



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



In the matter of:)	
)	
XXXXXXXXXX, XXXXX)	ISCR Case No. 11-00014
)	
Applicant for Security Clearance)	

Appearances

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

January 20, 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 June 11, 2010, Applicant submitted an Electronic Questionnaires for Investigations Processing (e-QIP). On May 16, 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 after September 1, 2006.

Applicant answered the SOR on June 16, 2011, and DOHA received his answer on June 17, 2011. Department Counsel was prepared to proceed on August 4, 2011. The case was assigned to me on August 9, 2011. DOHA issued a notice of

hearing on August 12, 2011, scheduling the hearing for August 30, 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 Exhibit (AE) A, Tabs A through L, which was received into evidence without objection, and he testified on his own behalf.

I held the record open until September 16, 2011, to afford the Applicant the opportunity to submit additional documents on his behalf. Applicant timely submitted Tab M (1) through (6), which was received into evidence without objection. DOHA received the hearing transcript (Tr.) on September 9, 2011. The record closed on September 16, 2011.

Findings of Fact

Applicant admitted SOR ¶¶ 1a, 1b, and 1g. He denied the remaining allegations. Applicant provided explanations for his admissions and denials. His answers with 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 69-year-old part-time contract investigator, who has been employed as a defense contractor conducting background investigations since about April 2006. He seeks to reinstate his secret security clearance, which is a condition of his continued employment. Applicant has had a successful history of intermittently holding a security clearance beginning with his military service in 1960 until the present. (Tr. 13-17, GE 1.)

After graduating from high school, Applicant enlisted in the U.S. Navy and served on active duty from July 1960 to July 1964. He was honorably discharged as a Radarman Second Class (pay grade E-5). Applicant then attended a prestigious state university from December 1965 to June 1969, and was awarded a Bachelor of Arts degree in law enforcement administration. He also attended one year of law school as an evening student after graduating from college. (Tr. 16-18, 21-23, GE 1.)

Applicant has had a very diverse and impressive career in law enforcement, and corporate and private security. He served as a police chief for a small Midwestern town; director of investigations for Midwestern prosecutor's office; was a Secret Service Agent and was detail agent for Presidents Nixon, Ford, and Carter, as well as detail and advance agent for many foreign heads of state for travel within the United States; served as national director of security for a Fortune 500 company with a portfolio of nearly 700 properties in 35 major metropolitan areas; and was a major property owner and manager with a direct assignment in two very high profile

buildings in a major metropolitan West Coast city. Applicant has also owned and managed two private security companies that provided armed and unarmed security officers for high profile buildings and events. As a consultant, Applicant also evaluated traditional and event security force operational preparedness for both emergency response activities. (Tr. 18, 23-30, AE A, Tab L.)

Applicant was married and divorced three times. He has no dependents from his first two marriages. His most recent marriage was from March 1994 to March 2003. Applicant and his third wife share joint custody of their two teenage sons, ages 17 and 14. Applicant and his wife live two blocks apart and have a "good relationship," particularly as it relates to their children. (Tr. 18-21, 24-25.)

Financial Considerations

Applicant's background investigation addressed his financial situation and included the review of his June 2010 e-QIP, his April 2011 DOHA Interrogatories; as well as his April 2004 and June 2010 credit reports. (GE 1 – 5.) Applicant's SOR alleged seven separate debts consisting of two tax liens in favor of the Internal Revenue Service (IRS) and five consumer debts. (SOR ¶¶ 1a – 1g.) Those seven debts and their current status are discussed below.

Applicant's financial difficulties primarily began when he was laid off in March 2004 from a \$120,000 a year job as national security director for a Fortune 500 company. He was able to get a job as a sales engineer in September 2004 and was laid off in March 2009. Since then, Applicant has found meeting his day-to-day expenses challenging while meeting the financial needs of his two teenage boys in a depressed economy. To further add to his troubles, he was diagnosed with tongue cancer and has been in remission since mid-2011. However, the radiation and chemotherapy treatment have taken their toll on him and have affected his energy level. He acknowledges at age 69 "the prospects of getting a real job are slim." (GE 1, GE 2.)

The largest debts alleged are two IRS liens, the first lien was filed in May 2006 in the amount of \$14,031, and the second lien was filed in November 1992 in the amount of \$61,253. (SOR ¶¶ 1a and 1b.)

The \$14,031 lien is for tax year 2003 and arose when Applicant's former employer failed to take the proper deductions from his pay. By the time Applicant discovered the error, the amount had become unmanageable for him to pay in a lump sum. Applicant immediately contacted the IRS to arrange a payment plan and has been making payments at the rate of \$206 per month by direct debit. As recently as September 9, 2011, Applicant contacted the IRS and requested that they release their lien in light of his excellent repayment history. The IRS provided Applicant with IRS Form 12277 – Application for Withdrawal of Filed Form 688(Y), Notice of Federal Tax Lien. Applicant filed Form 12777 requesting that the 2006 IRS lien be released. Results are pending. (Tr. 31-37, GE 2, AE 1 (TAB A), AE 1 (TAB M) (3).)

The \$61,253 lien arose from failure to pay about \$35,000 in payroll taxes in 1985 following a cash flow problem. At that time Applicant owned a security guard company with about 400 employees. That amount increased to \$61,243 as a result of penalties and interest. Applicant subsequently sold the company. The new owner agreed to pay Applicant consulting fees as well as the tax arrearage to the IRS. The new owner initially failed to comply with either of those terms and Applicant did not have the funds to retain counsel to sue the new owner. When the new owner failed to pay the tax arrearages, Applicant contacted the IRS to set up a payment plan. Applicant was later notified that the new owner was paying the IRS consulting fees owed to Applicant as a result of a levy. The proceeds from the levy were applied to the tax arrearage and Applicant provided documentation of same. Applicant continued making payments to the IRS until his meeting with the IRS on May 8, 2000. At that meeting, Applicant was informed by the IRS representative that he was no longer liable for the lien and the IRS ceased further collection activity. During Applicant's 2005 security clearance background investigation, this matter was reviewed and resolved in Applicant's favor.

At the same meeting Applicant had with the IRS on September 9, 2011, discussed above, he raised the issue of the 1992 lien that appeared on his credit report. He was referred to the IRS Lien Processing Center. Applicant then contacted the Lien Processing Center and was informed that the 1992 lien was no longer being pursued by the IRS and that the lien was "self-releasing." The IRS further informed him that they had no control over how long their liens remained on individual credit reports. Applicant has a pending request with the credit bureaus to remove this lien from his credit reports. He provided ample documentation that he remained in communication with the IRS throughout the years regarding this lien. (Tr. 37-54, GE 2, AE 1 (TAB B), AE 1 (TAB M (3) and (6).)

The SOR alleges two large consumer credit card debts in the amounts of \$10,674 (SOR ¶ 1c) and \$7,939 (SOR ¶ 1g). The original amounts were \$3,932 and \$4,870, respectively; however, due to penalties and interest the amounts increased to their current level. These debts arose in the 2005 timeframe when Applicant was laid off and had no income to repay them. Given his current situation, discussed below, he is not in a position to repay these debts in full. He has, however, provided documentation that he has attempted to resolve these debts throughout the years and as recently September 2011, he contacted a debt relief agency to explore settlement and repayment. Most notably, after Applicant questioned the validity of the \$10,674 debt, the creditor advised him by letter that his account was closed and they had notified the credit bureaus to delete their listing. Applicant provided documentation of his past and recent good-faith efforts to resolve these debts. (Tr. 54-61, GE 2, AE 1 (TABs C and G), AE 1 (TAB M (3) and (5).)

The remaining debts alleged in the SOR are relatively small amounts -- \$119, \$95, and \$119 (SOR ¶¶ 1d – 1f). Applicant provided documentation that he has paid all of these debts in full. (Tr. 61-64, GE 2, (TABs D, E, and F).

Applicant's salary is primarily derived from social security and whatever he is able to earn conducting background investigations for his defense contractor. His ability to work last two years has been hindered by his cancer treatments. Applicant's personal financial statement (PFS) reflects a net monthly remainder of \$1,035. It is clear from his budget that he lives a modest lifestyle, lives within his means, and remains current on his daily expenses. He is actively involved in the lives of his two teenage sons and does his level best to provide for them with his limited means. (Tr. 64-71, GE 2, AE 1 (TAB H)). In conclusion, of the seven debts alleged, Applicant has resolved his two largest debts with the IRS, the creditor to whom he allegedly owed \$10,674 has closed the account and requested the credit bureaus to delete this account from Applicant's credit report, he is attempting to repay the creditor to whom he owes \$7,939, and has paid in full the remaining three creditors.

Character Evidence

Applicant submitted eight reference letters. Given the path Applicant's life has taken to include Navy sailor, college student, Secret Service Agent, private sector businessman specializing in security, and most recently as a contract background investigator, the authors of these letters cover all phases of his diverse background.

His references primarily are from individuals who first met Applicant on a professional basis, which later developed into a long-term friendship. His references date back to a childhood friend and a former Navy shipmate and carry through to the present. The collective sense of these reference letters paint a compelling picture of a decent, hard working, intelligent, honest, and patriotic individual who places his teenage sons as his first priority. It speaks very well of Applicant that he was able to develop and maintain friendships with so many people for so many years. All of his references strongly support Applicant for a security clearance. (Tr. 71-72, AE 1 (TAB J)).

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 useful 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 over arching 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

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 as to obtaining 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. As indicated in SOR ¶¶ 1a to 1g, he had seven delinquent debts

that have been in various states of delinquency over the years. 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 he was laid off two times from high paying jobs in the latter part of his working life. These were events beyond his control and he acted responsibly under the circumstances. Even though he did not have the funds for full repayment for all of his debts, he consistently remained in contact with his creditors and has taken reasonable steps to resolve his debts.¹

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

AG ¶ 20(c) is applicable because Applicant did seek financial counseling through a debt relief agency and there are clear indications that his financial problems are being resolved. He has produced evidence that he is living within his means and has regained financial responsibility. Furthermore, there is sufficient information to establish partial if not full mitigation under AG ¶ 20(d).² Applicant has paid, is paying, or has otherwise resolved six out of the seven debts alleged, and is attempting to settle with his remaining creditor. Given the funds available to him, his plan is reasonable and prudent. AG ¶ 20(e) is partially applicable given the fact that Applicant has challenged the amounts owed and current status of several of his debts.

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 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.

The ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the

(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:

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)).

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 record of military service, service as a Secret service Special Agent, and superb employment weighs in his favor. There is no evidence of any security violation during the time Applicant may have held a security clearance. He is a law-abiding citizen. He is current on his day-to-day expenses, lives within his means, and his SOR debts have been and are being addressed in a meaningful and thoughtful manner. 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).

Applicant established a meaningful plan for resolving his debts. He is making a significant contribution to the national defense. His eight references fully support him and recommend him for a security clearance. Due to circumstances beyond his control, his debts became delinquent. Based on his background and demonstrated record of trustworthiness, there is sufficient reason to believe that Applicant will overcome this setback. For the overwhelming majority of his adult life, he has established a history of financial responsibility. Apart from the SOR debts alleged, he has been current on all of his other debts and lives within his means. 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 in the Navy, his tenure with the Secret Service where his assignments included the protection of three U.S. Presidents, his years of financial responsibility before falling

into debt, his plan for financial recovery and substantial steps he has taken to resolve his financial situation, his potential for future service as a defense contractor, his age and maturity, his dedication and unwavering support of his two teenage boys, his overall contribution to society, 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 or overcome the Government's case. 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 to 1g: 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. Tuidor
Administrative Judge