



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



In the matter of:)	
)	
)	ISCR Case No. 10-11074
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Julie R. Mendez, Esq., Department Counsel
For Applicant: *Pro se*

November 8, 2011

Decision

LYNCH, Noreen A, Administrative Judge:

On June 9, 2011, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) listing security concerns arising under Guideline F (Financial Considerations) and Guideline B (Foreign Influence).¹ The action was taken under 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), implemented in September 2006.

Applicant timely answered the SOR and requested a hearing. DOHA assigned the case to me on August 16, 2011. A notice of hearing was issued on September 6, 2011, and the case was heard on September 26, 2011. Department Counsel offered four exhibits (GE) 1-4, which were admitted without objection. Applicant testified on his own behalf and submitted three exhibits (AE) A-C at the hearing, which were admitted

¹The Government withdrew the allegation under Foreign Influence before the hearing.

without objection. DOHA received the hearing transcript on October 4, 2011. Based on a review of the pleadings, submissions, and exhibits, I find Applicant met his burden of proof on mitigation regarding the security concerns raised. Security clearance is granted.

Findings of Fact

In his answer to the SOR, Applicant admitted the delinquent debts in the SOR with the exception of one account. Applicant is 30 years old. He is married and has one daughter. He attended a military college and received his undergraduate degree in 2003. Applicant has been employed with his current employer since May 2010. (AE A)

Applicant incurred delinquent debts during his final year in college and the first few years after. (GE 1) He disclosed on his security clearance application that he had jobs that were based on commission. At the time, he had no financial difficulties and his credit was good. He was earning sufficient income to support himself. (Tr. 12) He was paying his student loans.

Applicant explained that he worked tirelessly in the mortgage industry for several years from 2004 until approximately 2007. When a financial downturn started and the mortgage crisis began, the sale of luxury condominiums that was a great part of his business came to a halt. Applicant had a loss of income and fell behind in his rent and other expenses.

Applicant was determined to support himself and his family. He started working in a family business in late 2006, while still working in the mortgage industry. The company sold luxury items and was affected by the financial downturn as well. (Tr. 29) In 2008, Applicant had little or no income. He lived with his grandparents. (Tr. 30) He found a seasonal job late in 2008 making about \$12,000 a year. (Tr. 31) He decided to move his family to another state to improve job opportunities.

In 2008, Applicant consolidated his accounts with Cambridge Credit Counselors. He paid \$500 a month for over a year. He learned that the company did not pay the creditors. He was notified about a class action suit against the company. He is still involved with the law suit. He has not recovered the money (\$6,000) that he sent to the company during the year.

The SOR lists delinquent accounts totaling approximately \$13,000. The credit reports in the record confirm the debts. (GE 2) Applicant acknowledges the debts. (Tr. 18) Applicant satisfied several accounts last year that are not reflected on the SOR. The Government conceded that Applicant paid the debt alleged in SOR 1.b and that 1.c is a duplicate of 1.d., and amended the SOR. His credit reports reflect the status.

Applicant presented documentation that he is working with DSI Solutions to settle the remaining three delinquent accounts. (AE B) Applicant was unsuccessful in dealing with the creditors on his own, although he tried on numerous occasions. Some

companies wanted full payment, which he could not afford. He also disputes one account. He plans to use a tax refund to pay on the remaining accounts.

Applicant's annual salary is approximately \$80,000. He has a detailed budget. (AE A) At the hearing, Applicant noted that he has been promoted eight times since he started his current work in 2010. He is now Deputy Program Manager. He has a retirement account.

Applicant submitted several character references. His supervisor describes him as a vital part of the security effort in the agency. He has demonstrated the ability and trustworthiness to handle and protect classified information. The vice-president of the company recommends Applicant for a security clearance. He notes that Applicant has always performed his duties in a professional and disciplined manner. He is honest and hardworking. (GE 4)

Policies

When evaluating an applicant's suitability for a security clearance, an 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. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, they are applied in conjunction with the factors listed in the adjudicative process. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. Under AG ¶ 2(c), this process is a conscientious scrutiny of a number of variables known as the "whole-person concept." An 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

The U.S. Government must present evidence to establish controverted facts alleged in the SOR. An applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." ² The burden of proof is something less than a preponderance of evidence. ³ The ultimate burden of persuasion is on the applicant. ⁴

² See also ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

³ *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

⁴ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

A person seeking access to classified information enters into a fiduciary relationship with the Government based on 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 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 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.”⁵ “The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”⁶ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such information.⁷ The decision to deny an individual a security clearance does not necessarily reflect badly on an applicant’s character. It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense established for issuing a clearance.

Analysis

Guideline F, Financial Considerations

The security concern for Financial Considerations is set out in AG ¶ 18:

Failure or an 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.” It also states that “an individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.

Applicant has acknowledged delinquent debts. His credit report confirms them. Consequently, Financial Considerations Disqualifying Condition (FC DC) AG ¶ 19(a) (inability or unwillingness to satisfy debts), and FC DC AG ¶ 19(c) (a history of not meeting financial obligations) apply. With such conditions raised, it is left to Applicant to overcome the case against him and mitigate security concerns.

⁵ See also EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information), and EO 10865 § 7.

⁶ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

⁷ *Id.*

Applicant had financial difficulties due to unemployment and underemployment. He worked on commission and, in 2008, did not earn any income. He attempted to work for the family business but the financial downturn affected that company as well. He acknowledges his debts. He has been gainfully employed since 2010 and has paid several accounts. He also spent \$500 a month in a consolidation plan that was not legitimate. The class action suit is not yet resolved. He lost approximately \$6,000 which he believed was paying his creditors. Consequently, Financial Considerations Mitigating Condition (FC MC) AG ¶ 20(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) applies.

Financial Considerations Mitigating Condition (FC MC) AG ¶ 20(b) (the conditions that resulted in the behavior 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) is potentially applicable. As noted, Applicant was on commission working in the mortgage industry. When the financial crisis occurred, he was no longer making a salary that could pay his bills. He tried to work in the family business but to no avail. He also attempted to consolidate his debts. However, the company was taking his money and not paying the creditors. He paid several accounts on his own. He has obtained the services of another company to settle the three remaining debts. He follows a budget. He has acted reasonably under the circumstances. This mitigating condition applies.

FC MC AG ¶ 20(d) (the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts) applies. Applicant receives credit since he never shirked from his responsibility to pay his creditors. He did not wait to start making payments to the creditors. However, the company that he chose did not act in good faith. Applicant has the capability and the motivation to pay the remaining three accounts. He has done all that he could possibly do to address his delinquent accounts. FC MC AG ¶ 20(c) (the person has received or is receiving counseling for the problem and there are clear indications that the problem is being resolved or is under control) 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 an applicant's conduct and all the 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. As noted above, the ultimate burden of persuasion is on the applicant seeking a security clearance.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case as well as the whole-person factors. Applicant is 30 years old. He obtained his undergraduate degree and worked in the mortgage industry for several years. Unfortunately, due to the economy, he did not continue to prosper or earn any commissions for a number of years, which caused his delinquent accounts. He has paid accounts, sought help from a consolidation company and never tired in his efforts to pay his debts. He is married and supports his wife and daughter. He is praised by his employer. He has worked successfully handling classified information. He has been promoted many times in a short period of time.

Applicant's financial difficulties stem from circumstances beyond his control. He has acted reasonably in resolving his delinquent debts. He submitted information to mitigate the security concerns raised in this case. The evidence clearly shows that he has reduced his debt and will pay his remaining accounts. Clearance is granted.

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.e:	For Applicant
Subparagraphs 1.b-1.c:	Withdrawn
Paragraph 2, Guideline B:	WITHDRAWN
Subparagraph 2.a:	Withdrawn

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 a security clearance. Clearance is granted.

NOREEN A. LYNCH.
Administrative Judge