently voluntarily returned it to the dealer. When Applicant learned of the delinquency, he contacted the dealer and was informed the car had been sold. He contacted the credit reporting agencies to dispute that he owed any additional balance. TransUnion responded on August 2, 2011, that the account was accurate, but Equifax's response of August 26, 2011, indicates that the charged-off account is now paid with a zero balance. (GE 2, 3, 4; AE E, H, L, M; Tr. 53-57)

Applicant's site manager provided a letter noting that Applicant has a strong work ethic, and his performance is integral to the company's success. Another manager described Applicant as a person who goes above and beyond what is required. His

trustworthiness makes him one of the few employees that the company allows to transport military cargo. (AE A)

Policies

Each security clearance decision must be an impartial, commonsense determination based on examination of available relevant and material information, and consideration of the pertinent criteria and adjudication policy in the AG.³ Decisions must also reflect consideration of the “whole-person” factors listed in ¶ 2(a) of the guidelines.

The presence or absence of a disqualifying or mitigating condition does not determine a conclusion for or against an applicant. However, specific applicable guidelines are followed when a case can be measured against them as they represent policy guidance governing the grant or denial of access to classified information. In this case, the pleadings and the information presented by the parties require consideration of the adjudicative factors addressed under Guideline F (Financial Considerations).

A security clearance decision is intended only to resolve the questions of whether it is clearly consistent with the national interest⁴ for an applicant to either receive or continue to have access to classified information. The Government bears the initial burden of producing admissible information on which it based the preliminary decision to deny or revoke a security clearance for an applicant. Additionally, the Government must be able to prove controverted facts alleged in the SOR. If the Government meets its burden, it then falls to the Applicant to refute, extenuate or mitigate the Government’s case. Because no one has a “right” to a security clearance, an applicant bears a heavy burden of persuasion.⁵ A person who has access to classified information enters into a fiduciary relationship with the government based on trust and confidence. Therefore, the government has a compelling interest in ensuring each applicant possesses the requisite judgment, reliability, and trustworthiness of one who will protect the national interests as his or her own. The “clearly consistent with the national interest” standard compels resolution of any reasonable doubt about an applicant’s suitability for access in favor of the government.⁶

³ Directive. 6.3.

⁴ See *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

⁵ See *Egan*, 484 U.S. at 528, 531.

⁶ See *Egan*; Adjudicative Guidelines, ¶ 2(b).

Analysis

Guideline F (Financial Considerations)

AG ¶18 expresses the security concern pertaining to financial considerations:

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 over-extended is at risk of having to engage in illegal acts to generate funds.

Applicant accrued approximately \$19,000 in debts over the past several years. Some debts remain unpaid. The record supports application of disqualifying conditions AG ¶19 (a) (*inability or unwillingness to satisfy debts*) and ¶19 (c) (*a history of not meeting financial obligations*).

The Financial Considerations guideline also contains factors that can mitigate security concerns. I have considered the mitigating factors under AG ¶ 20, especially the following:

(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;

(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.

Although Applicant's debts are not in the distant past, AG ¶ 20 (a) applies because they are unlikely to recur. Applicant testified credibly that he realizes the mistakes he made, has learned from them, and will not repeat them in the future. In addition, his supervisors noted that his current assignment is based on his trustworthiness.

Applicant has been making efforts to resolve his financial situation. Although the SOR alleged that he owed \$19,206, Applicant disputed the single largest debt of more than \$15,000, and the credit agency has removed it from his credit report. Applicant has resolved more than 75 percent of the alleged debt. Applicant has made a good faith effort, resulting in substantial progress in resolving his financial situation. He has

paid or otherwise resolved four debts, amounting to \$15,414, including the largest debt in the SOR. AG ¶ 20 (c) and (d) apply.

Whole-Person Analysis

Under the whole-person concept, an administrative judge must evaluate the applicant's security eligibility by considering the totality of an applicant's conduct and all the circumstances. An 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.

AG ¶ 2(c) requires that the ultimate determination of whether to grant a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. Under the cited guideline, I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case.

Applicant has resolved more than 75 percent of the SOR debt. He has sufficient income to have a positive monthly net remainder to resolve the remaining debts. Although Applicant has not yet resolved every debt listed in the SOR, the Appeal Board has held,

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 demonstrates 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.⁷

Applicant credibly testified that he accumulated seven debts over the past few years primarily because he believed it was his duty to support his girlfriend's children when they needed financial assistance. Three of the seven debts resulted when Applicant co-signed for her children, and one when he co-signed on an account for his own daughter. He realizes that these actions have led to serious financial problems, and he will not engage in that activity again. He has resolved more than \$15,400 of his debts, and the remaining small amount does not raise a security concern.

Overall, the record evidence satisfies the doubts raised about Applicant's suitability for a security clearance. For all these reasons, I conclude Applicant has mitigated the security concerns raised by the cited adjudicative guideline.

Formal Findings

Paragraph 1, Guideline F	FOR APPLICANT
Subparagraphs 1.a – 1.g	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 allow Applicant access to classified information. Applicant's request for a security clearance is granted.

RITA C. O'BRIEN
Administrative Judge

⁷ ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008) (internal citations omitted).