



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



In the matter of:)	
)	
XXXXXXXXXX, XXXXX)	ISCR Case No. 11-01467
)	
Applicant for Security Clearance)	

Appearances

For Government: Ray T. Blank, Esq., Department Counsel
For Applicant: *Pro se*

02/23/2012

Decision

TUIDER, Robert J., Administrative Judge:

Applicant has mitigated security concerns under Guideline F (financial considerations). Clearance is granted.

Statement of the Case

On June 17, 2010, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP). On July 7, 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 issued after September 1, 2006.

Applicant answered the SOR on August 8, 2011, and DOHA received his answer on August 11, 2011. Department Counsel was prepared to proceed on September 28, 2011. The case was assigned to me on October 14, 2011. DOHA issued a notice of

hearing on October 17, 2011, scheduling the hearing for November 2, 2011. The hearing was held as scheduled.

At the hearing, the Government offered Government Exhibits (GE) 1 through 5, which were received into evidence without objection. Applicant testified and offered Applicant Exhibits (AE) A through F, which were received into evidence without objection.

I held the record open until November 18, 2011, to afford the Applicant the opportunity to submit additional documents. Applicant submitted AE G through I, which were received into evidence without objection. DOHA received the hearing transcript (Tr.) on November 14, 2011. The record closed on November 18, 2011.

Findings of Fact

Applicant admitted SOR ¶¶ 1c, 1e, 1i, 1k, and 1l, and denied the remaining allegations. His admissions are incorporated as findings of fact. After a thorough review of the evidence, I make the following additional findings of fact.

Background Information

Applicant is a 33-year-old network engineer, who had been employed by a defense contractor from May 2010 to October 2011. He is a first-time applicant for a security clearance and seeks a security clearance as a condition of his employment. Applicant's employment contract was terminated on October 1, 2011, because he was unable to successfully vet for a security clearance in the time required. However, his employer indicated they would rehire him if he successfully vets for a security clearance. Applicant was unemployed at the time of his hearing. (GE 1, Tr. 11, 13, 15-17.)

Applicant was awarded his GED in October 1997. He later attended a community college and earned 22 college credits. He has also taken "several" computer certification courses. (GE 1, Tr. 13-15.) Applicant has been married three times. His first marriage was from October 1996 to August 2002 (W1). His second marriage was from December 2005 to April 2009 (W2). Both of those marriages ended by divorce. He married his third and current wife in October 2009 (W3). Applicant has three minor children – two sons ages 14 and 10, who live with W1, and a third son age 7, who lives with W2. He is paying W1 \$740 in monthly child support, and is paying W2 \$540 in monthly child support. Even though Applicant is unemployed, he has not sought to reduce and has remained current on his child support payments with his savings and his wife's income. (GE 1, Tr. 17-23, 53.)

Applicant's current wife works full-time as an academic supervisor earning \$32,000 annually. At the time Applicant's contract was terminated, he was earning \$65,000 annually. (Tr. 22-23.)

Financial Considerations

The Government's Exhibits included Applicant's June 2010 e-QIP, his two sets of April 2010 DOHA Interrogatories; as well as his August 2010 and February 2011 credit reports. Applicant's SOR alleges 13 debts totalling \$50,460. The value of the debts that he admitted totals \$13,932 and the debts he denied totals \$36,528. (Tr. 9.)

At the onset of the hearing, Department Counsel stated that three debts had been satisfied – SOR ¶¶ 1d (medical co-pay debt for \$363), 1f (medical co-pay debt for \$1,016), and 1h (telephone company collection account for \$721). (Tr. 9-10, 27, 30-31, 36, AE B – AE D.) The debts in SOR ¶¶ 1h and 1g were consolidated at the time Applicant paid SOR ¶ 1h. (Tr. 31-32, 57-60, GE 2, GE 3.)

Applicant attributes his financial problems to: (1) his two previous divorces, especially his divorce from W2; (2) his current wife (W3) being unemployed for “eight to ten” months in 2010; and (3) him being unemployed since October 2011. The majority of the debts alleged in the SOR arose during his marriage to W2. (Tr. 24-27, GE 2.)

The following is a summary of Applicant's remaining SOR debts and their status:

SOR ¶ 1a is telephone company collection account for \$356. This account was paid in full on June 24, 2011. Applicant asserts that the debt in SOR ¶ 1b (charged-off account for \$300) is a duplicate of the debt in SOR ¶ 1a. He filed an on-line dispute to remove the duplicate debt in SOR ¶ 1b with the various credit bureaus at the time he paid this debt in full in June 2011. (Tr. 28-30, GE 2, GE 3.)

The debt in SOR ¶ 1c is a medical co-pay for \$500. The debt was originally \$664; however, Applicant paid \$164 in May 2010 towards that account. This debt is unresolved. (Tr. 32-35, 60, GE 2, GE 3, GE 4.) The debt in SOR ¶ 1e is a charged-off credit card debt for \$519 that W2 incurred while she was married to the Applicant. This debt is not resolved. (Tr. 35-36, 60-61.)

The debt in SOR ¶ 1i is a charged-off credit card debt for \$599. This debt was incurred by W2 while she was married to Applicant. Applicant contacted the creditor (credit union) in 2010 to make payment arrangements and was informed that the account was closed and no further action was required on his part. This debt is not resolved. (Tr. 36-37, 61-63, GE 2, GE 3.)

The debt in SOR ¶ 1j was incurred following a vehicle repossession. The creditor claims Applicant owes a balance of \$33,247. In 2007, W3 purchased a truck and Applicant co-signed the loan. In 2010, W3 lost her job and was unable to continue making payments. W3 immediately contacted the lender and was informed that since she was already one month late on her truck payment that she did not have the option of a “voluntarily” repossession. In April 2010, she received a letter from her lender advising that her truck was sold at auction for \$16,550 and that amount was subtracted from the original purchase price of \$33,000. At the time the truck was “repossessed,” she owed a loan balance of \$16,696. W3 has contested the \$33,000 amount claiming

that the lender did not give her credit for her years of timely payments. W3 contacted the lender and has filed disputes with the credit bureaus. Results are pending. Furthermore, W3 has contacted the lender and made good-faith attempts to set up an affordable payment plan. This debt is not resolved. (Tr. 37-42, 63-64, GE 2, GE 3, AE E.)

The debt in SOR ¶ 1k is a charged-off account for \$1,830. This debt originated when W2 purchased a vacuum cleaner in Applicant's name. W2 has the vacuum cleaner and Applicant has the debt. Applicant attempted to settle with this creditor; however, the amount the creditor required was more than Applicant is able to pay. Applicant is continuing his efforts to settle this account. This debt is not resolved. (Tr. 42-47, GE 2, GE 3.)

The debt in SOR ¶ 1l is a judgment for \$10,484 against Applicant. After divorcing W2, Applicant purchased a motorcycle from Party A and shortly thereafter recognized making such a purchase was not prudent. With Party A's permission, he sold the motorcycle to Party B. Before transfer of title occurred or before Applicant or Party B paid Party A, the motorcycle was stolen from Party B. Party A wished to be paid for his motorcycle and successfully sued Applicant for the value of the motorcycle in 2005. Applicant intends to repay Party A; however, at the present time he does not have the funds to do so while he has been attempting to settle his other debts. Applicant was unaware of this judgment until it was brought to his attention during his security clearance background investigation. This debt is not resolved. (Tr. 47-51, 54-57, GE 2, GE 3.)

The debt in SOR ¶ 1m is a collection account for \$413 and is not resolved. (Tr. 50-51, GE 2, GE 3.)

In conclusion, Applicant has paid or resolved 6 of the 13 debts alleged, has made a partial payment on one of the debts, and is contesting the amount of his largest debt, the truck repossession. He has also contacted several creditors and attempted to negotiate a settlement. Applicant leads a modest lifestyle and lives within his means. He and his current wife live in his mother's house and pay her rent. As noted, Applicant remains current on his child support payments and views this obligation "to make sure [his] kids are taken care of" as a priority. (Tr. 66-68.) Applicant testified that he and his wife have adopted the "Ramsey strategy" of paying down their small debts first and working up to the larger ones. (Tr. 70-71.)

Post-hearing, Applicant submitted evidence of having sought financial counseling. He provided a comprehensive plan, which included a financial summary, an action plan that included counselor comments, an analysis with objectives, recommendations, setting goals, priority spending plan, and how to take charge of his debt. His plan broke down his income and expenses, his financial future, and how to protect his credit. Applicant's financial counselor prepared two separate budgets – one reflecting his being unemployed and the second reflecting his being employed. His budget contains a strategy to repay his creditors. Additionally, Applicant's financial counselor referred him to an attorney to resolve the judgment in SOR ¶ 1l. (AE G – I.)

Character Evidence

Applicant submitted his most recent employee evaluation covering May 2010 to May 2011. His evaluation reflects: (1) that he is an above average performer; (2) that he is a valued employee; (3) that he is making a contribution to the defense industry; and (4) that he has excellent potential for future service. (AE F.)

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 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, 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 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 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. 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 his two divorces and wife's unemployment as well as his recent unemployment were circumstances beyond his control and he acted responsibly under the circumstances. Even though he did not have the funds to remain current on all of his debts, he remained in contact with the majority of his creditors during this timeframe and has taken reasonable steps to resolve his debts.¹

Additionally, Applicant receives credit under AG ¶ 20(c). Although he sought financial counseling post-hearing, it is clear from the comprehensive plan he submitted that he is on a clear path to resolve his financial situation. His financial plan has factored in two scenarios – one where he is employed and the other where he is unemployed. He has, however, produced evidence that reflects he is living within his means and is doing everything within his ability to regain financial responsibility. Furthermore, there is sufficient information to establish partial if not full mitigation under AG ¶ 20(d).² Applicant remained in contact with the majority of his creditors and was able to successfully settle several debts and made a partial payment on one debt. Several creditors required more than Applicant was able to pay. With regard to the largest debt,

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 (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)).

which is the truck repossession, Applicant's wife has diligently attempted to correct the amount reflected on their credit report and address the balance owed. Given his financial situation, Applicant has done all that can reasonably be expected of him. AG ¶ 20(e) is applicable with regard to those debts that Applicant established were duplicates or consolidated.

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 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 service as a defense contractor employee and employment record weigh in his favor. He is a law-abiding citizen and a productive member of society. He is current on his day-to-day expenses, lives within his means, and his SOR debts have been addressed to the best of his ability given his circumstances. 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).

Of note, Applicant remains current on his day-to-day expenses and has also remained current on his child support obligations. He could easily have sought to reduce his child support payments due to a change of circumstances, *i.e.* him being unemployed. However, Applicant and his wife continue to work through this problem by using his savings and her current salary to ensure his children's needs are met. Applicant's financial situation is not where he would like it to be, but he has a plan in place and has taken significant actions to implement that plan. His past conduct demonstrates that he had paid his creditors when he could while attempting to balance his daily living expenses and the needs of his minor children. Applicant's company fully supports him and recommends him for a security clearance. Due to circumstances beyond his control, his debts became delinquent. Despite Applicant's recent financial setback, it is clear from his actions that he is on the road to a full financial recovery. 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 years of financial responsibility before falling into debt, his financial recovery and substantial steps he has taken to resolve his financial situation, his potential for future service as a defense contractor, the mature and responsible manner in which he dealt with his adverse situation, his performance evaluation, 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 1m: 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