



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



In the matter of:)
)
) ISCR Case No. 11-01729
)
Applicant for Security Clearance)

Appearances

For Government: Daniel Crowley, Esq., Department Counsel
For Applicant: *Pro se*

December 21, 2011

Decision

LOUGHRAN, Edward W., Administrative Judge:

Applicant mitigated financial considerations security concerns, and he rebutted personal conduct security concerns. Eligibility for access to classified information is granted.

Statement of the Case

On August 12, 2011, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines F (financial considerations) and E (personal conduct). The action was taken under Executive Order (EO) 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) implemented by the Department of Defense on September 1, 2006.

Applicant answered the SOR on September 13, 2011, and requested a hearing before an administrative judge. The case was assigned to me on October 20, 2011. DOHA issued a notice of hearing on November 15, 2011, scheduling the hearing for

December 6, 2011. The hearing was convened as scheduled. The Government offered Exhibits (GE) 1 through 9, which were admitted without objection. Applicant testified and submitted Exhibits (AE) A through N, which were admitted without objection. DOHA received the hearing transcript (Tr.) on December 14, 2011.

Findings of Fact

Applicant is a 52-year-old employee of a defense contractor. He seeks to retain his security clearance, which he has held since 2007. He attended college for more than three years but has not earned a degree. He is married with six surviving children, ages 10 to 22.¹

Applicant worked for about six months in 2002 in a struggling company without receiving a real salary. He and the other employees were hoping the company would succeed and pay them their salaries. The company went out of business without adequately compensating its employees. Applicant had periods of unemployment and underemployment until he was hired by his current employer in October 2004. In 2002, one of Applicant's children was diagnosed with cancer. The child went through extensive medical procedures for several years. Applicant had medical insurance, but it did not cover all the costs of the child's treatment. Applicant was unable to pay all his bills and a number of debts became delinquent. The child survived the cancer and is currently a college student. In 2005, Applicant had a life-threatening medical condition. He spent time in the hospital and was on medical leave for a period.²

Several debts were charged off in 2003. An attorney advised Applicant that if a company charged off a debt, it would be difficult to deal with as far as arranging a payment plan. The attorney told him that if the companies would not accept payment plans and demanded a lump-sum payment, there was nothing else he could do. Applicant paid a number of debts that were not alleged in the SOR. He continued to attempt to negotiate with his creditors, but he had little success with the creditors who had charged off their debts.³

The SOR alleges five delinquent debts with balances totaling about \$16,150 and an unpaid \$10,501 judgment. Individual debts are discussed below.

Applicant paid the \$202 medical debt alleged in SOR ¶ 1.a in July 2011. He paid the \$84 debt for telephone services (SOR ¶ 1.b) on August 2, 2011. Applicant credibly stated that he was unaware of these debts until they were brought to his attention during his background interview in November 2010.⁴

¹ Tr. at 49-50, 55, 73; GE 1, 2.

² Tr. at 31-34, 44-45, 51-54; Applicant's response to SOR; GE 1, 2, 6; AE J.

³ Tr. at 32-36, 45-46, 54-55, 58-59; Applicant's response to SOR; GE 6, 7, 9.

⁴ Tr. at 37-38; Applicant's response to SOR; GE 7, 9; AE A, B, J.

A creditor obtained a judgment of \$10,501 against Applicant in March 2006. The judgment is alleged in SOR ¶ 1.f. Applicant settled the judgment for \$3,150 in September 2011. Applicant credibly stated that he was unaware of the judgment until he received a letter from the attorney for the plaintiff in late October or early November 2010.⁵

The three remaining delinquent debts (SOR ¶¶ 1.c - \$6,234; 1.d - \$7,366; and 1.e - \$2,265) were incurred in the early 2000s. Credit reports list the \$6,234 debt alleged in SOR ¶ 1.c as charged off, with a date of last action of December 2003. The \$7,366 debt alleged in SOR ¶ 1.d is listed as charged off, with a date of last action of January 2004. The underlying account for the \$2,265 debt alleged in SOR ¶ 1.e is listed as charged off and transferred to another lender, with a date of last action of October 2010.⁶

Applicant contacted the owners of the three remaining debts in order to attempt to resolve the debts. The collection company holding the debt alleged in SOR ¶ 1.c agreed to accept a settlement on the debt. The company provided him several options. Applicant credibly stated that he will settle the debt, but he will not be able to do so until the end of January 2012. The creditors alleged in SOR ¶¶ 1.c and 1.d told Applicant that they are only willing to accept a lump-sum payment on the accounts. They told him not to contact them unless he can make a full payment.⁷

Applicant completed a financial awareness course. His wife plans on returning to the workforce. He credibly testified that he intends to resolve all his delinquent debts. He is not accumulating new delinquent debt. His current finances are sound. He has four children in college, so funds are tight. However, he is able to make payments toward his delinquent debts, and he has a positive cash flow that can be used for savings and emergencies.⁸

Applicant submitted a security clearance application (SF 86) in June 2005. He listed a number of delinquent debts under the pertinent financial questions.⁹

Applicant submitted another SF 86 in October 2010. The financial questions asked about information within the last seven years. He did not list any delinquent debts or unpaid judgments under any of the pertinent financial questions. Applicant credibly denied intentionally falsifying the SF 86. He stated that he was unaware that a judgment was awarded against him, and he believed the delinquent debts were all charged off

⁵ Tr. at 36-37; Applicant's response to SOR; GE 4; AE J, L.

⁶ Tr. at 46-48; Applicant's response to SOR; GE 3, 5, 8; AE E, K.

⁷ Tr. at 38-39; Applicant's response to SOR; AE I, M.

⁸ Tr. at 45-48, 57-62; Applicant's response to SOR; GE 3-9; AE E, K.

⁹ Tr. at 56; GE 1.

more than seven years before he submitted the SF 86.¹⁰ After considering all the evidence, I find that Applicant did not intentionally falsify his SF 86.

A few weeks after he submitted the SF 86, Applicant received a letter from the attorney for the plaintiff in the judgment against him. Applicant considered the judgment to be adverse information that needed to be brought to the attention of the Department of Defense within seven days. He had an interview with an OPM investigator scheduled within seven days of his receiving notice. He was interviewed in November 2010. He produced the letter from the attorney and notified the investigator of the judgment. The judgment was not listed on any credit report, and there is no evidence that the investigator was aware of the judgment before Applicant notified the investigator. The investigator informed Applicant that several debts were still listed on his credit report. Applicant discussed the debts and his finances with the investigator.¹¹

Applicant submitted a number of letters attesting to his excellent job performance, honesty, judgment, trustworthiness, and integrity.¹²

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are to be 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, administrative judges apply the 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

¹⁰ Tr. at 32-43, 58; Applicant's response to SOR; GE 2, 6.

¹¹ Tr. at 43-44; Applicant's response to SOR; GE 3, 5, 6, 8; AE E, J, K.

¹² GE 7; AE C, D, F-H, N.

responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel.” The applicant has the ultimate burden of persuasion 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 safeguard 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 EO 10865 provides that adverse 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 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. Two are potentially applicable in this case:

- (a) inability or unwillingness to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant accumulated a number of delinquent debts and was unable or unwilling to pay his financial obligations. The evidence is sufficient to raise the above disqualifying conditions.

Conditions that could mitigate financial considerations security concerns are provided under AG ¶ 20. The following 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; and

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant had significant employment problems before he was hired by his current employer in 2004. His daughter had cancer, and he had a life-threatening medical condition. He attempted to resolve his financial problems after he was hired. He paid some debts that were not alleged in the SOR. Several creditors refused to accept payment plans. Applicant has received financial counseling. He has paid or settled several debts, including the judgment awarded against him. He credibly testified that he intends to settle or pay his debts. He has a plan to address his financial problems. He is now in the position where he can pay his current and delinquent debts, and he has a positive cash flow that can be used for savings and emergencies.

A security clearance adjudication is not a debt collection procedure. It is a procedure designed to evaluate an applicant's judgment, reliability, and trustworthiness. See ISCR Case No. 09-02160 (App. Bd. Jun. 21, 2010). An applicant is not required, as a matter of law, to establish resolution of every debt alleged in the SOR. An applicant need only establish a plan to resolve the financial problems and take significant actions to implement the plan. There is no requirement that an applicant make payments on all delinquent debts simultaneously, nor is there a requirement that the debts alleged in the SOR be paid first. See ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008).

Applicant's and his child's medical conditions and his employment problems qualify as conditions that were outside his control. I find that he acted responsibly under the circumstances and made a good-faith effort to pay his debts. There are clear indications that his financial problems are being resolved and are under control. They occurred under circumstances that are unlikely to recur and do not cast doubt on his current reliability, trustworthiness, and good judgment. AG ¶¶ 20(b) and 20(c) are applicable. AG ¶¶ AG ¶ 20(a) and 20(d) are partially applicable.

Guideline E, Personal Conduct

The security concern for personal conduct is set out in AG ¶ 15: Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. The following disqualifying conditions are potentially applicable:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities.

Applicant provided inaccurate information on his SF 86, but it was not intentional. AG ¶ 16(a) is not applicable. SOR ¶ 2.a is concluded for Applicant.

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. I have incorporated my comments under Guidelines F and E in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but some warrant additional comment.

I considered Applicant's favorable character evidence. I found Applicant to be honest and candid about his finances. I believe he is sincere about resolving his remaining financial issues. As indicated above, an applicant is not required to establish that he has paid every debt listed in the SOR. All that is required is that an applicant establish a plan to resolve the financial problems and take significant actions to implement the plan. I find that Applicant has established a plan to resolve his financial problems and has taken significant action to implement that plan. His finances do not constitute a security concern.

Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. I conclude Applicant has mitigated financial considerations security concerns, and he has rebutted personal conduct security concerns.

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
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraph 2.a:	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 continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is granted.

Edward W. Loughran
Administrative Judge